

CHAPTER 80C

FRANCHISES

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80C.01 DEFINITIONS.

[For text of subds 1 to 3, see M.S.1980]

Subd. 4. "Franchise" means (a) a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

(1) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;

(2) in which the franchisor and franchisee have a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and

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

(b) a contract, lease, or other agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons, whereby the franchisee is granted the right to market motor vehicle fuel; or

(c) the sale or lease of any products, equipment, chattels, supplies, or services to the purchaser, other than the sale of sales demonstration equipment, materials or samples for a total price of \$500 or less to any one person, for the purpose of enabling the purchaser to start a business and in which the seller:

(1) Represents that the seller, lessor, or an affiliate thereof will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or similar devices, or currency operated amusement machines or devices, on premises neither owned or leased by the purchaser or seller; or

(2) Represents that the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the supplies, services, or chattels sold to the purchaser; or

(3) Guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller.

(d) "Franchise" does not include any business which is operated under a lease on the premises of the lessor as long as such business is incidental to the business conducted by the lessor on such premises, including, without limitation, leased departments and concessions.

(e) "Franchise" does not include any contract, lease or other agreement whereby the franchisee is required to pay less than \$100 on an annual basis, except those franchises identified in paragraph (b), clause (2).

[For text of subds 5 to 16, see M.S.1980]

Handwritten note: (f) missing Refer to Laws '81 Chap 59

Subd. 17. "Predecessor" means any person or persons from whom the franchisor acquired, either directly or indirectly, assets constituting 30 percent or more of the franchisor's total assets immediately following the acquisition, during the five year period preceding the date of the offering circular.

Subd. 18. "Fractional franchise" means any franchise relationship in which the franchisee or any of the principal officers or directors of the franchisee, have been in the type of business represented by the franchise relationship for more than two years and the parties anticipated, or should have anticipated, at the date of the agreement establishing the franchise relationship, that the sales arising from the relationship would represent no more than 20 percent of the dollar sales volume of the franchisee.

History: 1981 c 59 s 19; 1981 c 165 s 1-3

80C.03 EXEMPTIONS.

The registration requirement imposed by section 80C.02 shall not apply to the following provided that the method of offer or sale is not used for the purpose of evading sections 80C.01 to 80C.22:

(a) The offer or sale by a franchisee of a franchise owned by him, or the offer or sale by a subfranchisor of the entire area franchise owned by him if the sale is not effected by or through a franchisor; provided, however, that no person shall make more than one sale during any period of 12 consecutive months of a franchise or area franchise granted by a single franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee;

(b) Any transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian or conservator;

(c) Any offer or sale to a banking organization, financial organization or life insurance corporation within the meanings given these terms by section 345.31;

(d) Securities currently registered in this state pursuant to chapter 80A;

(e) The offer or sale of a franchise, not including an area franchise, provided that:

(1) Neither the franchisor nor any predecessor or affiliate of the franchisor has more than two franchises in Minnesota at the time of any such offer or will have more than three franchises in Minnesota immediately following any such sale;

(2) The franchisor has not directed or caused to be directed any advertisement for the franchise to anyone within Minnesota who has not requested it; and

(3) The franchisor deposits all franchisee fees in an escrow account until all obligations of the franchisor to the franchisee which are, pursuant to the terms of the franchise agreement, to be performed prior to the opening of the franchise, have been performed. The franchisor shall provide the franchisee with a purchase receipt for the franchise fees paid, a copy of the escrow agreement and the name, address and telephone number of the escrow agent. The escrow agent shall be a bank located in Minnesota. All such franchise fees shall be deposited in the escrow account within two business days after receipt.

(4) The franchisor has filed with the commissioner, no later than 10 business days prior to the date of the first sale, a written notice of its intention to offer or sell franchises pursuant to the exemptions set forth in this paragraph, which notice shall be accompanied by a fee of \$50, together with a copy of the disclosure document and standard franchise agreement of the franchisor, which documents

are required to be supplied by the franchisor to the franchisee pursuant to rules of the Federal Trade Commission.

(f) The offer or sale of a fractional franchise;

(g) Any transaction which the commissioner by rule or order exempts as not being within the purposes of this chapter and the registration of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors; and

(h) The offer or sale of a franchise to a resident of a foreign state, territory, or country who is neither domiciled in this state nor actually present in this state, if the franchise business is not to be operated wholly or partly in this state, and if the sale of this franchise is not in violation of any law of the foreign state, territory, or county concerned.

History: 1981 c 165 s 4

80C.14 UNFAIR PRACTICES.

Subdivision 1. **Prohibition.** No person, whether by means of a term or condition of a franchise or otherwise, shall engage in any unfair or inequitable practice in contravention of such rules as the commissioner may adopt defining as to franchises the words "unfair and inequitable". For the purpose of rules defining the words "unfair and inequitable" the commissioner may specifically recognize classifications of franchises including but not limited to the classifications of motor vehicle fuel franchises, motor vehicle franchises, hardware franchises and franchises which require that the franchisee make an initial, unfinanced investment in excess of \$200,000. Any violation of this section is enjoined by a court of competent jurisdiction.

A temporary injunction may be granted under this section without requiring the posting of any bond or security. A bond or security shall be required if a temporary restraining order is granted.

