

permission from the state superintendent of public instruction that contains estimated disbursements in excess of the total of estimated cash receipts for the current fiscal year plus net cash balance and investments at the close of the last completed fiscal year shall be null and void and shall not be considered an appropriation.

NEW SECTION. Sec. 3. This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 15, 1972.

Passed the Senate February 11, 1972.

Approved by the Governor February 23, 1972.

Filed in Office of Secretary of State February 24, 1972.

CHAPTER 116

[Engrossed Substitute House Bill No. 417]

FRANCHISES

AN ACT Relating to franchises; amending section 1, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.010; amending section 3, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.030; amending section 4, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.040; amending section 5, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.050; amending section 7, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.070; amending section 8, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.080; amending section 11, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.110; amending section 12, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.120; amending section 14, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.140; amending section 18, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.180; amending section 19, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.190; amending section 20, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.200; amending section 21, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.210; amending section 22, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.220; amending section 25, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.250; and declaring an emergency.

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

Section 1. Section 1, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.010 are each amended to read as follows:

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

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

(2) "Community interest" means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.

(3) "Director" means the director of department of motor vehicles.

(4) "Franchise" means an oral or written contract or agreement, either expressed or implied, in which a person grants to another person, a license to use a trade name, service mark, trade mark, logotype or related characteristic in which there is a community interest in the business of offering, selling, distributing goods or services at wholesale or retail, leasing, or otherwise and in which the franchisee is required to pay, directly or indirectly, a franchise fee; PROVIDED, That none of the following shall be construed as a franchise within the meaning of this chapter:

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

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

(c) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

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

~~((5))~~ (6) "Franchisee" means a person to whom a franchise is offered or granted.

~~((6))~~ (7) "Franchisor" means a person who grants a franchise to another person.

~~((7))~~ (8) "Area franchise" means any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

~~((8))~~ (9) "Subfranchisor" means a person to whom an area franchise is granted.

~~((9))~~ (10) "Franchise broker or selling agent" means a person who directly or indirectly engages in the sale of franchises.

~~((10))~~ (11) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for

the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value.

~~((44))~~ [12] "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

~~((42))~~ [13] "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

~~((43))~~ [14] "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

~~((44))~~ [15] "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

[16] "Chain distributor scheme" is a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above

license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

Sec. 2. Section 3, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.030 are each amended to read as follows:

The registration requirements of this chapter shall not apply to:

(1) A sale or transfer of a franchise by a franchisee whether voluntary or involuntary if such sale is an isolated sale.

(2) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

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

(4) Any franchisor:

(a) (Who has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

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

(c) Who requires an initial investment by the franchisee of more than one hundred thousand dollars; and

(d)) Who has disclosed in writing to each prospective franchisee, at least forty-eight hours prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least forty-eight hours prior to the receipt of any consideration, the following information:

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

(ii) The franchisor's principal business address and the name

and address of his agent in the state of Washington authorized to receive process.

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

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

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

(B) Has granted franchises for such business; and

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

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

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

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

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

(C) Working capital, deposits and prepaid expenses;

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

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

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

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

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

(x) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such

purchases.

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

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

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

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

(xv) A statement of (~~earnings of past and present franchisees including records of failures, resales to the franchisor, sales of the franchise to others, and transfers~~) business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement.

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

(xvii) A statement as to whether or not franchisees are granted a specific area or territory within which the franchisor agrees not to operate or grant additional franchises for the operation of the franchise business or in which the franchisor will operate or grant franchises for the operation of no more than a specified number of additional franchise businesses.

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

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

(xx) A statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the franchisor may desire to present;

and

(b) Who either:

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

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five franchises conducting business at all times during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

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

(ii) (A) has and is offering for sale fewer than ten franchises within the state of Washington under franchise agreement; and

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

(iii) (A) does not charge a franchise fee, as defined in section 1 (11) of this 1972 amendatory act, in excess of fifteen hundred dollars per year, and

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

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

(5) ((Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(6)) Neither the registration requirements nor the provisions

of RCW 19.100.180 (2) as now or hereafter amended, shall apply to any franchisor:

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

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

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

Any franchisor or subfranchisor who claims an exemption under subsection 4(a) and 4(b)(i) of this section shall file with the director a statement giving notice of such claim and setting forth the name and address of franchisor or subfranchisor and the name under which the franchisor or subfranchisor is doing or intends to do business.

Sec. 3. Section 4, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.040 are each amended to read as follows:

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

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

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

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

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

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

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

(b) Is subject to any currently effective order of the securities and exchange commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order ~~((or))~~ of any national security association or national securities ~~((exchanges))~~ exchange (as defined in the Securities & Exchange Act



of 1934) suspending or expelling such person from membership of such association or exchange; or

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

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

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

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

(b) Has granted franchises for such business; and

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

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

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

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

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

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

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

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

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

(c) Working capital, deposits and prepaid expenses;

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

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

(10) A statement describing a payment of fees other than franchise fees that the franchisee is required to pay to the

franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

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

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

(13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such purchases.

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

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

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

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

(18) A statement of ~~((earnings of past and present franchisees including records of failures; resales to the franchisor; sales of the franchise to others; and transfers; insofar as such information is reasonably available to the franchisor))~~ business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement.

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

(20) Such other information as the director may reasonably

require.

(21) ((Such other information as the franchisor may wish to present)) A list of the names, addresses and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in the state of Washington.

(22) ((When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section)) A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.

