

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The General Not For Profit Corporation Act of 1986 is amended by changing Section 107.50 as follows:

(805 ILCS 105/107.50) (from Ch. 32, par. 107.50)

Sec. 107.50. Proxies. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, by proxy executed in writing by the member or by that member's duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors, ~~or~~ officers, or representatives are to be elected by members, the bylaws may provide that such elections may be conducted by mail, email, or other electronic means.

(Source: P.A. 84-1423.)

Section 10. The Illinois Business Brokers Act of 1995 is amended by changing Section 10-80 as follows:

(815 ILCS 307/10-80)

Sec. 10-80. Persons exempt from registration and other duties under law; burden of proof thereof.

(a) The following persons are exempt from the requirements of this Act:

(1) Any attorney who is licensed to practice in this State, while engaged in the practice of law and whose service in relation to the business broker transaction is incidental to the attorney's practice.

(2) Any person licensed as a real estate broker or salesperson under the Illinois Real Estate License Act of 2000 who is primarily engaged in business activities for which a license is required under that Act and who, on an incidental basis, acts as a business broker.

(3) Any dealer, salesperson, or investment adviser registered pursuant to the Illinois Securities Law of 1953 or any investment adviser representative, or any person who is regularly engaged in the business of offering or selling securities in a transaction exempted under subsection C, H, M, R, Q, or S of Section 4 of the Illinois Securities Law of 1953 or subsection G of Section 4 of the Illinois Securities Law of 1953 provided that such person is registered pursuant to federal securities law.

(4) An associated person described in subdivision (h) (2) of Section 15 of the Federal 1934 Act.

(5) An investment adviser registered pursuant to Section 203 of the Federal 1940 Investment Advisors Act.

(6) A person described in subdivision (a) (11) of Section 202 of the Federal 1940 Investment Advisors Act.

(7) Any person who is selling a business owned or operated (in whole or in part) by that person in a one time transaction.

(b) This Act shall not be deemed to apply in any manner, directly or indirectly, to: (i) a State bank or national bank, as those terms are defined in the Illinois Banking Act, or any subsidiary of a State bank or national bank; (ii) a bank holding company, as that term is defined in the Illinois Bank Holding Company Act of 1957, or any subsidiary of a bank holding company; (iii) a foreign banking corporation, as that term is defined in the Foreign Banking Office Act, or any subsidiary of a foreign banking corporation; (iv) a representative office, as that term is defined in the Foreign Bank Representative Office Act; (v) a corporate fiduciary, as that term is defined in the Corporate Fiduciary Act, or any subsidiary of a corporate fiduciary; (vi) a savings bank organized under the Savings Bank Act, or a federal savings bank organized under federal law, or any subsidiary of a savings bank or federal savings bank; (vii) a savings bank holding company organized under the Savings Bank Act, or any subsidiary of a savings bank holding company; (viii) an association or federal association, as those terms are defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of an association or federal association; (ix) a foreign savings and loan association or foreign savings bank subject to the Illinois Savings and Loan Act of 1985, or any subsidiary of a

foreign savings and loan association or foreign savings bank; or (x) a savings and loan association holding company, as that term is defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of a savings and loan association holding company.

(b-1) Any franchise seller as defined in the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Part 436, as it may be amended, is exempt from the requirements of this Act. ~~Persons registered under the Illinois Franchise Disclosure Act of 1987 (and their employees) are exempt from the requirements of this Act as to: offers and sales in connection with franchising activities; or assisting any of their franchisees in the offer or sale of a franchise by any such franchisee for the franchisee's own account regardless of whether the sale is effected by or through the registered persons.~~

(b-2) Any certified public accountant licensed to practice in Illinois, while engaged in the practice as a certified public accountant and whose service in relation to the business broker transaction is incidental to his or her practice, is exempt from the requirements of this Act.

