

A Bill for an Act Relating to Franchises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

## “CHAPTER FRANCHISE INVESTMENT LAW

**Sec. -1 Purpose and intent.** The purpose of this chapter is to regulate the sale of franchises in the State to minimize losses to the franchisees in cases where the franchisor or his representative has not provided full and complete information regarding: (1) the franchisor-franchisee relationship; (2) the details of the contract between franchisor and franchisee; and (3) the prior business experience of the franchisor.

It is the intent of the legislature to: (1) provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered; (2) prohibit the sale of franchises which would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled; and (3) protect the franchisor or subfranchisor by providing a better understanding of the relationship between the franchisor or subfranchisor and the franchisee with regard to their business relationship.

**Sec. -2 Definitions.** As used in this chapter and unless a different meaning appears from the context:

“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.

“Community interest” means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.

“Director” means the director of regulatory agencies.

“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, trademark, logotype, or related characteristic in which there is a community interest in the business of offering, selling, or 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.

“Franchisee” means a person to whom a franchise is offered or granted.

“Franchisor” means a person who grants a franchise to another person.

“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.

“Subfranchisor” means a person to whom an area franchise is granted.

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“Franchise broker or selling agent” means a person who directly or indirectly engages in the sale of franchises.

“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 charge based upon the amount of goods or products purchased by the franchisee from the franchisor or subfranchisor, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for goods or services, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (1) the purchase or agreement to purchase goods at a bona fide wholesale price; (2) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale reflect only the bona fide wholesale price of such goods; (3) a bona fide loan to the franchisee from the franchisor; (4) 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; (5) the purchase or agreement to purchase supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market value; (6) 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 value.

“Person” means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it includes 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.

“Publish” means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

“Sale or sell” includes every contract of sale, contract to sell, or disposition of a franchise.

“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.

**Sec. -3 Registration of Sale or offer to sell.** (a) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this State after July 1, 1974, unless the offer of the franchise has been registered under this chapter or exempted under section -4.

(b) 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, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.

- (2) The franchisor's principal business address and the name and address of his agent in the State 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 the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; 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 any national security association or national securities exchanges (as defined in the Securities and 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 or is subject to any currently effective order relating to business activity as a result of an action brought 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 recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The director may describe:
  - (A) Form and content of the financial statements required under this chapter;
  - (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 the 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.

- (10) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor 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, or repurchased at the option of the franchisor.
- (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 or subfranchisor 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.
- (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 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.
- (18) A statement of earnings of past and present franchisees including record of failures, resales to the franchisor, sales of the franchise to others, and transfers, insofar as such information is reasonably available to the franchisor.
- (19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.
- (20) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.
- (21) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (A) the use of the public figure in the name or symbol of the franchise or (B) the endorsement or recommendation of the franchise by the public figure in advertisements.
- (22) Such other information as the director may reasonably require.
- (23) Such other information as the franchisor may wish 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 subsection.

(c) The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impoundment of franchise fees if he finds that such requirement is necessary and appropriate to protect prospective franchisees.

(d) If no stop order is in effect and no proceeding is pending under section -8(a), a registration statement becomes effective at of the fifteenth business day after the filing of the registration statement or the last amendment or at such earlier time as the director determines.

(e) 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.

(f) 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 prescribed fee.

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

(h) Neither the fact that application for registration under this chapter has been filed nor the fact that such registration has become effective constitutes a finding by the director that any document filed under this chapter is true, complete or not misleading. Neither any such fact or the fact an exemption is available for a transaction means that the director has passed in any way on the merit or qualifications of or recommended or given approval to any person, franchise, or transaction.

It is unlawful to make or cause to be made to any prospective purchaser or offeree any representation inconsistent with this subsection.

**Sec. -4 Exemptions.** (a) 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 \$5,000,000 or who has a net worth, according to its most recent

audited financial statement, of not less than \$1,000,000 and is at least eighty per cent 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 \$5,000,000; 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 per cent 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) Who requires an initial investment by the franchisee of more than \$100,000; 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, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.
  - (ii) The franchisor's principal business address and the name and address of his agent in the State 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 conducted a business of the type to be operated by the franchisees; has granted franchises for such business; and 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 the 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.
  - (vii) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor 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, or repurchased at the option of the franchisor.

- (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 or subfranchisor 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.
- (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 franchise is limited 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 or subfranchisor 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.
- (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, insofar as such information is reasonably available to the franchisee.
- (xvi) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.
- (xvii) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of the public figure in the name or symbol of the franchise, or the endorsement or recommendation of the franchise by the public figure in advertisements.
- (xviii) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.

(5) Any motor vehicle dealer subject to chapter 437.

