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Doing Business in the United States

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CHAPTER 97 Franchising \*

*6-97 Doing Business in the United States § 97.02*

## § 97.02 Franchise Sales Laws

### [1] The FTC and the FTC Franchise Rule

The U.S. federal government regulates the offer and sale of franchises. The principal regulation of franchising is through the Federal Trade Commission's (FTC) Trade Regulation Rule on Franchising and Business Opportunity Ventures ("FTC Franchise Rule"), n1 which the Commission promulgated on December 21, 1978. n2 The FTC Franchise Rule requires pre-sale disclosure by franchisors (and franchise brokers) of all material terms and conditions of the franchise agreement in the form of a franchise offering circular n3 on the theory that an informed consumer can determine whether a franchise deal is in his or her best interest. n4 The FTC Franchise Rule only imposes a disclosure requirement: it does not require registration or regulate substantive terms of the franchise agreement or specific activities. n5

An analysis of the FTC Franchise Rule must begin with the basis for the FTC's power to promulgate such a rule. n6 The Federal Trade Commission Act ("FTC Act") n7 provides that "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." n8

The FTC Act does not define what constitutes "unfair or deceptive acts or practices," but gives the FTC authority to define and prohibit certain activities that constitute such unfair and deceptive acts by promulgating trade regulation rules. The FTC Franchise Rule was promulgated pursuant to this authority. n9 The FTC had concluded that regulation of the franchising industry was necessary to prevent (1) the informational imbalance that exists between prospective franchisees and franchisors and (2) the serious financial risk faced by prospective franchisees in entering into and operating a franchise business. n10

The FTC Franchise Rule applies in all fifty states, and other areas in which the United States has jurisdiction -- e.g., U.S. territories and is intended to provide minimum protection. If a particular state also regulates franchising, franchisors are required to comply in that state with both the FTC Franchise Rule and state law. n11 The FTC Franchise Rule preempts state or local laws only if, and then only to the extent that, such laws provide less protection than the FTC Franchise Rule for prospective franchisees. The Franchise Rule does not pre-empt state regulations creating more stringent disclosure requirements. n12 However, a state law determination that a business is not covered by the state franchise law does not preclude coverage under the FTC Rule. n13

### [a] Defining a Franchise.

The FTC Franchise Rule provides two alternative definitions of business relationships that will be treated as franchises. n14 If a distribution or sales agency relationship constitutes a franchise as defined in the FTC Franchise Rule, the supplier must comply with the regulations promulgated by the FTC. The name used by the parties to identify the relationship is not relevant. n15

The FTC Franchise Rule defines a franchise as a continuing commercial relationship n16 created by any arrangement or arrangements whereby:

a person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are: (1) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or (2) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and (B)(1) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs; or (2) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including, but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs; Provided, however, That assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance. n17

Alternatively, The term "franchise" means any continuing commercial relationship created by any arrangement or arrangements whereby:

A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are: (1) Supplied by another person (hereinafter "franchisor"), or (2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or (3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and (B) The franchisor: (1) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or (2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or (3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (a)(1)(ii)(B)(1) and (2) above. n18

In both cases, the franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

The definition of a franchise includes three elements described below.

**[i] Trademark Element.** The first required element is the use of a trademark. The trademark element will be met if the franchisee either operates his business under the franchisor's trademark, service mark, trade name, advertising, or other commercial symbol or distributes goods bearing such marks.

**[ii] Significant Control or Assistance.** The second element regards "significant control or assistance." This element will be met only if the control the franchisor exerts over the franchisee or the assistance the franchisor furnishes the franchisee is "significant" and relates to the franchisee's entire method of operation. n19 This requirement is satisfied if the franchisor has the authority to exert such control or assistance, whether or not the franchisor exercises the right.

**[iii] Required Payment Element.** The FTC Franchise Rule provides that, to be a franchise, the franchisee must be required, as a condition of obtaining or commencing the franchise operation, to make a payment or commitment to pay the franchisor (or any affiliate of the franchisor) \$500 or more within six months after commencing operations. n20 A commitment entered into during the first six months which requires a payment later than six months after operations commence, such as a promissory note or that portion of lease payments made after six months, is not counted toward the \$500 minimum. n21 The fee requirement does not include payments made to a franchisor for reasonable amounts of inventory purchased at bona fide wholesale prices for sale in quantities determined by the dealer. n22 This provision narrows the definition of a franchise under the FTC Franchise Rule and exempts certain distributors, wholesalers and manufacturers from its application to their businesses.

The required payment element may not be met where the buyer's obligation to make a payment is speculative, *i.e.* a right to receive payment may arise if certain conditions are met. n23 The payment of a share of future profits by a franchisee could be considered a required minimum payment under the Rule if there is a current obligation to make future payments, regardless of their form (e.g., royalties, equipment purchases, and profit shares), so long as the parties can reasonably anticipate, based upon the facts, that such payments will total at least \$500 within the first six months of the franchisee's operations. n24

**[b] Exemptions and Exclusions.** The FTC Franchise Rule provides exemptions and exclusions from coverage for certain types of relationships. It provides exemptions for "fractional franchisees," n25 "leased departments," n26 "oral agreements" n27 and where the franchisee pays a total of less than \$500 during a period from any time before to within 6 months after commencing operation of the franchisee's business, as a condition of obtaining or commencing the franchise operation.

The FTC Franchise Rule provides exclusions for "employer-employee" relationships, "general business partnership" relationships, relationships created by membership in a retail owned co-operative, relationships with a testing or certification service, and single license relationships. n28 These exemptions and exclusions are narrow and cover business relationships not normally considered to be franchises. Most companies selling franchises typically are unable to take advantage of any of these exemptions or exclusions.

The FTC Act also permits a franchisor to petition the FTC for a "discretionary exemption," (*i.e.*, an exemption by order) either as an individual or on behalf of a class. n29 The petitioner must show that application of the FTC Franchise Rule to the petitioner or the petitioner's class is unnecessary to prevent unfairness or deceptive practices to which the FTC Franchise Rule relates.

**[c] Disclosure Requirements.** The disclosure document required by the FTC Franchise Rule describes information required for twenty categories of information. n30 The categories of information include: (1) the franchisor's names, trademarks, marks and advertising; (2) business experience of its officers; (3) business experience of the franchisor; (4) criminal convictions, civil liability, and agency actions; (5) bankruptcy history; (6) description of the franchise; (7) franchisee payments; (8) recurring payments; (9) franchisee business with franchisor affiliates; (10) franchisee purchase and lease requirements; (11) franchisor revenue from franchisee's suppliers; (12) financing arrangements and terms; (13) restrictions on business, customers, territories and protected areas; (14) personal participation of the franchisee; (15) duration, termination, transfer and modification; (16) franchisor's recent franchising history; (17) time lapse between signing and delivery of franchise agreement; (18) training programs; (19) public figure involvement, investment and fees; and (20) balance sheet and income statement. The franchisor must deliver a copy of

its standard franchise agreement and other agreements related to the franchise with the disclosure document. The franchisor also must deliver the completed franchise agreements at least five business days before execution of such agreements.