(b-3) Any publisher, or regular employee of such publisher, of a bona fide newspaper or news magazine of regular and established paid circulation who, in the routine course of selling advertising, advertises businesses for sale and in which no other related services are provided is exempt from the

requirements of this Act.

(c) The burden of proof of any exemption or classification provided in this Act shall be on the party claiming the exemption or classification.

(Source: P.A. 90-70, eff. 7-8-97; 91-245, eff. 12-31-99.)

Section 15. The Business Opportunity Sales Law of 1995 is amended by changing Sections 5-10, 5-30 and 5-35 as follows:

(815 ILCS 602/5-10)

Sec. 5-10. Exemptions. Registration pursuant to Section 5-30 shall not apply to any of the following:

(a) Any offer or sale of a business opportunity for which the immediate cash payment made by the purchaser for any business opportunity is at least \$25,000 if the immediate cash payment does not exceed 20% of the purchaser's net worth as determined exclusive of principal residence, furnishings therein, and automobiles; provided, however, the Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.

(b) Any offer or sale of a business opportunity which the seller does not advertise, solicit, or sell for an initial payment to the seller or a person recommended by the seller exceeding \$500.

(c) Any offer or sale of a business opportunity where the seller has a net worth of not less than \$1,000,000 as

determined on the basis of the seller's most recent audited financial statement, prepared within 13 months of the first offer in this State. Net worth may be determined on a consolidated basis where the seller is at least 80% owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this subsection. The Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.

(d) Any offer or sale of a business opportunity where the purchaser has a net worth of not less than \$250,000. Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.

(e) Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or a dealer registered under the Illinois Securities Law of 1953, where the purchaser is acting for itself or in a fiduciary capacity.

(f) Any offer or sale of a business opportunity which is defined as a franchise under the Franchise Disclosure Act of 1987 provided that the seller delivers to each purchaser 14 ~~at~~

~~the earlier of the first personal meeting, or 10 business days~~
prior to the earlier of the execution by a purchaser of any
contract or agreement imposing a binding legal obligation on
the purchaser or the payment by a purchaser of any
consideration in connection with the offer or sale of the
business opportunity, a disclosure document prepared in
accordance with the requirements of Section 16 of the Illinois
Franchise Disclosure Act of 1987, as it may be amended. ~~one of
the following disclosure documents:~~

~~(1) The Franchise Offering Circular provided for under
the Franchise Disclosure Act of 1987 which the Secretary of
State may adopt by rule or regulation; or~~

~~(2) A disclosure document prepared pursuant to the
Federal Trade Commission rule entitled Disclosure
Requirements and Prohibitions Concerning Franchising and
Business Opportunity Ventures, 16 C.F.R. Sec. 436 (1979).
For the purposes of this subsection, a personal meeting
shall mean a face to face meeting between the purchaser and
the seller or their representatives, which is held for the
purpose of discussing the offer or sale of a business
opportunity.~~

(g) Any offer or sale of a business opportunity for which
the cash payment required to be made by a purchaser for any
business opportunity does not exceed \$500 and the payment is
made for the not-for-profit sale of sales demonstration
equipment, material, or samples or the payment is made for

product inventory sold to the purchaser at a bona fide wholesale price.

(h) Any offer or sale of a business opportunity which the Secretary of State exempts by order or a class of business opportunities which the Secretary of State exempts by rule or regulation upon the finding that such exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

(Source: P.A. 91-809, eff. 1-1-01.)

(815 ILCS 602/5-30)

Sec. 5-30. Registration.