(b) Neither the registration requirements nor the provisions of section -6(2) shall apply to any franchisor:

- (1) Who meets the tests and requirements set forth in subsection (a) (4); and

- (2) 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.

**Sec. -5 General provisions.** (a) No person shall publish in this State any advertisement offering a franchise subject to the registration requirements of this chapter unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow.

(b) 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 subsection 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 chapter 91, the director shall determine whether to affirm and to continue or to rescind the order.

(c) Every person offering franchises for sale shall at all times keep and maintain a complete set of books, records, and accounts of such and the disposition of the proceeds thereof and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it, the proceeds derived therefrom, and the disposition thereof.

(d) 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 and all supplemental reports of the franchisor and the subfranchisor on file with the director.

(e) It is unlawful for any person in connection with the offer, sale, or purchase of any franchise directly or indirectly:

- (1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this chapter or wilfully to omit to state in any application notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by section -3(g).
- (2) To sell or offer to sell a franchise in this State by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.
- (3) To employ any device, scheme, or artifice to defraud.

- (4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (5) To violate any order of the director.

(f) Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to this chapter, shall be amenable to the jurisdiction of the courts of this State and shall be amenable to the service of process as provided by law and rule. Every applicant for registration of a franchise under this chapter, by other than a Hawaii corporation, shall file with the director in such form as he by rule prescribed, an irrevocable consent appointing the director or his successor in office to be his attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or his successors, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not effective unless:

- (1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director; and
- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows.

(g) In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it.

**Sec. -6 Relationship between franchisor or subfranchisor and franchisee.** 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 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.
  - (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 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 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.
  - (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.
  - (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.
- (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 con-

tracts, 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. -7 Registration of franchise broker or selling agent.** (a) It is unlawful for any person to offer to sell or sell a franchise which is subject to the registration requirements of section -4 or section -3 unless he is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee, except if the transaction is exempt under section -4 to employ a franchise broker or selling agent unless he is registered.

(b) 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 prescribes and payment of the fee prescribed in section -11.

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

- (1) The applicant's form and place of organization.
- (2) The applicant's proposed method of doing business.
- (3) The qualifications and business history of the applicant.
- (4) 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
- (5) The applicant's financial condition and history.

**Sec. -8 Duties of the director.** (a) 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 immaterial in any 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 subparagraph 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 subparagraph on the basis of an injunction entered under any other law 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;
- (7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this paragraph and he shall vacate such order when the deficiency has been corrected.

(b) Upon the entry of a stop order under any part of subsection (a), the director shall promptly notify the applicant that the order has been entered and the reasons therefor and that within fifteen days after receipt of a written request, the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice of an opportunity for hearings to the issuer and to the applicant or registrant shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted his entry have changed or that it is otherwise in the public interest to do so.

(c) The director shall refer such evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his discretion with or without such a reference institute the appropriate criminal proceeding under this chapter.

(d) The director may, in accordance with chapter 91, from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out 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.

**Sec. -9 Civil liability.** (a) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by section -6 shall constitute an unfair or deceptive act or practice under chapter 480.

(b) 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 for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of section -5(e) rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or admission 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.

(c) The suit authorized under subsection (b) 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.

(d) 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.

(e) 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, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsections (a) and (b) as to all matters which said judgment or decree would be an estoppel between the parties thereto.

**Sec. -10 Penalties.** (a) 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.

(b) Every person who violates the terms of any injunction issued as provided by this chapter shall forfeit and pay a civil penalty of not more than \$25,000.

Every person who violates section -3(a) or -5(c), (d), or (e) shall forfeit a civil penalty of not more than \$2,000 for each violation.

For the purpose of this section the 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.

(c) Any person who wilfully violates any provision of this chapter or who wilfully violates any rule or order under this chapter shall be fined not more than \$5,000 or imprisoned 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.

(d) Nothing in this chapter limits the power of the State to punish any person for any conduct which constitutes a crime.

**Sec. -11 Fees.** The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

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- (1) The fee for filing an application for registration on the sale of franchise under section -3(b) is \$500;
- (2) The fee for filing an application for renewal of a registration under section -3(f) is \$100;
- (3) The fee for filing an amendment to the application filed under this chapter is \$100;
- (4) The fee for registration of a franchise broker or selling agent is \$50 for an original registration and \$25 for each annual renewal.

**Sec. -12 Administration.** (a) Chapter 91 shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter.

(b) The director shall appoint, subject to applicable civil service laws, a competent person to administer this chapter. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter.”

**SECTION 2. Severability.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 3.** All conflicting acts or parts thereof are repealed or amended to conform with this Act.

**SECTION 4. Effective date.** This Act shall become effective January 1, 1975.

(Approved May 17, 1974.)