The FTC Franchise Rule contains specific instructions regarding the format of the disclosure document. Franchisors must present the required information according to the organization described in the FTC Franchise Rule or in the Uniform Franchise Offering Circular ("UFOC") format required under the Uniform Franchise Offering Circular Guidelines. n31 The FTC permits the use of the UFOC format, which is the preferred format for compliance with state franchise sales laws, in order to minimize the compliance burdens of franchisors.

The FTC Franchise Rule requires disclosure be made by franchisors, franchise brokers, and sub-franchisors. Franchisors are classified as persons owning the trademark, service mark, trade name, advertising or other commercial symbol identified with the goods, commodities or services being offered, sold or distributed by the franchisee. Franchisees selling their own franchised businesses to third parties are not required by the FTC Franchise Rule to provide disclosure.

The term "franchise brokers" includes "any person other than the franchisor or a franchisee who sells, offers for sale, or arranges for the sale of a franchise." n32 This definition is broad and somewhat ambiguous. What type of activity constitutes "arranging a sale" is sometimes difficult to determine and must be evaluated on a case-by-case basis.

The Final Guides also require sub-franchisors to provide disclosure. Sub-franchising arrangements include relationships in which the sub-franchisor "passes through" the terms and conditions prescribed by the franchisor and relationships in which the sub-franchisor takes a greater role in defining the terms and conditions of the franchise. The FTC considers the franchisor and sub-franchisor responsible for each other's compliance with the FTC Franchise Rule and makes them jointly and severally liable for the other's violations. n33

The FTC Franchise Rule requires disclosure be provided to "prospective franchisees." A prospective franchisee is defined as: "any person, including any representative, agent, or employee of that person, who approaches or is approached for the purpose of discussing the establishment, or possible establishment, of a franchise relationship involving such person." n34 Every individual who will execute a binding agreement related to the franchise (for example, the guarantor) should be provided with disclosure. Whether franchisors need to deliver disclosure documents to existing franchisees that open new outlets or renew their agreements depends upon the franchise relationship. Unless the terms and conditions of the relationship significantly change, the franchisor is not required to provide disclosure.

The document must be presented to the prospective franchisee at the earlier of (1) "the first personal meeting" or (2) "the time for making disclosures." The "first personal meeting" is a face-to-face meeting between a prospective franchisee and franchisor held for the purpose of discussing the sale or possible sale of a franchise. n35 The FTC has identified four factors that are to be taken into consideration to determine whether a face-to-face personal meeting qualifies as the first personal meeting. These are: (1) whether the franchisor clearly indicated at the outset of the discussion that it was not prepared to discuss a sale at that time; (2) whether the meeting was initiated by franchisee rather than franchisor; (3) whether the meeting was limited to a brief and generalized discussion; and (4) whether earnings claims were made. n36 The time for making disclosures is defined as ten business days before the execution of any agreement that imposes any binding obligation on the franchisee or payment of any consideration by the franchisee in connection with the sale or proposed sale of a franchise. n37

**[d] Amendment and Updating Requirements.** The FTC Franchise Rule requires that the disclosure document be kept "current." Franchisors must update the disclosure document at least once annually. The revisions must be made within ninety days after the close of the fiscal year. In addition, franchisors must update the disclosure document quarterly to reflect any "material changes" that occur in the information contained in the document. These standards for amending and updating the disclosure document apply to all parts of the disclosure document except for any "earnings

claims." "Earnings claims" (described below) must be current at the time they are made. n38

The amendment and updating requirements of the FTC Franchise Rule do not apply to an offering circular in states requiring registration. n39 In such cases, the FTC Franchise Rule is satisfied if the offering circular is amended in accordance with the requirements in the state in which the franchisor is registered. n40

**[e] Earning Claims** The FTC Franchise Rule does not require that a franchisor make "earnings claims." However, if the franchisor does make "earnings claims," they must be in strict accordance with the FTC Franchise Rule's standards. An "earnings claim" is defined as: "any oral, written, or visual representation [made] to a prospective franchisee which states a specific level of potential sales, income, gross or net profit for that prospective franchisee, or which states other facts which suggest such a specific level." n41

Franchisors may make earnings claims if they meet three requirements. First, there must be a "*reasonable basis*" to support the accuracy of the earning claims. Whether there is a reasonable basis is a factual inquiry. n42 Second, the franchisor must have material demonstrating the reasonable basis, and the franchisor must make the material available to prospective franchisees and to the FTC upon reasonable demand. n43 Third, the representation must be *relevant* to the geographic market in which the franchise will be located at the time of making the representation. n44

Under the FTC Franchise Rule, a franchisor that makes an earnings claim must furnish the prospective franchisee with a separate "Earnings Claim Document" at the earlier of the first personal meeting at which or following the time an earnings claim is made or the time for making disclosures. n45

The Earnings Claim Document must contain a statement of the basis and assumptions upon which any earnings claim is made and certain mandatory disclosures depending on whether the claim relates to projected earnings or past performance. The Earnings Claim Document must also state in a clear and conspicuous manner that the material demonstrating the reasonable basis is available to the franchisee. n46 The Earnings Claim Document must be current as of the time the claim is made. Prospective franchisees must be notified of any material changes in the information contained in the Earnings Claim Document prior to entering into a franchise relationship.

**[f] Civil and Criminal Penalties.** Failure to comply with any of the FTC Rule requirements is a violation of the FTC Franchise Rule. The FTC Act authorizes the FTC to seek injunctions, civil penalties, consumer redress, and to issue a cease and desist order for violations of the FTC Franchise Rule or the FTC Act. n47 The FTC may bring an action in federal district court to recover civil penalties of up to \$10,000 per day per violation. Such actions are governed by a five-year limitation period. n48 The FTC must demonstrate that the person who committed the allegedly illegal act violated the FTC Franchise Rule either with "actual knowledge" or "knowledge fairly implied" that the act is unfair or deceptive. n49 The FTC may also seek a temporary restraining order, a preliminary injunction, or permanent injunctive relief. Contrary to the FTC's position, the federal courts have consistently held that no private right of action exists for a violation of the Federal Trade Commission Act section 5 and the FTC Franchise Rule. n50 The FTC had established a set of criteria that it would consider in determining whether to take action in the Franchise Rule Enforcement Protocol, which was repealed in 1995. n51

## **[2] State Franchise Sales Laws**

In addition to the federal requirements relating to the disclosure of information to a "prospective franchisee," fifteen states have enacted specific statutory provisions directed toward misrepresentation in the sale of franchises. n52 These laws generally require both (1) disclosure of information in the franchise offering circular furnished to the prospective franchisee prior to the sale and (2) registration of the franchise or franchise offering prior to the making of any offer or sale of a franchise in the state. These statutes generally provide civil remedies and criminal penalties for violations. n53

### **[a] Defining a Franchise.**

State law definitions as to what constitutes a franchise differ from that used in the FTC Franchise Rule. The result is that a franchisor also must look to each state's statute to determine whether or not the offer and sale of the franchise will be regulated under a particular state law. There are two definitions as to what constitutes a "franchise" under state law, each of which has three elements. n54 The more prevalent approach requires that there be a "marketing plan or system" in which the franchisee is required to take part. The other common approach requires that a "community of interest" exist between the franchisor and the franchisee. While the requisite nature of the relationship necessary to find a franchise under these two definitions differ, they are substantially similar with regard to the two other necessary elements of a franchise (a trademark element and a fee element).