(a) In order to register a business opportunity, the seller shall file with the Secretary of State one of the following disclosure documents with the appropriate cover sheet as required by subsection (b) of Section 5-35 of this Law, a consent to service of process as specified in subsection (b) of this Section, and the appropriate fee as required by subsection (c) of this Section which is not returnable in any event:

(1) The Business Opportunity Disclosure Document ~~Franchise Offering Circular~~ which the Secretary of State may prescribe by rule or regulation; or

(2) A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Part 436, or the Federal Trade Commission rule

entitled Disclosure Requirements and Prohibitions Concerning Business Opportunities, 16 C.F.R. Part 437, as they may be amended ~~and Business Opportunity Venture, 16 C.F.R. Sec. 436 (1979). The Secretary of State may by rule or regulation adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Sec. 436 (1979), that has been adopted by the Federal Trade Commission; or~~

(3) A disclosure document prepared pursuant to subsection (b) of Section 5-35 of this Law.

(b) Every seller shall file, in the form as the Secretary of State may prescribe, an irrevocable consent appointing the Secretary of State or the successor in office to be the seller's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor or administrator which arises under this Law after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by delivering a copy of the process in the office of the Secretary of State, but is not effective unless the plaintiff or petitioner in a suit, action or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail, return receipt requested, to the defendant's or respondent's most current address on file with the Secretary of State, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of

the process, if any, or within such further time as the court allows.

(c) (1) The Secretary of State shall by rule or regulation impose and shall collect fees necessary for the administration of this Law including, but not limited to, fees for the following purposes:

(A) filing a disclosure document and renewal fee;

(B) interpretive opinion fee;

(C) acceptance of service of process pursuant to subsection (b) of Section 5-145;

(D) issuance of certification pursuant to Section 5-20; or

(E) late registration fee pursuant to Section 5-30(g).

(2) The Secretary of State may, by rule or regulation, raise or lower any fee imposed by, and which he or she is authorized by law to collect under this Law.

(d) A registration automatically becomes effective upon the expiration of the 10th full business day after a complete filing, provided that no order has been issued or proceeding pending under Section 5-45 of this Law. The Secretary of State may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The Secretary of State may by order defer the effective date until the expiration of the 10th full business day after the filing of any amendment.

(e) The registration is effective for one year commencing on the date of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the Secretary of State may by rule or regulation or order require. The annual renewal fee shall be in the same amount as the initial registration fee as established under subsection (c) of Section 5-30 of this Law which shall not be returnable in any event. Failure to renew upon the close of the one year period of effectiveness will result in expiration of the registration. The Secretary of State may by rule or regulation or order require the filing of a sales report.

(f) The Secretary of State may by rule or regulation or order require the filing of all proposed literature or advertising prior to its use.

(g) Notwithstanding the foregoing, applications for renewal of registration of business opportunities may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or order. Any application filed within 30 days following the expiration of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

(Source: P.A. 92-308, eff. 1-1-02.)

(815 ILCS 602/5-35)

Sec. 5-35. Disclosure requirements.

(a) It shall be unlawful for any person to offer or, sell any business opportunity required to be registered under this Law unless a written disclosure document as filed under subsection (a) of Section 5-30 of this Law is delivered to each purchaser at least 14 ~~10-business~~ days prior to the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

(b) The disclosure document shall have a cover sheet which is entitled, in at least 10-point bold type, "DISCLOSURE REQUIRED BY THE STATE OF ILLINOIS." Under the title shall appear the statement in at least 10-point bold type that "THE REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE TO BE PROVIDED 10 BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's name and

principal business address, along with the date of the disclosure document shall also be provided on the cover sheet. No other information shall appear on the cover sheet. The disclosure document shall contain the following information unless the seller uses a disclosure document as provided in paragraph (1) or (2) of subsection (a) of Section 5-30 of this Law:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this State.

(2) The name of the seller, whether the seller is doing business as an individual, partnership or corporation; the names under which the seller has conducted, is conducting or intends to conduct business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or which will take responsibility for statements made by the seller.