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

(24) When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

Sec. 4. Section 5, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.050 are each amended to read as follows:

The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he finds that such requirement is necessary and appropriate to protect prospective franchisees. At any time after the issuance of such rule or order under this section the franchisor may in writing request the rule or order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act.

Sec. 5. Section 7, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.070 are each amended to read as follows:

(1) A franchise offering shall be deemed duly registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than fifteen business days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information

contained in the original application for a renewal application and payment of the proscribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor should occur during any year, a supplemental report shall be filed as soon as reasonably possible and in any case, before the further sale of ((the)) any franchise.

Sec. 6. Section 8, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.080 are each amended to read as follows:

Any person offering for sale or selling a franchise within this state, whether or not one or more franchises will be located within this state, must present to the prospective franchisee or his representative, at least forty-eight hours prior to the sale of the franchise, copies of the ((offering circular)) materials specified in section 2(4) (a) of this 1972 amendatory act and all supplemental reports of the franchisor and the subfranchisor on file with the director.

Sec. 7. Section 11, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.110 are each amended to read as follows:

No person shall publish in this state any advertisement concerning a franchise subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act.

Sec. 8. Section 12, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.120 are each amended to read as follows:

The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date, or as of any earlier date in the case of an order denying effectiveness, is incomplete ((and inadvisable in any)) in any material respect or contains any statement which was in the light of the circumstances

under which it was made false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the offering by:

(a) The person filing the registration statement but only if such person is directly or indirectly controlled by or acting for the franchisor; or

(b) The franchisor, any partner, officer or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

(3) The franchise offering registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering but the director may not:

(a) Institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunctive relief thereon unless the injunction is thereafter violated; and

(b) Enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction is based on facts that currently constitute a ground for stop order under this section;

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) ~~((The applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate improvements, equipment, training, or other items included in the offering;))~~ The applicant has failed to comply with any rule or order of the director issued pursuant to section 4 of this 1972 amendatory act.

(7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this subsection and he shall vacate such order when the deficiency has been corrected.

Sec. 9. Section 14, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.140 are each amended to read as follows:

(1) It is unlawful for any person to offer to sell or sell a franchise which is subject to the registration requirements of RCW ~~((19.100.030(4)(d) or))~~ 19.100.040 unless he is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee, except if the transaction is exempt under RCW 19.100.030

((1), (2), and (3)) to employ a franchise broker or selling agent unless he is registered.

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

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

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

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

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

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

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

Sec. 10. Section 18, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.180 are each amended to read as follows:

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

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

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

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

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

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on franchises granted at materially different

times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

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

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is ((promptly accounted for and transmitted)) disclosed to the franchisee.

(f) ((If he is the franchisor or subfranchisor, to compete with the franchisee in a relevant market or to grant competitive franchises in the relevant market area previously granted to another franchisee. Such relevant market to be specifically listed in the franchise agreement.)) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) ((Fail to renew a franchise except for just cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees; unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable; is based on proper and justifiable distinctions considering the purposes of this chapter; and is not arbitrary.)) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the

franchisor: PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) ((Terminate a franchise or to restrict the transfer of a franchise except for just cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable; is based on proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary. Upon termination the franchisee shall receive a fair and reasonable compensation for the value of the franchisee's inventory, supplies, equipment, and furnishings and those prepaid costs and expenses paid the franchisor: PROVIDED, That personalized materials which have no value to the franchisor need not be compensated for.)) To terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee (i) is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(k) Promote, offer or grant participation in a chain distributor scheme.



((3) The provisions of this chapter shall apply to all written or oral arrangements with the franchisee including but not limited to the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such arrangements in which the franchisor or subfranchisor has any direct or indirect interest.

(4) In any proceedings damages may be based on reasonable approximations but not on speculation.)

Sec. 11. Section 19, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.190 are each amended to read as follows:

(1) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 as now or hereafter amended shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

(2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.100.170 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or ((admission)) omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or ((admission)) omission.

(3) The suit authorized under subsection (2) of this section may be brought to recover the actual damages sustained by the plaintiff ((together with the cost of the suit including reasonable attorneys' fees)) and the court may in its discretion increase the award of damages to an amount not to exceed three times the actual damages sustained; PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(4) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(5) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, under the Washington State Consumer Protection Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsection (1) and (2) of this section as to all matters which

said judgment or decree would be an estoppel between the parties thereto.

Sec. 12. Section 20, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.200 are each amended to read as follows:

The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, the Consumer Protection Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person.

Sec. 13. Section 21, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.210 are each amended to read as follows:

(1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful and the prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person who violates RCW 19.100.020, 19.100.080, 19.100.150 and 19.100.170 as now or hereafter amended shall forfeit a civil penalty of not more than two thousand dollars for each violation.

For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(3) Any person who wilfully violates any provision of this chapter or who wilfully violates any rule or order under this chapter

shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Sec. 14. Section 22, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.220 are each amended to read as follows:

In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a franchise at the time of entering into a franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void.

Sec. 15. Section 25, chapter 252, Laws of 1971 ex. sess. and RCW 19.100.250 are each amended to read as follows:

The director may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter including rules and forms governing applications and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter. The director in his discretion may honor requests from interested persons for interpretive opinions.

NEW SECTION. Sec. 16. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 17. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 1, 1972.

Passed the House February 16, 1972.

Passed the Senate February 12, 1972.

Approved by the Governor February 23, 1972.

Filed in Office of Secretary of State February 24, 1972.