Subd. 2. **Acts constituting.** All franchise contracts or agreements, other than those classifications of franchises specifically recognized by the commissioner pursuant to subdivision 1, and any other device or practice of a franchisor shall conform to the following provisions. It shall be deemed unfair and inequitable for any person to:

(a) Terminate or cancel a franchise without first giving written notice setting forth all the reasons for the termination or cancellation to the franchisee at least 60 days in advance of termination or cancellation, except that the notice shall be effective immediately upon receipt where the alleged grounds are:

(1) Voluntary abandonment of the franchise relationship by the franchisee;

(2) The conviction of the franchisee of an offense directly related to the business conducted pursuant to the franchise; or

(3) Failure to cure a default under the franchise agreement which materially impairs the goodwill associated with the franchisor's trade name, trademark, service mark, logotype or other commercial symbol after the franchisee has received written notice to cure of at least 24 hours in advance thereof;

(b) Terminate or cancel a franchise except for good cause. "Good cause" shall be failure by the franchisee substantially to comply with reasonable requirements imposed upon him by the franchise including, but not limited to:

(1) The bankruptcy or insolvency of the franchisee;

(2) Assignment for the benefit of creditors or similar disposition of the assets of the franchise business;

- (3) Voluntary abandonment of the franchise business;
 - (4) Conviction or a plea of guilty or no contest to a charge of violating any law relating to the franchise business; or
 - (5) Any act by or conduct of the franchisee which materially impairs the goodwill associated with the franchisor's trademark, trade name, service mark, logotype or other commercial symbol; or
- (c) Fail to renew a franchise unless the franchisee has been given written notice of the intention not to renew at least 90 days in advance thereof and has been given a sufficient opportunity to recover his investment unless the failure to renew is for good cause as defined in clause (b).

History: 1981 c 165 s 5

80C.145 MOTOR FUEL FRANCHISES; RIGHT OF SURVIVORSHIP.

Subdivision 1. **Required provisions.** No motor fuel franchisor shall initially execute or renew a franchise agreement in the state after July 1, 1981 unless it contains the provisions of subdivisions 3 to 9.

Subd. 2. **Definition; designated family member.** For purposes of this section, "designated family member" means the spouse, child, grandchild, parent, brother, or sister of the motor fuel franchisee who, in the case of the motor fuel franchisee's death, is entitled to inherit the franchisee's interest in the motor fuel franchise under the terms of the franchisee's will or under the law of intestate succession of this state or who, in the case of an incapacitated franchisee, has been appointed by a court as the legal representative of the franchisee's property.

Subd. 3. **Authorization.** Any designated family member of a deceased or incapacitated owner of a motor fuel franchise may succeed to the ownership of the existing franchise: (a) if the designated family member gives the motor fuel franchisor written notice of the intention to succeed to the motor fuel franchise within 60 days of the motor fuel franchisee's death or incapacity; (b) if the designated family member agrees to be bound by all terms and conditions of the existing franchise; and (c) unless there exists good cause for the refusal to honor the succession on the part of the motor fuel franchisor.

Subd. 4. **Personal and financial data.** At the time of serving notice under subdivision 3, the designated family member shall provide upon the request of the motor fuel franchisor, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

Subd. 5. **Notice of termination or refusal to honor succession.** If a motor fuel franchisor believes in good faith that good cause exists for refusing to honor succession of the franchise by a designated family member of a deceased or incapacitated motor fuel franchisee, the franchisor may within 90 days after receipt of the personal and financial data requested under subdivision 4, serve notice upon the designated family member of its refusal to honor succession and of its intent to terminate the existing motor fuel franchise with the designated family member no sooner than 90 days from the date the notice is served.

Subd. 6. **Contents of notice.** The notice must state the specific grounds for the refusal to honor the succession and the termination of the existing franchise with the designated family member.

Subd. 7. **Effect of notice not timely served.** If notice of refusal and termination is not timely served upon the designated family member, the existing motor fuel franchise shall continue in effect subject to termination only as otherwise permitted by law.

Subd. 8. **Burden of proof.** In determining whether good cause for the refusal to honor the succession exists, the motor fuel franchisor has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing, reasonable standards.

Subd. 9. **Succession agreements.** Notwithstanding the foregoing, in the event the motor fuel franchisee and the motor fuel franchisor have duly executed an agreement concerning the succession rights prior to the franchisee's death or incapacitation, the agreement shall be observed, even if the agreement designates an individual other than the surviving spouse or heirs of the franchisee.

Subd. 10. **Enforcement.** The attorney general or any aggrieved party may institute a civil action in the district court for an injunction prohibiting a violation of this section. It is no defense to the action that the state or the aggrieved party has adequate remedies at law.

History: 1981 c 59 s 1

80C.17 CIVIL LIABILITY.

[For text of subs 1 to 4, see M.S.1980]

Subd. 5. No action may be commenced pursuant to this section more than three years after the franchisee pays the first franchise fee.

History: 1981 c 165 s 6

80C.18 RULES AND REGULATIONS; COMMISSIONER TO PRESCRIBE.

[For text of subd 1, see M.S.1980]

Subd. 2. The commissioner may, upon request and upon payment of a fee of \$50, honor requests for interpretive opinions relating to sections 80C.01 to 80C.22.

History: 1981 c 165 s 7

80C.19 SCOPE OF SECTIONS 80C.01 TO 80C.22.

Subdivision 1. The provisions of sections 80C.01 to 80C.22 concerning sales and offers to sell shall apply when a sale or offer to sell is made in this state; when an offer to purchase is made and accepted in this state; or when the franchise is to be located in this state.

[For text of subs 2 to 4, see M.S.1980]

History: 1981 c 165 s 8