(3) The names, addresses and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including:

(A) The name, address, and a description of any business opportunity previously offered by the seller;

(B) The length of time the seller has offered each such business opportunity; and

(C) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to persons identified in item (3) of this subsection:

(A) A description of the persons' business experience for the 10 year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers; and

(B) A listing of the persons' educational and professional backgrounds including, the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether the seller or any person identified in item (3) of this subsection:

(A) Has been convicted of any felony, or pleaded nolo contendere to a felony charge, or has been the subject of any criminal, civil or administrative proceedings alleging the violation of any business opportunity law, securities law, commodities law, franchise law, fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, unfair or

deceptive practices, misappropriation of property or comparable allegations;

(B) Has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or was an owner, principal officer or general partner or any other person that has so filed or was so adjudged or reorganized during or within the last 7 years.

(7) The name of the person identified in item (6) of this subsection, nature of and parties to the action or proceeding, court or other forum, date of the institution of the action, docket references to the action, current status of the action or proceeding, terms and conditions or any order or decree, the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or when the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products or supplies on a premises neither owned

nor leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) The business opportunity seller that is required to secure a bond under Section 5-50 of this Law, shall state in the disclosure document "As required by the State of Illinois, the seller has secured a bond issued by (insert name and address of surety company), a surety company, authorized to do business in this State. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status.".

(14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to:

(A) The bases or assumptions for any actual, average, projected or forecasted sales, profits, income or earnings;

(B) The total number of purchasers who, within a period of 3 years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser; and

(C) The total number of purchasers who, within 3

years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(15) Any seller who makes a guarantee to a purchaser shall give a detailed description of the elements of the guarantee. Such description shall include, but shall not be limited to, the duration, terms, scope, conditions and limitations of the guarantee.

(16) A statement of:

(A) The total number of business opportunities that are the same or similar in nature to those that have been sold or organized by the seller;

(B) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last 12 months and the number of those who have received the refund or rescission; and

(C) The total number of business opportunities the seller intends to sell in this State within the next 12 months.

(17) A statement describing any contractual restrictions, prohibitions or limitations on the purchaser's conduct. Attach a copy of all business opportunity and other contracts or agreements proposed for

use or in use in this State including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.

(20) A copy of the most recent audited financial statement of the seller, prepared within 13 months of the first offer in this State, together with a statement of any material changes in the financial condition of the seller from that date. The Secretary of State may accept the filing of a reviewed financial statement in lieu of an audited financial statement.

(21) A list of the states in which this business opportunity is registered.

(22) A list of the states in which this disclosure document is on file.

(23) A list of the states which have denied, suspended or revoked the registration of this business opportunity.

(24) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement

shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(25) Any additional information as the Secretary of State may require by rule, regulation, or order.

(Source: P.A. 92-308, eff. 1-1-02.)

Section 20. The Franchise Disclosure Act of 1987 is amended by changing Sections 3, 7, 8, 10, 11, 15, 16, 21, 22, 26, 29, 31, and 40 as follows:

(815 ILCS 705/3) (from Ch. 121 1/2, par. 1703)

Sec. 3. Definitions. As used in this Act:

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

(a) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and

(b) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(c) the person granted the right to engage in such

business is required to pay to the franchisor or an affiliate of the franchisor, directly or indirectly, a franchise fee of \$500 or more;

Provided that this Act shall not apply to any of the following persons, entities or relationships which may involve or acquire a franchise or any interest in a franchise:

(i) any franchised business which is operated by the franchisee on the premises of the franchisor or subfranchisor as long as such franchised business is incidental to the business conducted by the franchisor or subfranchisor at such premises, including, without limitation, leased departments and concessions; or

(ii) a fractional franchise. A "fractional franchise" means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20% of the sales in dollar volume of the franchisee for a period of at least one year after the franchisee begins selling the goods or services involved in the franchise; or

(iii) a franchise agreement for the use of a trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services; or

(iv) a franchise relationship covered by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(2) "Franchisee" means a person to whom a franchise is granted and includes, unless stated otherwise in this Act: (a) a subfranchisor with regard to its relationship with a franchisor and (b) a subfranchisee with regard to its relationship with a subfranchisor.

(3) "Franchisor" means a person who grants a franchise and includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this Act.