[i] **"Marketing Plan or System" or "Community of Interest"**. The "marketing plan or system" definition of a franchise has been adopted in eleven states. The definition of a franchise adopted in the California Franchise Investment Law is typical:

"Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

- (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
- (2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and
- (3) The franchisee is required to pay, directly or indirectly, a franchise fee. n55

Various courts have considered what constitutes a "marketing plan or system prescribed in substantial part" by the franchisor. While there is no clear rule on which to rely in any jurisdiction, an important consideration is the degree of control the franchisee retains in the conduct of its business and the ability of the person engaged in the business to make decisions substantially without being subject to restrictions or having to obtain the consent or approval of other persons. n56 Thus, where a putative franchisee retains total autonomy in the method by which it sells, distributes, or otherwise markets its goods or services, no franchise relationship will be found. n57 Power over pricing is one of the most important criteria for determining the existence of a franchise. n58 Other factors that may indicate a franchisor's control over a franchisee include: (a) whether an operations manual, training, advertising, promotion or other support is provided to the putative franchisee; (b) whether there are standard operating procedures with which the putative franchisee is expected to comply; and (c) the extent to which the franchisee is required to engage in certain marketing activities. n59 In some instances a marketing plan may be found to be prescribed in substantial part even where the franchisee is not technically obligated to take part in such a program. Where a franchisor provides supplies, sales aids, props, or where a particular method of sales is supported by training material, courses or seminars, a program may attain the level of a prescribed marketing plan. n60

An alternative definition of a franchise has been adopted in five other states. The Minnesota definition is typical:

"Franchise" means ... a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

- (1) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;
- (2) in which the franchisor and the franchisee have a community of interest in the marketing of goods at wholesale, retail, by lease, agreement, or otherwise; and

(3) for which the franchisee pays, directly or indirectly, a franchise fee ... n61

The second prong of the statute, which gives this definition its name and its distinctive characteristics, is ambiguous, and subject to interpretation. The necessary element to find a "community of interest" is that the franchisor and franchisee share a continuing interest in the operation of the franchise, a standard that is relatively easy to meet, especially if the other two elements are present. n62 If a franchisor controls the franchisee's conduct of business to the point of the franchisee being subject to the whim and discretion of the franchisor, it is likely that a "community of interest" will be found. n63 The mere fact that a seller may generate goodwill for a product is not enough to indicate that a community of interest exists. n64 As the Supreme Court of New Jersey has noted, if goodwill were all that was necessary to show a community of interest, "a department store selling Sony name products could claim a community of interest with the manufacturer despite the fact that the department store's goodwill investments are not intimately tied to the manufacturer." More is required because the statute was passed to prevent "arbitrary or capricious actions by the franchisor who generally has vastly greater economic power than the franchisee." n65

**[ii] Trademark Element** The second element in both the "marketing plan or system," or "community of interest" definitions of a franchise is that a franchisor's trademark must be connected with the operation of the franchised business. Several state law definitions contain language similar to the requirement in the California franchise sales law that the franchisor's trademark be "substantially associated" with the franchisee's business. There are two ways that a franchisee's business may be found to be "substantially associated" with the franchisor's trademark: (1) objectively, by looking to the proportion of the franchisee's business attributable to the franchisee's use of the mark, and (2) subjectively, by determining whether a reasonable consumer is likely to view the franchisee as an outlet of the franchisor. n66 Using the objective test, a "substantial association" will usually not be found if the sale, distribution, or other marketing of products or service under the franchisor's trademark accounts for only a minute percentage of the franchisee's business. n67 The rationale behind such an approach is that the state law was enacted to prevent franchisors from taking unfair advantage of franchisees by virtue of the franchisee's relative economic weakness, and therefore, if a relationship constitutes only a minor percentage of the franchisee's business, the likelihood of such a result is greatly diminished. n68 Under the subjective test, a franchisee's business may be found to be substantially associated with the franchisor's trademark if the public is likely to view the franchisee as an extension of the franchisor. n69 The implication of such a recognition by the public justifies this approach. A franchisee by identifying itself with the franchisor's trademark, necessarily receives the benefit of the goodwill that the franchisor has built up in that mark, which could lead to increased revenue for the franchisee on other products or services in which it deals, whether or not those products are under the franchisor's trademark. n70

Under the "community of interest" definition of a franchise, the requirement that the franchisor's trademark be "substantially associated" with the franchised business is absent. Typically such a definition will include a requirement that the franchisee only be granted the right to use the franchisor's mark in connection with the business.

**[iii] Franchise Fee.** A common element to most definitions of a "franchise" (including the "marketing plan or system" and "community of interest" approaches discussed above) is the requirement that the franchisee pay a fee, directly or indirectly, to the franchisor for the right to do business as a franchisee. n71 State franchise sales laws are substantially similar as to their definition of the "fee" element of a franchise. A number of non-uniform exceptions do exist, however, under state franchise sales laws (e.g., a minimum payment may not constitute a franchise fee). Moreover, indirect franchise fees may take the form of payments to a franchisor or its affiliate for certain items (e.g., for advertising materials, royalties, training, required equipment or inventory, or a set-up fee) or to others, even if they are not called franchise fees. n72 Most states impose a statutory minimum payment that must be made over a specific time period in order to create a franchise. n73

#### **[b] Exceptions and Exemptions.**

Many states limit the applicability of their state franchise sales laws so that certain relationships that might otherwise be

considered franchises will be either (1) excepted or excluded, or (2) exempt from the application of the state franchise sales law. Commercial relationships excepted or excluded from the definition of a "franchise" will not be subject to franchise sales laws. Certain other commercial relationships may be exempted only from certain aspects of the law -- e.g., from the requirement to register the franchise offering.

