



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3977

Introduced 2/26/2009, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

See Index

Amends the Business Brokers Act of 1995. Exempts any franchise seller as defined in the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, as it may be amended, from the registration requirements and other duties imposed under the Act (rather than exempting persons registered under the Illinois Franchise Disclosure Act of 1987 from the Act's requirements as to (1) offers and sales in connection with franchising activities or (2) assisting their franchisees in the offer or sale of a franchise). Amends the Business Opportunity Sales Law of 1995. Provides that a seller of a business opportunity that is defined as a franchise under the Franchise Disclosure Act of 1987 is exempt from registering certain disclosure documents if the seller delivers either (1) The Franchise Offering Circular or (2) a disclosure document as required by the Illinois Franchise Disclosure Act of 1987, as it may be amended, to each purchaser 14 days prior to (rather than delivery by the earlier of the first personal meeting, or 10 business days) the purchaser's execution of specified documents. Makes other changes. Amends the Franchise Disclosure Act of 1987. In the definition of the term "franchise", provides that a person granted the right to operate a franchise business is required to pay the franchisor or the franchisor's affiliate a fee of \$500 or more at any time prior to or within the first 6 months of the commencement of operations of the franchise business. Also enumerates specific franchise agreements and relationships not governed by the Act. Makes changes to provisions concerning the sale and extension or renewal of an existing franchise; exemptions from the Act's registration requirements; registration and annual reports; amendments to disclosure statements; the deferral of payment of the initial franchise fee; and other matters. Repeals the provision prohibiting a franchise broker from selling a franchise that requires registration under the Act unless the franchise broker submitted an application for registration and a consent to service of process. Repeals the provision creating a franchise advisory board.

LRB096 03123 KTG 13139 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Business Brokers Act of 1995 is
5 amended by changing Section 10-80 as follows:

6 (815 ILCS 307/10-80)

7 Sec. 10-80. Persons exempt from registration and other
8 duties under law; burden of proof thereof.

9 (a) The following persons are exempt from the requirements
10 of this Act:

11 (1) Any attorney who is licensed to practice in this
12 State, while engaged in the practice of law and whose
13 service in relation to the business broker transaction is
14 incidental to the attorney's practice.

15 (2) Any person licensed as a real estate broker or
16 salesperson under the Illinois Real Estate License Act of
17 2000 who is primarily engaged in business activities for
18 which a license is required under that Act and who, on an
19 incidental basis, acts as a business broker.

20 (3) Any dealer, salesperson, or investment adviser
21 registered pursuant to the Illinois Securities Law of 1953
22 or any investment adviser representative, or any person who
23 is regularly engaged in the business of offering or selling

1 securities in a transaction exempted under subsection C, H,
2 M, R, Q, or S of Section 4 of the Illinois Securities Law
3 of 1953 or subsection G of Section 4 of the Illinois
4 Securities Law of 1953 provided that such person is
5 registered pursuant to federal securities law.

6 (4) An associated person described in subdivision
7 (h) (2) of Section 15 of the Federal 1934 Act.

8 (5) An investment adviser registered pursuant to
9 Section 203 of the Federal 1940 Investment Advisors Act.

10 (6) A person described in subdivision (a) (11) of
11 Section 202 of the Federal 1940 Investment Advisors Act.

12 (7) Any person who is selling a business owned or
13 operated (in whole or in part) by that person in a one time
14 transaction.

15 (b) This Act shall not be deemed to apply in any manner,
16 directly or indirectly, to: (i) a State bank or national bank,
17 as those terms are defined in the Illinois Banking Act, or any
18 subsidiary of a State bank or national bank; (ii) a bank
19 holding company, as that term is defined in the Illinois Bank
20 Holding Company Act of 1957, or any subsidiary of a bank
21 holding company; (iii) a foreign banking corporation, as that
22 term is defined in the Foreign Banking Office Act, or any
23 subsidiary of a foreign banking corporation; (iv) a
24 representative office, as that term is defined in the Foreign
25 Bank Representative Office Act; (v) a corporate fiduciary, as
26 that term is defined in the Corporate Fiduciary Act, or any

1 subsidiary of a corporate fiduciary; (vi) a savings bank
2 organized under the Savings Bank Act, or a federal savings bank
3 organized under federal law, or any subsidiary of a savings
4 bank or federal savings bank; (vii) a savings bank holding
5 company organized under the Savings Bank Act, or any subsidiary
6 of a savings bank holding company; (viii) an association or
7 federal association, as those terms are defined in the Illinois
8 Savings and Loan Act of 1985, or any subsidiary of an
9 association or federal association; (ix) a foreign savings and
10 loan association or foreign savings bank subject to the
11 Illinois Savings and Loan Act of 1985, or any subsidiary of a
12 foreign savings and loan association or foreign savings bank;
13 or (x) a savings and loan association holding company, as that
14 term is defined in the Illinois Savings and Loan Act of 1985,
15 or any subsidiary of a savings and loan association holding
16 company.

17 (b-1) Any franchise seller as defined in the Federal Trade
18 Commission rule entitled Disclosure Requirements and
19 Prohibitions Concerning Franchising, 16 C.F.R. Part 436.1(j),
20 as it may be amended, is exempt from the requirements of this
21 Act. Persons registered under the Illinois Franchise
22 Disclosure Act of 1987 (and their employees) are exempt from
23 the requirements of this Act as to: offers and sales in
24 connection with franchising activities; or assisting any of
25 their franchisees in the offer or sale of a franchise by any
26 such franchisee for the franchisee's own account regardless of

1 ~~whether the sale is effected by or through the registered~~
2 ~~persons.~~

3 (b-2) Any certified public accountant licensed to practice
4 in Illinois, while engaged in the practice as a certified
5 public accountant and whose service in relation to the business
6 broker transaction is incidental to his or her practice, is
7 exempt from the requirements of this Act.