(4) "Subfranchise" means any contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, in consideration of the payment of a franchise fee in whole or in part for such right, to ~~service franchises or to~~ sell or negotiate the sale of franchises. Where used in this Act, unless specifically stated otherwise, "franchise" includes "subfranchise."

(5) "Subfranchisor" means a person to whom the right to sell or negotiate the sale of subfranchises is granted.

(6) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the Attorney General Administrator.

(7) "Person" means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.

(8) "Rule" means any published regulation or standard of general application issued by the Administrator.

(9) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(10) "State" means the State of Illinois.

(11) "Fraud" and "deceit" are not limited to common law fraud or deceit.

(12) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise, any interest in a franchise or an option to acquire a franchise for value.

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

(14) "Franchise fee" means any fee or charge that a franchisee is required to pay directly or indirectly for the right to enter into a business or sell, resell, or distribute goods, services or franchises under an agreement, including, but not limited to, any such payment for goods or services,

provided that the Administrator may by rule define what constitutes an indirect franchise fee, and provided further that the following shall not be considered the payment of a franchise fee: (a) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card; (b) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services; (c) the purchase or agreement to purchase goods for which there is an established market at a bona fide wholesale price; (d) the payment for fixtures necessary to operate the business; (e) the payment of rent which reflects payment for the economic value of the property; or (f) the purchase or agreement to purchase goods for which there is an established market at a bona fide retail price subject to a bona fide commission or compensation plan. The Administrator may by rule define what shall constitute an established market.

(15) "Disclosure statement" means the document provided for in Section 16 of this Act and all amendments to such document.

(16) "Write" or "written" shall include printed, lithographed or any other means of graphic communication.

(17) (Blank).

(18) "Marketing plan or system" means a plan or system relating to some aspect of the conduct of a party to a contract in conducting business, including but not limited to (a)

specification of price, or special pricing systems or discount plans, (b) use of particular sales or display equipment or merchandising devices, (c) use of specific sales techniques, (d) use of advertising or promotional materials or cooperation in advertising efforts; provided that an agreement is not a marketing plan or system solely because a manufacturer or distributor of goods reserves the right to occasionally require sale at a special reduced price which is advertised on the container or packaging material in which the product is regularly sold, if the reduced price is absorbed by the manufacturer or distributor.

(19) "Administrator" means the Illinois Attorney General.

(20) (a) An offer to sell a franchise is made in this State when the offer either originates from this State or is directed by the offeror to this State and received at the place to which it is directed. An offer to sell is accepted in this State when acceptance is communicated to the offeror in this State; and acceptance is communicated to the offeror in this State when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed.

(b) An offer to sell a franchise is not made in this State merely because the franchisor circulates or there is circulated in this State an advertisement in (i) a bona fide newspaper or other publication of general, regular and

paid circulation which has had more than 2/3 of its circulation outside this State during the past 12 months, or (ii) a radio or television program originating outside this State which is received in this State.

(21) "Franchise broker" means any person engaged in the business of representing a franchisor in offering for sale or selling a franchise and is not a franchisor, an affiliate of a franchisor or an officer, director or employee of a franchisor or an affiliate of a franchisor with respect to such franchise. A franchisee shall not be a franchise broker merely because it receives a payment from the franchisor in consideration of the referral of a prospective franchisee to the franchisor, if the franchisee does not otherwise participate in the sale of a franchise to the prospective franchisee. A franchisee shall not be deemed to participate in a sale merely because he responds to an inquiry from a prospective franchisee.

(22) "Salesperson" means any person employed by or representing a franchise broker, a franchisor or an affiliate of the franchisor in effecting or attempting to effect the offer or sale of a franchise.

(Source: P.A. 90-642, eff. 7-24-98.)