**[i] Bona Fide Wholesale Price Exception.** There are several states which have provided a broad exception for payments for the purchase of goods that otherwise could be construed as a payment of a "franchise fee." Typically, any payment by one party to another for goods purchased for resale by the buyer from the seller at a "bona fide wholesale price" is not considered a franchise fee. A bona fide wholesale price may be found if there is an established market for the goods or services sold, or if the purchase is for inventory which is not in excess of that which a reasonable businessperson might require. n74

**[ii] Large Franchisor Exemption.** Recognizing that the primary purpose behind most state franchise sales laws is to protect a potential franchisee from being exploited by "fly-by-night" franchisors, many states have provided that large and experienced franchisors may be exempt from the application of aspects of the franchise sales law. n75 The reasoning behind this exemption is that a well-known and established franchisor is unlikely to defraud prospective franchisees and abandon its franchise operations. The majority of states that recognize this exemption require a franchisor seeking the exemption to satisfy certain experience and net-worth requirements; n76 a minority requires only that the franchisor have a minimum net-worth. n77

**[iii] Existing Franchisee.** An agreement between a franchisor and an existing franchisee of such franchisor is also sometimes exempted from the application of state franchise sales laws or from registration under the state franchise sales laws. Such agreement may be a renewal or extension of a franchise agreement n78 or amendment n79 of an existing franchise agreement (where there has been no interruption in the operation of the franchised business). Certain state franchise sales laws will exempt the sale of an additional franchise to an existing franchisee. n80 These exemptions are uniformly limited to instances where there has been no material change in the nature of the franchise, of which the franchisee would be entitled to full disclosure in conformity with the state franchise sales law. n81

**[iv] Franchisee's Sale for Franchisee's Own Account.** Any sale by an existing franchisee of its franchise rights to a new franchisee that is not made by or through the franchisor is normally exempt from the applicability of a state franchise sales law. n82 It is generally held that a franchisor's right to approve a new franchisee does not amount to a sale by or through a franchisor. n83 Execution of a new franchise agreement with the franchisor is likely to meet such standard. What constitutes a sale by or through a franchisor is not always clear, and is a mixed question of fact and law.

**[v] Other Exemptions.** Other sales may be exempted from the application of the registration and disclosure requirements under state law. These exemptions may include sales of a franchise (a) to a bank, or other certified financial institution, or (b) by an executor, administrator, sheriff, trustee in bankruptcy or marshal. n84 Service charges to an issuer of a credit card by an establishment accepting that credit card, and payments to a licensed trading stamp company also are excluded from the definition of "franchise fee" by statute. n85

**[vi] Discretionary Exemptions.** In addition to any available statutory exemptions, many states' franchise sales laws also allow the state franchise administrator to exempt franchisors from the application of the state franchise sales law by order if the administrator determines that such a franchisor's compliance with the law is not necessary or appropriate in the public interest or for the protection of investors. n86

### **[c] Registration and Disclosure Requirements**

**[i] Registration.** Fourteen states require that a franchisor first register the franchise or the franchise offering to be sold before an "offer" or "sale" of a franchise in the state. n87 The Michigan Franchise Investment law requires the filing of a Notice of Franchise Offering prior to making an offer or sale of a franchise in the state. n88 The Oregon franchise sales law requires no registration or filing, but does require that a franchise offering circular be furnished to

prospective franchisees prior to executing a franchise agreement. n89 An "offer" of a franchise is defined in many state franchise sales laws as any "attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value." n90

Registration requirements generally include the filing of: (a) one or more copies of the offering circular, with financial statements current to within ninety days of the date of the filing, to be used in compliance with the FTC Franchise Rule and any applicable state franchise sales law; (b) information regarding any individuals that will offer or sell the franchise in the state; (c) information on the financial capability of the franchisor to fulfill its franchise obligations; (d) a consent form for service of process in the state; (e) copies of any advertising materials to be used in the state; and (f) a filing fee ranging from \$50 to \$750. n91

Registrations generally expire after one year, or at some specified time after the end of the franchisor's current fiscal year. n92 To continue to offer and sell franchises in the state, a franchisor must file a renewal application with the state administrator. n93 Upon application for renewal, several states require detailed information regarding any sales activity within the state during the preceding registration period. n94

**[ii] Disclosure.** Many states mandate that a franchisor give a prospective franchisee a disclosure document several days prior to the execution of the franchise contract. n95 However, no state requires that a franchisor provide a franchisee with a disclosure document for more time than the FTC Franchise Rule requires. n96

State disclosure requirements may be important, however, because several states provide a private right of action to prospective franchisees for a franchisor's violation of the state statute. n97

**[iii] Scope.** In determining the states in which a franchisor may need to file registration applications, or with which state laws a franchisor may need to comply in terms of providing disclosure to a prospective franchisee, it is necessary to look to each individual state law. A state franchise sales law will usually apply when an offer, sale, or acceptance is made within the state. What constitutes an "offer" or "sale" is typically defined in the applicable state law. Even though a state franchise registration typically lasts for one year, in the event that any element of the franchise changes in a material way, the franchisor's state franchise registration must be amended. n98 State franchise sales laws normally also include provisions making it unlawful, in connection with the offer, sale, or registration of a franchise, to: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statements of material fact, or fail to make any statements of material fact which might clarify a potentially misleading statement; or (c) engage in any act which may operate as a fraud on any person. n99

**[d] Sanctions for Non-compliance.** Failure to adhere to the requirements of state franchise sales law may subject a franchisor to one or more possible sanctions. Such sanctions may include actions by franchisees seeking damages or rescission of the franchise agreement, n100 or actions by state authorities, including: (1) an injunction preventing the franchisor from doing business in the state, or to enforce compliance with the state franchise sales law; n101 (2) a stop order denying, revoking, or suspending a franchise registration; n102 (3) the escrow or impounding of any franchise fees until the franchisor has met its initial obligations under the franchise agreement; n103 and (4) the imposition of civil or criminal sanctions and other civil proceedings. n104 For any violation of a state franchise sales law, an action must be brought within the applicable statute of limitations specified in the applicable state franchise sales law.

**[e] State Business Opportunity Laws.** In addition to the many state franchise sales laws discussed above, many states regulate the offer and sale of "business opportunities." As with the term "franchise," a uniform definition of a "business opportunity" does not exist, but there are common elements to most formulations of the term. Business opportunity laws typically define a "business opportunity" as the sale or lease of products, equipment, supplies, or services for an initial fee, for the purpose of enabling the purchaser to start a business, in which the seller represents or guarantees that it will provide assistance with a substantial part of the business, including the providing of a marketing plan, or that the purchaser will repurchase goods from the purchaser, or refund all or part of the purchaser's initial fee. n105 Business opportunity sales laws often apply to franchise agreements, because of the provision of a marketing plan.

Many business opportunity laws exempt transactions made in compliance with the FTC Franchise Rule, n106 or for marketing plans or systems in which the purchaser is also given the right to use a registered trademark. n107

**FOOTNOTES:**

(n1)Footnote 1. Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. § 436.

(n2)Footnote 2. *43 Fed. Reg. 59614* (December 21, 1978) . In April 1995, the Commission published a request for comment on the Rule to determine the its effectiveness and impact. *60 Fed. Reg. 17656* (April 7, 1995) . In February 1997, the Commission sought additional comment on a number of specific issues. *62 Fed. Reg. 9115* (February 28, 1997) . The Commission asked for written submissions on specific proposed revisions to the rule in October 1999 by issuing a Notice of Proposed Rulemaking. *64 Fed. Reg. 57293* (October 22, 1999) .