8 (b-3) Any publisher, or regular employee of such publisher,
9 of a bona fide newspaper or news magazine of regular and
10 established paid circulation who, in the routine course of
11 selling advertising, advertises businesses for sale and in
12 which no other related services are provided is exempt from the
13 requirements of this Act.

14 (c) The burden of proof of any exemption or classification
15 provided in this Act shall be on the party claiming the
16 exemption or classification.

17 (Source: P.A. 90-70, eff. 7-8-97; 91-245, eff. 12-31-99.)

18 Section 10. The Business Opportunity Sales Law of 1995 is
19 amended by changing Sections 5-10, 5-30 and 5-35 as follows:

20 (815 ILCS 602/5-10)

21 Sec. 5-10. Exemptions. Registration pursuant to Section
22 5-30 shall not apply to any of the following:

23 (a) Any offer or sale of a business opportunity for which
24 the immediate cash payment made by the purchaser for any

1 business opportunity is at least \$25,000 if the immediate cash
2 payment does not exceed 20% of the purchaser's net worth as
3 determined exclusive of principal residence, furnishings
4 therein, and automobiles; provided, however, the Secretary of
5 State may by rule or regulation withdraw or further condition
6 the availability of this exemption.

7 (b) Any offer or sale of a business opportunity which the
8 seller does not advertise, solicit, or sell for an initial
9 payment to the seller or a person recommended by the seller
10 exceeding \$500.

11 (c) Any offer or sale of a business opportunity where the
12 seller has a net worth of not less than \$1,000,000 as
13 determined on the basis of the seller's most recent audited
14 financial statement, prepared within 13 months of the first
15 offer in this State. Net worth may be determined on a
16 consolidated basis where the seller is at least 80% owned by
17 one person and that person expressly guarantees the obligations
18 of the seller with regard to the offer or sale of any business
19 opportunity claimed to be exempt under this subsection. The
20 Secretary of State may by rule or regulation withdraw or
21 further condition the availability of this exemption.

22 (d) Any offer or sale of a business opportunity where the
23 purchaser has a net worth of not less than \$250,000. Net worth
24 shall be determined exclusive of principal residence,
25 furnishings therein, and automobiles. The Secretary of State
26 may by rule or regulation withdraw or further condition the

1 availability of this exemption.

2 (e) Any offer or sale of a business opportunity where the
3 purchaser is a bank, savings and loan association, trust
4 company, insurance company, credit union, or investment
5 company as defined by the federal Investment Company Act of
6 1940, pension or profit sharing trust, or other financial
7 institution or institutional buyer, or a dealer registered
8 under the Illinois Securities Law of 1953, where the purchaser
9 is acting for itself or in a fiduciary capacity.

10 (f) Any offer or sale of a business opportunity which is
11 defined as a franchise under the Franchise Disclosure Act of
12 1987 provided that the seller delivers to each purchaser 14 ~~at~~
13 ~~the earlier of the first personal meeting, or 10 business~~ days
14 prior to the earlier of the execution by a purchaser of any
15 contract or agreement imposing a binding legal obligation on
16 the purchaser or the payment by a purchaser of any
17 consideration in connection with the offer or sale of the
18 business opportunity, one of the following disclosure
19 documents:

20 (1) The Franchise Offering Circular provided for under
21 the Franchise Disclosure Act of 1987 which the Secretary of
22 State may adopt by rule or regulation; or

23 (2) A disclosure document prepared in accordance with
24 the requirements of Section 16 of the Illinois Franchise
25 Disclosure Act of 1987, as it may be amended. ~~pursuant to~~
26 ~~the Federal Trade Commission rule entitled Disclosure~~

~~Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Sec. 436 (1979). For the purposes of this subsection, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity.~~

(g) Any offer or sale of a business opportunity for which the cash payment required to be made by a purchaser for any business opportunity does not exceed \$500 and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

(h) Any offer or sale of a business opportunity which the Secretary of State exempts by order or a class of business opportunities which the Secretary of State exempts by rule or regulation upon the finding that such exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

(Source: P.A. 91-809, eff. 1-1-01.)

(815 ILCS 602/5-30)

Sec. 5-30. Registration.

(a) In order to register a business opportunity, the seller shall file with the Secretary of State one of the following

1 disclosure documents with the appropriate cover sheet as
2 required by subsection (b) of Section 5-35 of this Law, a
3 consent to service of process as specified in subsection (b) of
4 this Section, and the appropriate fee as required by subsection
5 (c) of this Section which is not returnable in any event:

6 (1) The Business Opportunity Disclosure Document
7 ~~Franchise Offering Circular~~ which the Secretary of State
8 may prescribe by rule or regulation; or

9 (2) A disclosure document prepared pursuant to the
10 Federal Trade Commission rule entitled Disclosure
11 Requirements and Prohibitions Concerning Franchising, 16
12 C.F.R. Part 436, as it may be amended and ~~Business~~
13 ~~Opportunity Venture, 16 C.F.R. Sec. 436 (1979).~~ The
14 ~~Secretary of State may by rule or regulation adopt any~~
15 ~~amendment to the disclosure document prepared pursuant to~~
16 ~~16 C.F.R. Sec. 436 (1979), that has been adopted by the~~
17 ~~Federal Trade Commission; or~~

18 (3) A disclosure document prepared pursuant to
19 subsection (b) of Section 5-35 of this Law.

