

FRANCHISE REGISTRATION

DEFINITION OF FRANCHISING

Franchising is a method of marketing and distributing goods and services. Franchises are offered and sold for many types of businesses, including services, retail trade, finance, real estate, transportation, and communications.

A franchise is broadly defined as a contract or agreement between two or more persons by which the franchisor (the seller), for a fee, gives the franchisee (the buyer) the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, servicemark, logotype, advertising or other commercial symbol. Both the franchisor and the franchisee must have a community of interest in the marketing of the goods or services.

Under the Minnesota franchising statute, a franchise also includes business opportunities in which the seller sells or leases products or services to the purchaser **and** represents that the seller will find or assist in finding locations; or represents that the seller will purchase the products made; or guarantees that the purchaser will make a profit.

FRANCHISE REGISTRATION AND REGULATION

Any proposed offer or sale of a franchise that meets the above definition may be subject to the registration and other requirements of the Minnesota Franchise Act (Minn. Stat. § 80C) and rules of the Minnesota Department of Commerce, Minnesota Rules 2860.0100-2860.9930. Unless there is a specific statutory exemption, a proposed franchise must be registered with the Department of Commerce and must be effective before any offers or sales are made.

The Minnesota Franchise Act and rules define franchises and exemptions; establish registration criteria, procedures, and fees; set requirements for public offering statements; define unfair and prohibited practices; mandate the keeping of books and records; establish enforcement standards, and provide for imposition of civil liability for violations. The Act and rules also address issues like termination and notice periods for non-renewal of franchises, liquidated damages, termination penalties, arbitration, security deposits and governing law.

Minnesota accepts franchise applications which comply with the Uniform Franchise Offering Circular (UFOC) Guidelines of the North American Securities Administrators Association. The UFOC Guidelines prescribe disclosures that a franchisor must make available to prospective franchisees, and require that franchisors supply prospective franchisees with audited financial statements and copies of all proposed contracts and agreements pertaining to the proposed franchise relationship.

COMMERCE DEPARTMENT ENFORCEMENT ACTIONS

The Enforcement Division of the Minnesota Department of Commerce investigates complaints against companies selling franchises and business opportunities. Action can be taken only when

a violation of the Minnesota Franchise Law has occurred. Enforcement actions can be viewed on the Minnesota Department of Commerce website address in the Resource Directory section of the Minnesota Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*.

OTHER ENFORCEMENT AND INFORMATION ASSISTANCE

In addition to the regulation done by the State of Minnesota, the United States Federal Trade Commission (FTC) has regulatory authority over the sellers of franchises and business opportunities. Pursuant to Section 5 of the Federal Trade Commission Act, the FTC has issued its filing complaints about franchises and business opportunities. The NFIC assists the FTC and state Attorneys General by entering complaints into a computerized database to help track and identify operators of frauds.

Along with its enforcement activities, the FTC issues a number of publications designed to educate potential buyers and sellers of franchises and business opportunities. Examples are: *Franchise and Business Opportunities: Buying a Franchise: A Consumer Guide*, explains how to shop for a franchise opportunity, the obligations of a franchise owner, and questions to ask before investing; *Franchise Rule Compliance Guide: Advertising FAQ's: A Guide for Small Business*, an A-Z primer focusing on the federal truth-in advertizing standards; *Work At Home Schemes: and Complying with the Telemarketing Sales Rule*. Many of the publications are available on its website, at www.ftc.gov. Also available on their website, at the Legal Resources section, is information regarding Case Highlights; Compliance Documents; Laws, Rules, and Guides; Reports and Workshops.

EXEMPTIONS

There are eight registration exemptions available under Minn. Stat. § 80C.03. These include sale of a franchise by a franchisee-owner; sales by an executor, administrator, sheriff, trustee in bankruptcy, guardian or conservator; sales to a bank or insurance company; sales of registered securities; a single isolated sale of a franchise under specified conditions; the sale of a franchise to a franchisee with specified experience in the business and who derives 80 percent or more of its sales from other sources; sale of a foreign franchise to a nonresident of Minnesota under specified conditions; and sales exempted by order of the Commissioner of the Minnesota Department of Commerce. It is strongly recommended that anyone considering the offer or sale of a franchise consult a knowledgeable attorney before relying on an exemption.

FRANCHISING IN OTHER STATES

Although many states regulate franchises in a manner similar to Minnesota, each state's laws are different. Accordingly, franchisors who plan to offer or sell franchises in other states should check with appropriate officials in those states regarding their franchising laws and requirements.

INTERPRETIVE OPINIONS

Under Minn. Stat. § 80C.18, subd. 2, a company may request an interpretive opinion from the Minnesota Department of Commerce on whether a business being offered is a franchise, whether registration is required, and whether an exemption is available. An opinion fee is required.

FEES

Fees charged by the Department of Commerce for franchise-related transactions are: initial application fee, \$400; annual report (renewal) fee, \$200; amendment fee, \$100; and opinion fee, \$50.

QUESTIONS AND FURTHER INFORMATION

Questions concerning franchise registration should be directed to the Minnesota Department of Commerce at the address and telephone number provided in the Resource Directory section of the *Guide*.

The Minnesota Franchise Act is available at www.revisor.leg.state.mn.us. The rules are available at www.revisor.leg.state.mn.us/arule/2860. The UFOC Guidelines (including forms) can be downloaded from a link on the Minnesota Department of Commerce website at <http://mn.gov/commerce/businesses/Franchises/>.