(n3)Footnote 3. *16 C.F.R. § 436.1(a)*.

(n4)Footnote 4. Statement of Basis of Purpose Relating to Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, *43 Fed. Reg. 59614* , Bus. Franchise Guide (CCH) P 6301, P 6312) (Dec. 21, 1978) ("Statement").

(n5)Footnote 5. Statement, Bus. Franchise Guide (CCH) P 6301.

(n6)Footnote 6. The FTC is an independent administrative agency created by statute and comprised of 5 commissioners appointed by the President.

(n7)Footnote 7. *15 U.S.C. §§ 41-77*.

(n8)Footnote 8. *16 C.F.R. § 45(a)(1)*.

(n9)Footnote 9. *16 C.F.R. § 57a(a)(1)(A)*. The Federal Trade Commission explains that it promulgated the FTC Franchise Rule in response to numerous complaints of affirmative misrepresentations, omissions of material facts, and fraudulent franchise offerings (Statement, Bus. Franchise Guide (CCH)P 6304) and claims of egregious practices on the part of franchisors, including false claims of profitability, and failures to disclose material facts that emerged in public hearings. Statement, Bus. Franchise Guide (CCH) PP 6307-6309.

(n10)Footnote 10. Statement, Bus. Franchise Guide (CCH) P 6312. The FTC's activities related to the FTC Franchise Rule include granting discretionary exemptions, issuing advisory opinions about compliance with the FTC Franchise Rule, and investigating and prosecuting alleged violations.

(n11)Footnote 11. *16 C.F.R. § 436.3* (Note 2).

(n12)Footnote 12. *16 C.F.R. §436*. See *Mon-Shore Management, Inc. v. Family Media, Inc.* *584 F. Supp. 186, 190 n. 2 (S.D.N.Y. 1984)* ; See also *Spring Fresh Corp. v. Department of Securities*, *1992 OK CIV APP 31, 829 P.2d 1001 (Okla. Ct. App. 1992)* .

(n13)Footnote 13. *Kimber*, FTC Informal Staff Advisory Opinion, 2 Bus. Franchise Guide (CCH) P 6396 (December 20, 1979).

(n14)Footnote 14. *16 C.F.R. § 436.2(a)*.

(n15)Footnote 15. Final Guides to the Franchising and Business Opportunity Ventures Trade Regulation Rule, ("Final Guides"), *44 Fed. Reg. 49966* . See, also, *FTC v. International Computer Concepts, Inc.*, 1995-96 Bus. Franchise Guide (CCH) & ;para 10,786 (D.C. Ohio 1995)..

(n16)Footnote 16. *16 C.F.R. §436.2(a)*. See, also, Informal FTC Staff Advisory Opinion 02-2 Bus. Franchise Guide, CCH & ;para 6513 (April 26, 2002) (regarding meaning of continuous commercial relationship).

(n17)Footnote 17. *16 C.F.R. § 436.2(a)(1)(i)*.

(n18)Footnote 18. *16 C.F.R. § 436.2(a)(1)(ii)*. The business opportunity venture franchise covered by the FTC Franchise Rule typically involves distributorships, vending machine routes, and video games. Final Guides, *44 Fed. Reg. at 49968*.

(n19)Footnote 19. The FTC explains that the following types of controls are "significant": site approval; site design and appearance requirements; hours of operation; production techniques; accounting practices; personnel policies and practices; promotional campaigns requiring a franchisee's participation or financial contribution; restrictions on customers; and location or sales area restrictions. *44 Fed. Reg. at 49967*. The FTC also states in the Final Guides that the following types of assistance are "significant": formal sales, repair, or business training programs, establishing accounting systems; furnishing management, marketing or personnel advice; selecting site locations; and furnishing a detailed operating manual. *44 Fed. Reg. at 49967*.

(n20)Footnote 20. *16 C.F.R. §§ 436.2(a)(2), 436.2(a)(3)(iii)*.

(n21)Footnote 21. *44 Fed. Reg. at 49965, 49968*.

(n22)Footnote 22. See, e.g., Schwinn Bicycle Co., Informal Staff Advisory Op. (FTC), Bus. Franchise Guide (CCH) P 6381 (1979); Automobile Importers of Am., Informal Staff Advisory Op. (FTC), Bus. Franchise Guide (CCH) P 6,382 (1979).

(n23)Footnote 23. See, Advisory Opinion 97-9, Business Franchise Guide (CCH) P 6489 (1997) (payment is not required when subject to a condition over which the buyer had no control).

(n24)Footnote 24. See, Advisory Opinion 93-12, Bus. Franchise Guide (CCH) P 6456 (1994). See Informal Staff Advisory Opinion 99-1 (March 30, 1999) (holding that there is no required payment when franchisees' obligation to pay a future share of profits does not begin until 6 months after business operations actually commence).

(n25)Footnote 25. *16 C.F.R. § 436.2(a)(3)*. A fractional franchise is created when a new product or service is added to an established distributor's existing product line. It is exempt from the FTC Rule if: (1) the franchisee or any of its directors has more than two years management experience in the business; and (2) at the time of entering into the franchise agreement, the parties in good faith anticipated that the sales arising from the franchise relationship would represent no more than 20 percent of the dollar volume of the franchisee's projected gross sales.

(n26)Footnote 26. *16 C.F.R. § 436.2(a)(3)(ii)*. An independent retailer is excluded from coverage when it leases space and sells goods from the premises of another retailer if it not required directly or indirectly to purchase its goods or services from specific suppliers.

(n27)Footnote 27. *16 C.F.R. § 436.2(a)(3)*. The FTC Rule exempts oral agreements only if there is no written evidence of any material term. The Final Guides provide that any writing, even if unsigned, will preclude the oral agreement exemption. *44 Fed. Reg. at 49,966*. An informal staff advisory opinion construed the exemption even more narrowly stating that handwritten notes made during a sales presentation, a fact sheet or other promotional materials describing the franchise, sales receipts, price lists, cancelled checks, or letters between the parties referring to one or more material terms of the relationship may be sufficient to invalidate the exemption.

(n28)Footnote 28. *16 C.F.R. § 436.2(a)(4)*.

(n29)Footnote 29. *15 U.S.C. § 56a(g)*.

(n30)Footnote 30. 16 C.F.R. § 436(1)(a). For further discussion of the UFOC see § 97.06[4] *infra*.

(n31)Footnote 31. The UFOC Guidelines were first adopted in 1975 by the Midwest Securities Commissions Association, which later changed its name to the North American Securities Administrators Association ("NASAA"). NASAA adopted new requirements and instructions for the UFOC Guidelines on April 25, 1993, which were approved by the FTC on December 30, 1993, and adopted a 1994 Commentary on the UFOC that was intended to clarify specific issues regarding the new Guidelines and their instructions. In 1998, NASAA issued a proposed Statement of Policy for public comment regarding a restated and supplemented UFOC Commentary. *See* discussion in § 97.06[4] *infra*.