20 (b) Every seller shall file, in the form as the Secretary
21 of State may prescribe, an irrevocable consent appointing the
22 Secretary of State or the successor in office to be the
23 seller's attorney to receive service of any lawful process in
24 any noncriminal suit, action or proceeding against the seller
25 or the seller's successor, executor or administrator which
26 arises under this Law after the consent has been filed, with

1 the same force and validity as if served personally on the
2 person filing the consent. Service may be made by delivering a
3 copy of the process in the office of the Secretary of State,
4 but is not effective unless the plaintiff or petitioner in a
5 suit, action or proceeding, forthwith sends notice of the
6 service and a copy of the process by registered or certified
7 mail, return receipt requested, to the defendant's or
8 respondent's most current address on file with the Secretary of
9 State, and the plaintiff's affidavit of compliance with this
10 subsection is filed in the case on or before the return date of
11 the process, if any, or within such further time as the court
12 allows.

13 (c) (1) The Secretary of State shall by rule or regulation
14 impose and shall collect fees necessary for the
15 administration of this Law including, but not limited to,
16 fees for the following purposes:

17 (A) filing a disclosure document and renewal fee;

18 (B) interpretive opinion fee;

19 (C) acceptance of service of process pursuant to
20 subsection (b) of Section 5-145;

21 (D) issuance of certification pursuant to Section
22 5-20; or

23 (E) late registration fee pursuant to Section
24 5-30(g).

25 (2) The Secretary of State may, by rule or regulation,
26 raise or lower any fee imposed by, and which he or she is

1 authorized by law to collect under this Law.

2 (d) A registration automatically becomes effective upon
3 the expiration of the 10th full business day after a complete
4 filing, provided that no order has been issued or proceeding
5 pending under Section 5-45 of this Law. The Secretary of State
6 may by order waive or reduce the time period prior to
7 effectiveness, provided that a complete filing has been made.
8 The Secretary of State may by order defer the effective date
9 until the expiration of the 10th full business day after the
10 filing of any amendment.

11 (e) The registration is effective for one year commencing
12 on the date of effectiveness and may be renewed annually upon
13 the filing of a current disclosure document accompanied by any
14 documents or information that the Secretary of State may by
15 rule or regulation or order require. The annual renewal fee
16 shall be in the same amount as the initial registration fee as
17 established under subsection (c) of Section 5-30 of this Law
18 which shall not be returnable in any event. Failure to renew
19 upon the close of the one year period of effectiveness will
20 result in expiration of the registration. The Secretary of
21 State may by rule or regulation or order require the filing of
22 a sales report.

23 (f) The Secretary of State may by rule or regulation or
24 order require the filing of all proposed literature or
25 advertising prior to its use.

26 (g) Notwithstanding the foregoing, applications for

1 renewal of registration of business opportunities may be filed
2 within 30 days following the expiration of the registration
3 provided that the applicant pays the annual registration fee
4 together with an additional amount equal to the annual
5 registration fee and files any other information or documents
6 that the Secretary of State may prescribe by rule or order. Any
7 application filed within 30 days following the expiration of
8 the registration shall be automatically effective as of the
9 time of the earlier expiration provided that the proper fee has
10 been paid to the Secretary of State.

11 (Source: P.A. 92-308, eff. 1-1-02.)

12 (815 ILCS 602/5-35)

13 Sec. 5-35. Disclosure requirements.

14 (a) It shall be unlawful for any person to offer or, sell
15 any business opportunity required to be registered under this
16 Law unless a written disclosure document as filed under
17 subsection (a) of Section 5-30 of this Law is delivered to each
18 purchaser at least 14 ~~10-business~~ days prior to the execution
19 by a purchaser of any contract or agreement imposing a binding
20 legal obligation on the purchaser or the payment by a purchaser
21 of any consideration in connection with the offer or sale of
22 the business opportunity.

23 (b) The disclosure document shall have a cover sheet which
24 is entitled, in at least 10-point bold type, "DISCLOSURE
25 REQUIRED BY THE STATE OF ILLINOIS." Under the title shall

1 appear the statement in at least 10-point bold type that "THE
2 REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE
3 APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF
4 ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE
5 DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY
6 QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL
7 ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE
8 TO BE PROVIDED 10 BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE
9 SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE
10 SELLER OR THE SELLER'S REPRESENTATIVE". The seller's name and
11 principal business address, along with the date of the
12 disclosure document shall also be provided on the cover sheet.
13 No other information shall appear on the cover sheet. The
14 disclosure document shall contain the following information
15 unless the seller uses a disclosure document as provided in
16 paragraph (1) or (2) of subsection (a) of Section 5-30 of this
17 Law:

18 (1) The names and residential addresses of those
19 salespersons who will engage in the offer or sale of the
20 business opportunity in this State.

21 (2) The name of the seller, whether the seller is doing
22 business as an individual, partnership or corporation; the
23 names under which the seller has conducted, is conducting
24 or intends to conduct business; and the name of any parent
25 or affiliated company that will engage in business
26 transactions with purchasers or which will take

1 responsibility for statements made by the seller.

2 (3) The names, addresses and titles of the seller's
3 officers, directors, trustees, general managers, principal
4 executives, agents, and any other persons charged with
5 responsibility for the seller's business activities
6 relating to the sale of the business opportunity.

7 (4) Prior business experience of the seller relating to
8 business opportunities including:

9 (A) The name, address, and a description of any
10 business opportunity previously offered by the seller;

11 (B) The length of time the seller has offered each
12 such business opportunity; and

13 (C) The length of time the seller has conducted the
14 business opportunity currently being offered to the
15 purchaser.

16 (5) With respect to persons identified in item (3) of
17 this subsection:

18 (A) A description of the persons' business
19 experience for the 10 year period preceding the filing
20 date of this disclosure document. The description of
21 business experience shall list principal occupations
22 and employers; and

23 (B) A listing of the persons' educational and
24 professional backgrounds including, the names of
25 schools attended and degrees received, and any other
26 information that will demonstrate sufficient knowledge

1 and experience to perform the services proposed.

2 (6) Whether the seller or any person identified in item
3 (3) of this subsection:

4 (A) Has been convicted of any felony, or pleaded
5 nolo contendere to a felony charge, or has been the
6 subject of any criminal, civil or administrative
7 proceedings alleging the violation of any business
8 opportunity law, securities law, commodities law,
9 franchise law, fraud or deceit, embezzlement,
10 fraudulent conversion, restraint of trade, unfair or
11 deceptive practices, misappropriation of property or
12 comparable allegations;

13 (B) Has filed in bankruptcy, been adjudged
14 bankrupt, been reorganized due to insolvency, or was an
15 owner, principal officer or general partner or any
16 other person that has so filed or was so adjudged or
17 reorganized during or within the last 7 years.

18 (7) The name of the person identified in item (6) of
19 this subsection, nature of and parties to the action or
20 proceeding, court or other forum, date of the institution
21 of the action, docket references to the action, current
22 status of the action or proceeding, terms and conditions or
23 any order or decree, the penalties or damages assessed and
24 terms of settlement.

25 (8) The initial payment required, or when the exact
26 amount cannot be determined, a detailed estimate of the

1 amount of the initial payment to be made to the seller.

2 (9) A detailed description of the actual services the
3 seller agrees to perform for the purchaser.

4 (10) A detailed description of any training the seller
5 agrees to provide for the purchaser.

6 (11) A detailed description of services the seller
7 agrees to perform in connection with the placement of
8 equipment, products or supplies at a location, as well as
9 any agreement necessary in order to locate or operate
10 equipment, products or supplies on a premises neither owned
11 nor leased by the purchaser or seller.

12 (12) A detailed description of any license or permit
13 that will be necessary in order for the purchaser to engage
14 in or operate the business opportunity.

15 (13) The business opportunity seller that is required
16 to secure a bond under Section 5-50 of this Law, shall
17 state in the disclosure document "As required by the State
18 of Illinois, the seller has secured a bond issued by
19 (insert name and address of surety company), a surety
20 company, authorized to do business in this State. Before
21 signing a contract or agreement to purchase this business
22 opportunity, you should check with the surety company to
23 determine the bond's current status."

24 (14) Any representations made by the seller to the
25 purchaser concerning sales or earnings that may be made
26 from this business opportunity, including, but not limited

1 to:

2 (A) The bases or assumptions for any actual,
3 average, projected or forecasted sales, profits,
4 income or earnings;

5 (B) The total number of purchasers who, within a
6 period of 3 years of the date of the disclosure
7 document, purchased a business opportunity involving
8 the product, equipment, supplies or services being
9 offered to the purchaser; and

10 (C) The total number of purchasers who, within 3
11 years of the date of the disclosure document, purchased
12 a business opportunity involving the product,
13 equipment, supplies or services being offered to the
14 purchaser who, to the seller's knowledge, have
15 actually received earnings in the amount or range
16 specified.

17 (15) Any seller who makes a guarantee to a purchaser
18 shall give a detailed description of the elements of the
19 guarantee. Such description shall include, but shall not be
20 limited to, the duration, terms, scope, conditions and
21 limitations of the guarantee.

22 (16) A statement of:

23 (A) The total number of business opportunities
24 that are the same or similar in nature to those that
25 have been sold or organized by the seller;

26 (B) The names and addresses of purchasers who have

1 requested a refund or rescission from the seller within
2 the last 12 months and the number of those who have
3 received the refund or rescission; and

4 (C) The total number of business opportunities the
5 seller intends to sell in this State within the next 12
6 months.

7 (17) A statement describing any contractual
8 restrictions, prohibitions or limitations on the
9 purchaser's conduct. Attach a copy of all business
10 opportunity and other contracts or agreements proposed for
11 use or in use in this State including, without limitation,
12 all lease agreements, option agreements, and purchase
13 agreements.

14 (18) The rights and obligations of the seller and the
15 purchaser regarding termination of the business
16 opportunity contract or agreement.

17 (19) A statement accurately describing the grounds
18 upon which the purchaser may initiate legal action to
19 terminate the business opportunity contract or agreement.

20 (20) A copy of the most recent audited financial
21 statement of the seller, prepared within 13 months of the
22 first offer in this State, together with a statement of any
23 material changes in the financial condition of the seller
24 from that date. The Secretary of State may accept the
25 filing of a reviewed financial statement in lieu of an
26 audited financial statement.

1 (21) A list of the states in which this business
2 opportunity is registered.

3 (22) A list of the states in which this disclosure
4 document is on file.

5 (23) A list of the states which have denied, suspended
6 or revoked the registration of this business opportunity.

7 (24) A section entitled "Risk Factors" containing a
8 series of short concise statements summarizing the
9 principal factors which make this business opportunity a
10 high risk or one of a speculative nature. Each statement
11 shall include a cross-reference to the page on which
12 further information regarding that risk factor can be found
13 in the disclosure document.

14 (25) Any additional information as the Secretary of
15 State may require by rule, regulation, or order.

16 (Source: P.A. 92-308, eff. 1-1-02.)