(n32)Footnote 32. 16 C.F.R. § 436.2(j).

(n33)Footnote 33. Final Guides, 44 Fed. Reg. at 49,966.

(n34)Footnote 34. 16 C.F.R. § 436.2(e).

(n35)Footnote 35. 16 C.F.R. §§ 436.1(a), 436.2(g), (o).

(n36)Footnote 36. FTC Informal Staff Advisory Opinion 95-10, December 8, 1995.

(n37)Footnote 37. 16 C.F.R. § 436.2(g).

(n38)Footnote 38. 44 Fed. Reg. at 49,970-71.

(n39)Footnote 39. 44 Fed. Reg. at, 49,970-71.

(n40)Footnote 40. For more detailed discussion on state law requirements, see § 97.02[2] *infra*.

(n41)Footnote 41. 16 C.F.R. § 436.1(b). This definition includes claims such as "earn \$100,000 in first year" or "make 100% return on investment in 6 months." However, general statements involving mere "puffery," such as "make lots of money" or "great financial opportunity," are acceptable.

(n42)Footnote 42. 43 Fed. Reg. 59614, at 59686 . *See*, Colish, FTC Informal Staff Advisory Opinion, 2 Bus. Franchise Guide (CCH) P 6408 (April 22, 1980). *See also* *FTC v. Tashman*, 318 F.3d 1273 (11th Cir. Fla. 2003) (holding defendants violated section 5 by making representations regarding earnings for which they had no basis)

(n43)Footnote 43. 16 C.F.R. § 436.1(b)(2).

(n44)Footnote 44. 16 C.F.R. § 436.1(b)(1).

(n45)Footnote 45. If the franchisor uses the UFOC format for disclosure, the earnings claims must be provided within the disclosure document. 16 C.F.R. 436.2(k).

(n46)Footnote 46. 16 C.F.R. 436.1(b)(2).

(n47)Footnote 47. 15 U.S.C. § 45(l)-(m).

(n48)Footnote 48. Actions for civil penalties or equitable relief are subject to the five-year statute of limitations contained in 28 U.S.C. §2462 and not section 57b(d), which limits to three years the time for bringing actions under section 57(b)(a)(1) on behalf of individual consumers who have been damaged by violations of the FTC Rule. *See*, *United States v. Building Inspector of America, Inc.*, 894 F. Supp. 507, 513-14 (D. Mass. 1995) .

(n49)Footnote 49. 16 C.F.R. § 45(m). The Commission intends the standard to be objective, *i.e.* whether a reasonable person under the circumstances would have known of the existence of the provision and that his action violated the provision. *See*, *United States v. Protocol, Inc.*, 1996-97 Bus. Franchise Guide (CCH) P11,184 (D. Minn.

1997).

(n50)Footnote 50. *See, e.g., Wright-Moore Corp. v. Ricoh Corp.*, 980 F.2d 432 (7th Cir. 1992) . However, a private right of action may exist under state franchise laws for conduct that violates the FTC Act or is otherwise "unfair" or "deceptive." *See e.g., Broussard v. Meineke Discount Muffler Shops, Inc.*, 958 F. Supp. 1087 (W.D.N.C. 1997) , rev'd, 155 F.3d 331 (4th Cir. 1998) . *See § 97.02[2] infra.*

(n51)Footnote 51. 16 C.F.R. § 14.17 (1994); 49 Fed. Reg. 50632 (December 31, 1984) . The FTC declared that the Protocol did not reflect, fully and accurately, the FTC's enforcement policy at the time.

(n52)Footnote 52. *Cal. Corp. Code §§ 31000 et. seq.*; (Deering's California Codes Annotated, 2003); HRS §§ 4482E-1 et seq. (Michie 2003); 815 ILCS 705/1 et seq. (2003); Burns Ind. Code Ann. §§ 23-2-2.5-1 et seq. (2003); Md. Business Regulation Code Ann. §§ 14-201 et seq. (2002) Iowa Code § 523H.1 (2003); MCLS §§ 445.1502 et seq.(2003); Minn. Stat. §§ 80C.01 et seq. (2003); N.Y. Gen. Bus. Law §§ 680 et seq. (2003); N.D. Cent. Code §§ 51-19-01 et seq. (2003); ORS §§650.005 et seq. (2001); R.I. Gen. Laws §§ 19-28-1 et seq. (2003); S.D. Codified Laws § 37-5A-1 et seq. (2003); Rev. Code Wash. (ARCW) §§ 19.110.010 et seq. (2003); Wis. Stat. § 553.01 et seq. (2002).

(n53)Footnote 53. A number of such state franchise sales laws, and other franchise-related laws, also contain terms governing the franchise relationship (e.g., termination and non-renewal of the franchise agreement). These laws are discussed in § 97.03 *infra*.

(n54)Footnote 54. The New York definition provides that a franchise exists when a franchisee is granted a right, for a fee, to engage in a business either under a marketing plan prescribed in substantial part by a franchisor, or where such business is substantially associated with the franchisor's trademark. NY CLS Gen. Bus. Law § 681.1.3 (2003).

(n55)Footnote 55. *Cal. Corp. Code § 31005* (Deering's California Codes Annotated, 2003). For similar state statutes, *see also 815 ILCS 705/3* (2003); Burns Ind. Code Ann. § 23-2-2.5-1 (2003); Iowa Code § 523H.1 (2003); Md. Business Regulation Code Ann. § 14-201 (2002); MCLS § 445.1502 (2003); N.D. Cent. Code; § 51-19-02(5)(a) (2003); ORS § 650.005 (2001); R.I. Gen. Laws § 19-28.1-3 (2003); Va. Code Ann. § 13.1-559(b) (2003); Rev. Code Wash. (ARCW) § 19.110.040 (2003); Wis. Stat. § 553.03(4)(a) (2002).

(n56)Footnote 56. *Hartford Elec. Supply Co. v. Allen-Bradley Co., Inc.*, 250 Conn. 334, 736 A.2d 824, 833 (Conn. 1999) (control evidenced by special program to remedy franchisee's underperformance, franchisor's demands for improvement, and franchisor's rigorous enforcement of franchisee's business plan); *Chem-Tek, Inc. v. General Motors Corp.*, 816 F. Supp. 123, 128-29 (D. Conn. 1993) ; *California v. Kline*, 110 Cal. App. 3d 587, 594 (Cal. Ct. App. 1980) (marketing plan found where franchisor would assist in advertising, food supply, and menu planning and where the franchisee agreed to use identifiable and distinctive kiosks).