17 Section 15. The Franchise Disclosure Act of 1987 is amended
18 by changing Sections 3, 7, 8, 10, 11, 15, 16, 20, 22, 26, 29 and
19 40 as follows:

20 (815 ILCS 705/3) (from Ch. 121 1/2, par. 1703)

21 Sec. 3. Definitions. As used in this Act:

22 (1) "Franchise" means a contract or agreement, either
23 expressed or implied, whether oral or written, between two or
24 more persons by which:

1 (a) a franchisee is granted the right to engage in the
2 business of offering, selling, or distributing goods or
3 services, under a marketing plan or system prescribed or
4 suggested in substantial part by a franchisor; and

5 (b) the operation of the franchisee's business
6 pursuant to such plan or system is substantially associated
7 with the franchisor's trademark, service mark, trade name,
8 logotype, advertising, or other commercial symbol
9 designating the franchisor or its affiliate; and

10 (c) the person granted the right to engage in such
11 business is required to pay to the franchisor or an
12 affiliate of the franchisor, directly or indirectly, a
13 franchise fee of \$500 or more at any time prior to or
14 within the first 6 months of the commencement of operations
15 of the franchised business;

16 Provided that this Act shall not apply to any of the
17 following persons, entities or relationships which may involve
18 or acquire a franchise or any interest in a franchise:

19 (i) any franchised business which is operated by
20 the franchisee on the premises of the franchisor or
21 subfranchisor as long as such franchised business is
22 incidental to the business conducted by the franchisor
23 or subfranchisor at such premises, including, without
24 limitation, leased departments and concessions; or

25 (ii) a fractional franchise. A "fractional
26 franchise" means any relationship in which the person

1 described therein as a franchisee, or any of the
2 current directors or executive officers thereof, has
3 been in the type of business represented by the
4 franchise relationship for more than 2 years and the
5 parties anticipated, or should have anticipated, at
6 the time the agreement establishing the franchise
7 relationship was reached, that the sales arising from
8 the relationship would represent no more than 20% of
9 the sales in dollar volume of the franchisee for a
10 period of at least one year after the franchisee begins
11 selling the goods or services involved in the
12 franchise; or

13 (iii) a franchise agreement for the use of a
14 trademark, service mark, trade name, logotype,
15 advertising, or other commercial symbol designating a
16 person who offers on a general basis, for a fee or
17 otherwise, a bona fide service for the evaluation,
18 testing, or certification of goods, commodities, or
19 services; or

20 (iv) a franchise relationship covered by the
21 Petroleum Marketing Practices Act, 15 U.S.C. 2801; or

22 (v) a franchise agreement where the franchisee (or
23 its parent or any affiliates) is an entity that has
24 been in business for at least 5 years and has a net
25 worth of at least \$5,000,000; or

26 (vi) a franchise agreement where one or more

1 purchasers of at least a 50% ownership interest in the
2 franchise: within 60 days of the sale, has been, for at
3 least 2 years, an officer, director, general partner,
4 individual with management responsibility for the
5 offer and sale of the franchisor's franchises or the
6 administrator of the franchised network; or within 60
7 days of the sale, has been, for at least 2 years, an
8 owner of at least a 25% interest in the franchisor.

9 (2) "Franchisee" means a person to whom a franchise is
10 granted and includes, unless stated otherwise in this Act: (a)
11 a subfranchisor with regard to its relationship with a
12 franchisor and (b) a subfranchisee with regard to its
13 relationship with a subfranchisor.

14 (3) "Franchisor" means a person who grants a franchise and
15 includes a subfranchisor with regard to its relationship with a
16 franchisee, unless stated otherwise in this Act.

17 (4) "Subfranchise" means any contract or agreement between
18 a franchisor and a subfranchisor whereby the subfranchisor is
19 granted the right, in consideration of the payment of a
20 franchise fee in whole or in part for such right, to grant
21 ~~service franchises to subfranchisees or to sell or negotiate~~
22 ~~the sale of franchises~~. Where used in this Act, unless
23 specifically stated otherwise, "franchise" includes
24 "subfranchise."

25 (5) "Subfranchisor" means a person to whom the right to
26 sell subfranchises is granted.

1 (6) "Order" means a consent, authorization, approval,
2 prohibition, or requirement applicable to a specific case
3 issued by the Attorney General Administrator.

4 (7) "Person" means an individual, a corporation, a
5 partnership, a joint venture, an association, a joint stock
6 company, a trust, or an unincorporated organization.

7 (8) "Rule" means any published regulation or standard of
8 general application issued by the Administrator.

9 (9) "Sale" or "sell" includes every contract or agreement
10 of sale of, contract to sell, or disposition of, a franchise or
11 interest in a franchise for value.

12 (10) "State" means the State of Illinois.

13 (11) "Fraud" and "deceit" are not limited to common law
14 fraud or deceit.

15 (12) "Offer" or "offer to sell" includes every attempt to
16 offer to dispose of, or solicitation of an offer to buy, a
17 franchise, any interest in a franchise or an option to acquire
18 a franchise for value.

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

22 (14) "Franchise fee" means any fee or charge that a
23 franchisee is required to pay directly or indirectly for the
24 right to enter into a business or sell, resell, or distribute
25 goods, services or franchises under an agreement, including,
26 but not limited to, any such payment for goods or services,

1 provided that the Administrator may by rule define what
2 constitutes an indirect franchise fee, and provided further
3 that the following shall not be considered the payment of a
4 franchise fee: (a) the payment of a reasonable service charge
5 to the issuer of a credit card by an establishment accepting or
6 honoring such credit card; (b) amounts paid to a trading stamp
7 company by a person issuing trading stamps in connection with
8 the retail sale of merchandise or services; (c) the purchase or
9 agreement to purchase goods for which there is an established
10 market at a bona fide wholesale price; (d) the payment for
11 fixtures necessary to operate the business; (e) the payment of
12 rent which reflects payment for the economic value of the
13 property; or (f) the purchase or agreement to purchase goods
14 for which there is an established market at a bona fide retail
15 price subject to a bona fide commission or compensation plan.
16 The Administrator may by rule define what shall constitute an
17 established market.

18 (15) "Disclosure statement" means the document provided
19 for in Section 16 of this Act and all amendments to such
20 document.

21 (16) "Write" or "written" shall include printed,
22 lithographed or any other means of graphic communication.

23 (17) (Blank).