(n57)Footnote 57. *Jerome-Duncan, Inc. v. Auto-By-Tel, L.L.C.*, 966 F. Supp. 540 (E.D. Mich. 1997) *aff'd by Jerome-Duncan, Inc. v. Auto-By-Tel, L.L.C.*, 176 F.3d 904 (6th Cir. Mich. 1999) (affirming lack of franchise agreement when service provider exerted no authority over the dealer's day-to-day business operations); *James v. Whirlpool Corp.*, 806 F. Supp. 835, (E. D. Mo. 1992) .

(n58)Footnote 58. *Hartford Elec. Supply Co. v. Allen-Bradley Co., Inc.*, 250 Conn. 334, 736 A.2d 824, 833 (Conn. 1999) ; *Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169, 1181 (2d Cir. 1995) , *cert. denied*, 517 U.S. 1119 (1996) .

(n59)Footnote 59. *See Petereit v. S.B. Thomas*, 853 F. Supp. 55, 61 (D. Conn. 1993) ; *Chem Tek, Inc. v. General Motors Corp.*, 816 F. Supp. 123, 128-29 (D. Conn. 1993) ; *California v. Kline*, 110 Cal. App. 3d 587, 594 (Cal. Ct. App. 1980) .

(n60)Footnote 60. *Vaughn v. Digital Message Sys. Corp.*, 1997 U.S. Dist. LEXIS 2798 (E.D. Mich. Mar. 10, 1997) (marketing plan prescribed in substantial part when agreement obligated seller to timely provide all operating and

marketing supplies and materials, a training/operating manual, brochures, demonstration tapes, and supply order/price forms and seller helped recruit sales personnel for licensees, provided a specific market area, and required the purchase and sale of a minimum number of systems each year); *See also*, Bus. Franchise Guide (CCH) P 5050.45 (summarizing California regulations on the definition of a franchise).

(n61)Footnote 61. *Minn. Stat. § 80C.01 subd. 4* (2003). For similar state statutes *see also* HRS § 482E-2 (Michie 2003); R.R.S. Neb. § 87-402(1) (2003); *N.J. Stat. § 56:10-3(a)* (2003); *S.D. Codified Laws § 37-5A-1* (2003).

(n62)Footnote 62. *See e.g.*, HRS § 482E-2 (Michie 2003).

(n63)Footnote 63. *See Martin v. VanderBie*, 269 N.W.2d 868, 874 (Minn. 1978) (stating that "community of interest" is found where fees come from a common source, regardless of how substantial); *Martin Investors, Inc. v. Vander Bie*, 269 N.W.2d 868, 874 (Minn. 1978) (finding community of interest in an ongoing business relationship from each party would share in fees from a common source); *C&J Delivery Inc. v. Emery Airfreight Corp.*, 647 F. Supp. 867 (E. D. Mo. 1986) (community of interest existed where a nationwide package delivery service relied upon local franchisees for local pick up and delivery, and each was dependent upon the other). *But see Colt Indus. Inc. v. Fidelco Pump & Compressor Corp.*, 844 F.2d 117, 120-21 (3d Cir. 1988) (stating that "indicia of control" by franchisor and "interdependence" are relevant to finding a "community of interest").

(n64)Footnote 64. *Instructional Systems, Inc. v. Computer Curriculum Corp.*, 614 A.2d 124, 141 (N.J. 1992) .

(n65)Footnote 65. *Instructional Systems, Inc. v. Computer Curriculum Corp.*, 614 A.2d 124, 141 (N.J. 1992) . *See also, Kubis & Perszyk Associates, Inc. v. Sun Microsystems, Inc.*, 146 N.J. 176, 680 A.2d 618 (1996) (application of leveling the playing field approach to forum selection clauses).

(n66)Footnote 66. *See Mechanical Rubber & Supply Co. v. American Saw & Mfg. Co.*, 810 F. Supp. 986, 991 (C.D. Ill. 1990) ; *Grand Light & Supply Co. v. Honeywell, Inc.*, 771 F.2d 672, 677 (2d Cir. 1985) .

(n67)Footnote 67. *Grand Light & Supply Co. v. Honeywell, Inc.*, 771 F.2d 672, 677 (2d Cir. 1985) (interpreting the Connecticut Franchises Law).

(n68)Footnote 68. *Grand Light & Supply Co. v. Honeywell, Inc.*, 771 F.2d 672, 677 (2d Cir. 1985) (interpreting the Connecticut Franchises Law).

(n69)Footnote 69. *Mechanical Rubber & Supply Co. v. American Saw & Mfg. Co.*, 810 F. Supp. 986, 991 (C.D. Ill. 1990) .

(n70)Footnote 70. *Mechanical Rubber & Supply Co. v. American Saw & Mfg. Co.*, 810 F. Supp. 986, 991 (C.D. Ill. 1990) .

(n71)Footnote 71. *See, e.g., Md. Business Regulation Code Ann. § 14-201(g)(1)* (2002); *Wright-Moore Corp. v. Ricoh Corp.*, 980 F.2d 432, 436 (7th Cir. 1992) (applying the Indiana Franchises Law); *James v. Whirlpool Corp.*, 806 F. Supp. 835, 842-43 (E.D. Mo. 1992) (applying the Michigan Franchise Investment Law); *Cambee's Furniture, Inc. v. Doughboy Recreational, Inc.*, 825 F.2d 167, 171 (8th Cir. 1987) (applying the South Dakota Franchises for Brand-Name Goods and Services Law); *Nielsen v. McCabe*, 442 N.W.2d 477, 480-81 (S.D. 1989) ; *Continental Basketball Assoc. v. Ellenstein Enters., Inc.*, 640 N.E. 2d 705, 708 (Ind. App. 1994) .

(n72)Footnote 72. *See, e.g.*, Bus. Franchise Guide (CCH) P 5050.45 (summarizing the California regulations on the definition of a franchise fee).

(n73)Footnote 73. *See, e.g., To-Am Equip. Co. v. Mitsubishi Caterpillar Forklift Am.*, 152 F.3d 658 (7th Cir. Ill. 1998) (finding payments of more than \$1600 to a manufacturer for required sales, service and parts manuals constituted

indirect franchise fees within the meaning of the Illinois Franchise Disclosure Act (815 ILCS 705/3(14) and more than satisfied the \$500 minimum fee requirement).

(n74)Footnote 74. *See, e.g., Cal. Corp. Code § 31011(a)* (Deering's California Codes Annotated, 2003); 815 ILCS 705/3(14)(c) (2003); *Md. Business Regulation Code Ann. § 14-201(g)(3)(i)* (2002); *Wright-Moore Corp. v. Ricoh Corp.*, 980 F.2d 432, 436 (7th Cir. 1992) (applying the Indiana Franchises Law); *James v. Whirlpool Corp.*, 806 F. Supp. 835, 842 (E.D. Mo. 1992) (applying the Michigan Franchise Investment Law); *Cambie's Furniture, Inc. v. Doughboy Recreational, Inc.*, 825 F.2d 167, 171 (8th Cir. 1987) (applying the South Dakota Franchises for Brand-Name Goods and Services Law).