24 (18) "Marketing plan or system" means a plan or system
25 relating to some aspect of the conduct of a party to a contract
26 in conducting business, including but not limited to (a)

1 specification of price, or special pricing systems or discount
2 plans, (b) use of particular sales or display equipment or
3 merchandising devices, (c) use of specific sales techniques,
4 (d) use of advertising or promotional materials or cooperation
5 in advertising efforts; provided that an agreement is not a
6 marketing plan or system solely because a manufacturer or
7 distributor of goods reserves the right to occasionally require
8 sale at a special reduced price which is advertised on the
9 container or packaging material in which the product is
10 regularly sold, if the reduced price is absorbed by the
11 manufacturer or distributor.

12 (19) "Administrator" means the Illinois Attorney General.

13 (20) (a) An offer to sell a franchise is made in this State
14 when the offer either originates from this State or is
15 directed by the offeror to this State and received at the
16 place to which it is directed. An offer to sell is accepted
17 in this State when acceptance is communicated to the
18 offeror in this State; and acceptance is communicated to
19 the offeror in this State when the offeree directs it to
20 the offeror in this State reasonably believing the offeror
21 to be in this State and it is received at the place to
22 which it is directed.

23 (b) An offer to sell a franchise is not made in this
24 State merely because the franchisor circulates or there is
25 circulated in this State an advertisement in (i) a bona
26 fide newspaper or other publication of general, regular and

1 paid circulation which has had more than 2/3 of its
2 circulation outside this State during the past 12 months,
3 or (ii) a radio or television program originating outside
4 this State which is received in this State.

5 (21) "Franchise broker" means any person engaged in the
6 business of representing a franchisor in offering for sale or
7 selling a franchise and is not a franchisor, an affiliate of a
8 franchisor or an officer, director or employee of a franchisor
9 or an affiliate of a franchisor with respect to such franchise.
10 A franchisee shall not be a franchise broker merely because it
11 receives a payment from the franchisor in consideration of the
12 referral of a prospective franchisee to the franchisor, if the
13 franchisee does not otherwise participate in the sale of a
14 franchise to the prospective franchisee. A franchisee shall not
15 be deemed to participate in a sale merely because he responds
16 to an inquiry from a prospective franchisee.

17 (22) "Salesperson" means any person employed by or
18 representing a franchise broker, a franchisor or an affiliate
19 of the franchisor in effecting or attempting to effect the
20 offer or sale of a franchise.

21 (Source: P.A. 90-642, eff. 7-24-98.)

22 (815 ILCS 705/7) (from Ch. 121 1/2, par. 1707)

23 Sec. 7. Sale by franchisee and extension or renewal of
24 existing franchise. There shall be exempted from the provisions
25 of Sections 5, 10, 11, 13 and 15 of this Act the offer or sale

1 of a franchise by a franchisee for its own account if the sale
2 is not effected by or through a franchisor. A sale is not
3 effected by or through a franchisor merely because a franchisor
4 has a right to approve or disapprove a different franchisee or
5 requires payment of a reasonable transfer fee or requires the
6 new franchisee to execute a franchise agreement on terms not
7 materially different from the existing franchise agreement.

8 There shall be exempted from the provisions of Sections 5,
9 10, 11, 13 and 15 of this Act the extension or renewal of an
10 existing franchise or the exchange or substitution of a
11 modified or amended franchise agreement where there is no
12 interruption in the operation of the franchise business by the
13 franchisee.

14 (Source: P.A. 85-551.)

15 (815 ILCS 705/8) (from Ch. 121 1/2, par. 1708)

16 Sec. 8. Exemptions. There shall be exempted from the
17 registration requirements the offer and sale of a franchise if:
18 the franchisor has a net worth on a consolidated basis,
19 according to its most recent audited financial statement, of
20 not less than \$15,000,000; or the franchisor has a net worth,
21 according to its most recent unaudited financial statement, of
22 not less than \$1,000,000 and is at least 80% owned by a
23 corporation which has a net worth on a consolidated basis,
24 according to its most recent audited financial statement, of
25 not less than \$15,000,000.

1 There shall be exempted from the provisions of Sections 5,
2 10, 11, 13 and 15 of this Act the offer and sale of a franchise
3 if the prospective franchisee qualifies as one of the
4 following:

5 any bank as defined in Section 3(a)(2) of the Securities
6 Act of 1933 whether acting in its individual or fiduciary
7 capacity or as an insurance company as defined in Section 2(13)
8 of that Act.

9 (Source: P.A. 85-551.)

10 (815 ILCS 705/10) (from Ch. 121 1/2, par. 1710)

11 Sec. 10. Registration and Annual Report. No franchisor may
12 sell or offer to sell a franchise in this State if (1) the
13 franchisee is domiciled in this State or (2) the offer of the
14 franchise is made or accepted in this State and the franchise
15 business is or will be located in this State, unless the
16 franchisor has registered the franchise with the Administrator
17 by filing such form of notification and disclosure statement as
18 required under Section 16.

19 The registration of a franchise shall become effective on
20 the 21st day after the date of the filing of the required
21 materials, unless the Administrator has denied registration
22 under subdivision (a)(3) of Section 22.

23 The registration of a franchise shall expire 120 days after
24 the franchisor's fiscal year end. Annually, but not later than
25 one business day before the ~~anniversary date of the~~

1 registration expires, the franchisor shall file the disclosure
2 statement updated as of the date of the franchisor's prior
3 fiscal year end ~~a date within 120 days of the anniversary date~~
4 ~~of the registration.~~

5 (Source: P.A. 90-642, eff. 7-24-98.)

6 (815 ILCS 705/11) (from Ch. 121 1/2, par. 1711)

7 Sec. 11. Amendments. Within 30 days after the close of each
8 quarter of its fiscal year, the franchisor shall prepare
9 revisions to be attached to its disclosure statement to reflect
10 any material changes to disclosures included, or required to be
11 included, in the ~~90 days of the occurrence of any material~~
12 ~~change in any facts required to be disclosed, a franchisor~~
13 ~~whose franchise is registered under this Act shall amend its~~
14 disclosure statement. The franchisor ~~and~~ shall deliver the
15 amended disclosure statement in accordance with the
16 requirements of subsection (2) of Section 5 and Section 16 of
17 this Act to any prospective franchisee, including, upon
18 request, to prospective franchisees to whom a disclosure
19 statement was previously delivered if the material change
20 relates to or affects the ~~franchisor or the~~ franchise offered
21 to such prospective franchisees. The amended disclosure
22 statement shall be filed with the Administrator. An amendment
23 shall not be required if the terms of the franchise agreement
24 merely reflect changes from the franchisor's registered
25 franchise made pursuant to negotiations between the franchisee

1 and the franchisor.

2 The fact that the franchise is considered to be registered
3 is not a finding that the amended disclosure statement complies
4 with the standard of disclosure required by this Act.

5 (Source: P.A. 90-642, eff. 7-24-98.)

6 (815 ILCS 705/15) (from Ch. 121 1/2, par. 1715)

7 Sec. 15. Escrow of franchise fees; surety bonds. If the
8 Administrator finds that a franchisor has failed to demonstrate
9 that adequate financial arrangements have been made to fulfill
10 obligations to provide real estate, improvements, equipment,
11 inventory, training, or other items to be included in the
12 establishment and opening of the franchise business being
13 offered, the Administrator may by rule or order require the
14 escrow or impoundment of franchise fees and other funds paid by
15 the franchisee until such obligations have been fulfilled, or,
16 at the option of the franchisor, the furnishing of a surety
17 bond as provided by rule of the Administrator, if he finds that
18 such requirement is necessary and appropriate to protect
19 prospective franchisees, or, at the option of the franchisor,
20 the deferral of payment of the initial fee until the opening of
21 the franchise business.

22 (Source: P.A. 85-551.)

23 (815 ILCS 705/16) (from Ch. 121 1/2, par. 1716)

24 Sec. 16. Form and contents of disclosure statements. The

1 disclosure statement required under this Act shall be prepared
2 in accordance with the Federal Trade Commission rule entitled
3 Disclosure Requirements and Prohibitions Concerning
4 Franchising, 16 C.F.R. Part 436, as it may be ~~Uniform Franchise~~
5 ~~Offering Circular Guidelines as adopted and~~ amended, the
6 Guidelines promulgated by the North American Securities
7 Administrators Association, Inc., as they may be amended, and
8 the rules adopted by the Administrator pursuant to Section 32
9 of this Act. ~~Incorporated.~~

10 All statements in the disclosure statement shall be free
11 from any false or misleading statement of a material fact,
12 shall not omit to state any material fact required to be stated
13 or necessary to make the statements not misleading, and shall
14 be accurate and complete as of the effective date thereof.

15 (Source: P.A. 90-642, eff. 7-24-98.)

16 (815 ILCS 705/20) (from Ch. 121 1/2, par. 1720)

17 Sec. 20. Nonrenewal of a franchise. It shall be a violation
18 of this Act for a franchisor to refuse to renew a franchise of
19 a franchised business located in this State without
20 compensating the franchisee either by repurchase or by other
21 means for the diminution in the value of the franchised
22 business caused by the expiration of the franchise where:

23 (a) the franchisee is barred by the franchise agreement
24 (or by the refusal of the franchisor at least 6 months
25 prior to the expiration date of the franchise to waive any

1 portion of the franchise agreement which prohibits the
2 franchisee) from continuing to conduct substantially the
3 same business under another trademark, service mark, trade
4 name or commercial symbol in the same area subsequent to
5 the expiration of the franchise; and ~~or~~

6 (b) the franchisee has not been sent notice of the
7 franchisor's intent not to renew the franchise at least 6
8 months prior to the expiration date or any extension
9 thereof of the franchise.

10 (Source: P.A. 85-551.)

11 (815 ILCS 705/22) (from Ch. 121 1/2, par. 1722)

12 Sec. 22. Enforcement.

13 (a) The Administrator may suspend, terminate, prohibit or
14 deny the sale of any franchise or registration of any
15 franchise, ~~or franchise broker or~~ salesperson if it appears to
16 him that: (1) there has been a failure to comply with any of
17 the provisions of this Act or the rules or orders of the
18 Administrator pertaining thereto; or (2) that the disclosure
19 statement or any amendment thereto includes any false or
20 misleading statement of a material fact or omits to state any
21 material fact required to be stated therein or necessary to
22 make the statements therein not misleading; or (3) that the
23 disclosure statement filed in conjunction with an initial
24 registration under Section 10 is materially deficient. A
25 disclosure statement is "materially deficient" if it fails to

1 comply with ~~the requirements of the Uniform Franchise Offering~~
2 ~~Circular Guidelines referred to in~~ Section 16; or (4) that the
3 sale of the franchise would constitute a misrepresentation,
4 deceit or fraud upon prospective franchisees; or (5) that any
5 person in this State is engaging in or about to engage in
6 false, fraudulent or deceptive practices or any device, scheme,
7 or artifice to defraud in connection with the offer or sale of
8 the franchise; or (6) that any person identified in the
9 disclosure statement or any person engaged in the offer or sale
10 of the franchise in this State has been convicted of an
11 offense, is subject to an order or civil judgment or is a
12 defendant in a proceeding required to be described in the
13 disclosure statement and the involvement of such person creates
14 an unreasonable risk to prospective franchisees; or (7)
15 (blank); or (8) (blank); or (9) that the franchisor's
16 enterprise or method of business includes or would include
17 activities which are illegal where performed; or (10) (blank);
18 or (11) (blank).

19 In no case shall the Administrator, or any person
20 designated by him, in the administration of this Act, incur any
21 official or personal liability by issuing an order or other
22 proceeding or by suspending, denying, prohibiting or
23 terminating the registration of a franchise broker or
24 salesperson, or by denying, suspending, terminating or
25 prohibiting the registration of franchises, or prohibiting the
26 sale of franchises, or by suspending or prohibiting any person

1 from acting as a franchise broker or salesperson.