(n75)Footnote 75. *E.g., Cal. Corp. Code § 31011* (Deering's California Codes Annotated, 2003); HRS § 482E-1 (Michie 2003); 815 ILCS 705/2(1) (2003); *Md. Business Regulation Code Ann. § 14-202(a)(2)* (2002).

(n76)Footnote 76. *See, e.g., Cal. Corp. Code § 31101* (Deering's California Codes Annotated, 2003).

(n77)Footnote 77. *See, e.g., N.Y. Gen. Bus. Law. § 684.2, 684.3* (2003)

(n78)Footnote 78. *E.g., HRS § 482E-4(a)(5)* (Michie 2003); *Burns Ind. Code Ann. § 23-2-2.5-1(g)* (2003).

(n79)Footnote 79. *E.g. MCLS § 445.1506(e)* (2003); *Cal. Corp. Code § 31018(b)* (Deering's California Codes Annotated, 2003).

(n80)Footnote 80. *See, e.g., HRS § 482E-4(a)(6)* (2003); *Md. Business Regulation Code Ann. § 14-201* (2002).

(n81)Footnote 81. *See, e.g., HRS § 482E-4(a)(5)* (2003); *MCLS § 445.1506(e)* (2003).

(n82)Footnote 82. *See, e.g., Cal. Corp. Code § 31102* (Deering's California Codes Annotated, 2003); HRS § 482E-4(a)(7) (2003); *Burns Ind. Code Ann. § 23-2-2.5-4* (2003); *Md. Business Regulation Code Ann. § 14-201* (2002).

(n83)Footnote 83. *See Md. Business Regulation Code Ann. § 14-214 (c)(2)* (2002).

(n84)Footnote 84. *See, e.g., HRS § 482E-4(a)(1), (2)* (2003); 815 ILCS 705/8 (2003); *Minn. Stat. § 80C.03(b)* (2003).

(n85)Footnote 85. *E.g., Cal. Corp. Code § 31011(b)-(c)* (Deering's California Codes Annotated, 2003); 815 ILCS 705/3(14)(b)-(c) (2003); *Md. Business Regulation Code Ann. § 14-201(g)(3)(ii)-(iii)* (2002).

(n86)Footnote 86. *E.g., Cal. Corp. Code § 31100(b)-(c)* (Deering's California Codes Annotated, 2003); HRS § 4482E-4(b) (Michie 2003); 815 ILCS 705/9 (2003); *Burns Ind. Code Ann. § 23-2-2.5-5* (2003).

(n87)Footnote 87. *Cal. Corp. Code § 31110* (Deering's California Codes Annotated, 2003); HRS § 4482E-3(c) (Michie 2003); 815 ILCS 705/10 (2003); *Burns Ind. Code Ann. § 23-2-2.5-9* (2003); *Md. Business Regulation Code Ann. § 14-214* (2002); *MCLS § 445.1507(a)* (2003); *Minn. Stat. § 80C.04* (2003); *N.Y. Gen. Bus. Law § 683* (2003); *N.D. Cent. Code § 51-19-03* (2003); *R.I. Gen. Laws § 19-28.1-5* (2003); *S.D. Codified Laws § 37-5A-6* (2003); *Va. Code Ann. § 13.1-560* (2003); *Rev. Code Wash. (ARCW) §§ 19.100.020 et seq.* (2003); *Wis. Stat. § 553.21* (2002).

(n88)Footnote 88. *MCLS § 445.1507(a)* (2003).

(n89)Footnote 89. *ORS § 650.020* (2001);

(n90)Footnote 90. *ORS § 650.005(7)* (2001);; *see also N.Y. Gen. Bus. Law § 681(11)* (2003).

(n91)Footnote 91. *See, e.g., Rev. Code Wash. (ARCW) §§ 19.100.040 et seq.* (2003);;

(n92)Footnote 92. *See, e.g., Cal. Corp. Code § 31120* (Deering's California Codes Annotated, 2003); *815 ILCS 705/12* (2003); *Md. Business Regulation Code Ann. § 14-219(a)(1)* (2002);

(n93)Footnote 93. *E.g. Cal. Corp. Code § 31121* (Deering's California Codes Annotated, 2003); *Burns Ind. Code Ann. § 23-2-2.5-18* (2003).

(n94)Footnote 94. *See, e.g., 815 ILCS 705/10* (2003);.

(n95)Footnote 95. *See, e.g., 815 ILCS 705/5(2)* (2003).

(n96)Footnote 96. *See Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. §§ 436.1(a), 436.2(g)*. For a more detailed discussion of the disclosure requirements of the FTC Franchise Rule, see § 97.02[1][c].

(n97)Footnote 97. *See, e.g., Cal. Corp. Code § 31300* (Deering's California Codes Annotated, 2003).

(n98)Footnote 98. *See, e.g., Cal. Corp. Code § 31123* (Deering's California Codes Annotated, 2003).

(n99)Footnote 99. *See, e.g., Burns Ind. Code Ann. § 23-2-2.5-27* (2003).

(n100)Footnote 100. *E.g., Cal. Corp. Code § 31300* (Deering's California Codes Annotated, 2003); HRS § 4482E-9 (Michie 2003); *Burns Ind. Code Ann. § 23-2-2.5-28* (2003); *Martschinske v. Olympic Styles, Inc., 628 F. Supp. 231 (S.D. 1984)* .

(n101)Footnote 101. *See, e.g., Cal. Corp. Code § 31400(a)* (Deering's California Codes Annotated, 2003); HRS § 4482E-10.7(e) (Michie 2003); *Burns Ind. Code Ann. § 23-2-2.5-32* (2003); *Md. Code Ann., Bus. Reg. § 14-210(b)* (1992).

(n102)Footnote 102. *See, e.g., Cal. Corp. Code § 31115* (Deering's California Codes Annotated, 2003); HRS § 4482E-8 (Michie 2003); *Burns Ind. Code Ann. § 23-2-2.5-15* (2003).

(n103)Footnote 103. *See, e.g., Cal. Corp. Code § 31113* (Deering's California Codes Annotated, 2003); *815 ILCS 705/15* (2003); *Burns Ind. Code Ann. § 23-2-2.5-12* (2003).

(n104)Footnote 104. *See, e.g., Cal. Corp. Code § 31404* (Deering's California Codes Annotated, 2003); HRS § 4482E-10.6 (Michie 2003); *Burns Ind. Code Ann. § 23-2-2.5-36-37* (2003).

(n105)Footnote 105. *See, e.g., Tex. Bus. & Com. Code § 41.004* (2003).

(n106)Footnote 106. *See, e.g., Tex. Bus. & Com. Code § 41.004(b)(8)(A)* (2003).

(n107)Footnote 107. *See, e.g., Fla. Stat. § 559.801(1)(a)(4)* (2003).

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