2 The Administrator may exercise any of the powers specified
3 in Section 31 of this Act.

4 (b) The Administrator, with such assistance as he may from
5 time to time request of the state's attorneys in the several
6 counties, may institute proceedings in the circuit court to
7 prevent and restrain violations of this Act or of any rule or
8 order prescribed or issued under this Act. In such a
9 proceeding, the court shall determine whether a violation has
10 been committed, and shall enter such judgment or decree as it
11 considers necessary to remove the effects of any violation and
12 to prevent such violation from continuing or from being renewed
13 in the future. The court, in its discretion, may exercise all
14 powers necessary for this purpose, including, but not limited
15 to, injunction, revocation, forfeiture or suspension of the
16 charter, franchise, certificate of authority or privileges of
17 any corporation, association, limited partnership or other
18 business organization operating under the laws of this State,
19 dissolution of domestic corporations or associations,
20 suspension or termination of the right of foreign corporations
21 or associations to do business in this State, or restitution or
22 payment of damages by a franchisor to persons injured by
23 violations of this Act, including without limitation an award
24 of reasonable attorneys fees and costs.

25 (Source: P.A. 90-642, eff. 7-24-98.)

1 (815 ILCS 705/26) (from Ch. 121 1/2, par. 1726)

2 Sec. 26. Private civil actions. Any person who offers,
3 sells, terminates, or fails to renew a franchise in violation
4 of this Act shall be liable to the franchisee who may sue for
5 damages caused thereby. ~~This amendatory Act of 1992 is intended~~
6 ~~to clarify the existence of a private right of action under~~
7 ~~existing law with respect to the termination or nonrenewal of a~~
8 ~~franchise in violation of this Act.~~ In the case of a violation
9 of Section 5, 6, 10, 11, or 15 of the Act, the franchisee may
10 also sue for rescission.

11 No franchisee may sue for rescission or damages under this
12 Section 26 who shall fail, within 30 days from the date of
13 receipt thereof, to accept an offer to return the consideration
14 paid or to repurchase the franchise purchased by such person.
15 Every offer provided for in this Section shall be in writing,
16 shall be delivered to the franchisee or sent by certified mail
17 addressed to the franchisee at such person's last known
18 address, shall offer to return any consideration paid or to
19 repurchase the franchise for a price equal to the full amount
20 paid less any net income received by the franchisee, plus the
21 legal rate of interest thereon, and may require the franchisee
22 to return to the person making such offer all unsold goods,
23 equipment, fixtures, leases and similar items received from
24 such person. Such offer shall continue in force for 30 days
25 from the date on which it was received by the franchisee and
26 shall advise the franchisee of such rights and the period of

1 time limited for acceptance thereof. Any agreement not to
2 accept or refusing or waiving any such offer made during or
3 prior to the expiration of said 30 days shall be void.

4 The term "franchisee" as used in this Section shall include
5 the personal representative or representatives of the
6 franchisee.

7 Every person who directly or indirectly controls a person
8 liable under this Section 26, every partner in a firm so
9 liable, every principal executive officer or director of a
10 corporation so liable, every manager of a limited liability
11 company so liable, every person occupying a similar status or
12 performing similar functions, and every employee of a person so
13 liable, who materially aids in the act or transaction
14 constituting the violation, is also liable jointly and
15 severally with and to the same extent as such person, unless
16 said person who otherwise is liable had no knowledge or
17 reasonable basis to have knowledge of the facts, acts or
18 transactions constituting the alleged violation.

19 Every franchisee in whose favor judgment is entered in an
20 action brought under this Section shall be entitled to the
21 costs of the action including, without limitation, reasonable
22 attorney's fees.

23 (Source: P.A. 87-1143.)

24 (815 ILCS 705/29) (from Ch. 121 1/2, par. 1729)

25 Sec. 29. Certificate of registration or filing of annual

1 report; admissibility in evidence. In any civil or criminal
2 action brought under this Act, a Certificate under the seal of
3 this State, signed by the Administrator, stating whether or not
4 a franchise is registered, or whether or not an annual report
5 of a franchisor has been filed under Section 10 of this Act, ~~or~~
6 ~~whether or not a person has registered as a franchise broker~~
7 ~~under Section 13 of this Act,~~ shall constitute prima facie
8 evidence of such matter, and shall be admissible into evidence
9 at trial without proof of foundation or additional
10 authenticity.

11 (Source: P.A. 85-551.)

12 (815 ILCS 705/40) (from Ch. 121 1/2, par. 1740)

13 Sec. 40. Fees.

14 (a) The Administrator shall charge and collect the fees
15 fixed by this Section, or as prescribed by rule of the
16 Administrator. All fees and charges collected under this
17 Section shall be transmitted to the State Treasurer at least
18 weekly, accompanied by a detailed statement thereof. Such fees
19 and charges shall be refundable at the discretion of the
20 Administrator.

21 (b) The fee for the initial registration of a franchise
22 shall be \$500.

23 (c) The fee for filing an amended disclosure statement
24 shall be \$100 if the amendment pertains to a material change,
25 otherwise \$25.

1 (d) The fee for an interpretive opinion shall be \$50.

2 (e) The fee for ~~registration of a franchise broker shall be~~
3 ~~\$100 with a renewal fee of \$100.~~

4 ~~(f) The fee for~~ filing an annual report shall be \$100.

5 (Source: P.A. 85-551.)

6 (815 ILCS 705/13 rep.)

7 (815 ILCS 705/21 rep.)

8 Section 20. The Franchise Disclosure Act of 1987 is
9 amended by repealing Sections 13 and 21.

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