(815 ILCS 705/7) (from Ch. 121 1/2, par. 1707)

Sec. 7. Sale by franchisee and extension or renewal of existing franchise. There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the offer or sale

of a franchise by a franchisee for its own account if the sale is not effected by or through a 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 or requires payment of a reasonable transfer fee or requires the new franchisee to execute a franchise agreement on terms not materially different from the existing franchise agreement.

There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business by the franchisee.

(Source: P.A. 85-551.)

(815 ILCS 705/8) (from Ch. 121 1/2, par. 1708)

Sec. 8. Exemptions.

(a) There shall be exempted, from the registration requirements of Section 10 of this Act, the offer and sale of a franchise if:

(1) the franchisor has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$15,000,000; or the franchisor has a net worth, according to its most recent unaudited financial statement, of not less than \$1,000,000 and is at least 80% 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 \$15,000,000;

(2) the franchisee (or its parent or any affiliates) is an entity that has been in business for at least 5 years and has a net worth of at least \$5,000,000; or

(3) one or more purchasers of at least 50% ownership interest in the franchise within 60 days of the sale, has been, for at least 2 years, an officer, director, general partner, individual with management responsibility for the offer and sale of the franchisor's franchises or the administrator of the franchised network; or within 60 days of the sale, has been, for at least 2 years, an owner of at least a 25% interest in the franchisor.

Provided, unless exempted by order or rule of the Administrator, the franchisor shall deliver to the prospective franchisee a disclosure statement in accordance with the requirements of Section 5(2) of this Act in connection with any transaction exempted under this Section 8(a).

(b) There shall be exempted from the provisions of Sections 5, 10, 11, ~~13~~ and 15 of this Act the offer and sale of a franchise if the prospective franchisee qualifies as one of the following:

any bank as defined in Section 3(a)(2) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity or as an insurance company as defined in Section 2(13) of that Act.

(Source: P.A. 85-551.)

(815 ILCS 705/10) (from Ch. 121 1/2, par. 1710)

Sec. 10. Registration and Annual Report. No franchisor may sell or offer to sell a franchise in this State if (1) the franchisee is domiciled in this State or (2) the offer of the franchise is made or accepted in this State and the franchise business is or will be located in this State, unless the franchisor has registered the franchise with the Administrator by filing such form of notification and disclosure statement as required under Section 16.

The registration of a franchise shall become effective on the 21st day after the date of the filing of the required materials, unless the Administrator has denied registration under subdivision (a) (3) of Section 22.

The registration of a franchise shall expire 120 days after the franchisor's fiscal year end. Annually, but not later than one business day before the ~~anniversary date of the~~ registration expires, the franchisor shall file the disclosure statement updated as of the date of the franchisor's prior fiscal year end ~~a date within 120 days of the anniversary date of the registration.~~

(Source: P.A. 90-642, eff. 7-24-98.)

(815 ILCS 705/11) (from Ch. 121 1/2, par. 1711)

Sec. 11. Amendments. Within 30 days after the close of each

quarter of its fiscal year, the franchisor shall prepare revisions to its disclosure statement to reflect any material changes to disclosures included, or required to be included, in the 90 days of the occurrence of any material change in any facts required to be disclosed, a franchisor whose franchise is registered under this Act shall amend its disclosure statement.
The franchisor ~~and~~ shall deliver the amended disclosure statement in accordance with the requirements of subsection (2) of Section 5 and Section 16 of this Act to any prospective franchisee, including prospective franchisees to whom a disclosure statement was previously delivered if the material change relates to or affects the ~~franchisor or the~~ franchise offered to such prospective franchisees. The amended disclosure statement shall be filed with the Administrator. An amendment shall not be required if the terms of the franchise agreement merely reflect changes from the franchisor's registered franchise made pursuant to negotiations between the franchisee and the franchisor.

The fact that the franchise is considered to be registered is not a finding that the amended disclosure statement complies with the standard of disclosure required by this Act.

(Source: P.A. 90-642, eff. 7-24-98.)

(815 ILCS 705/15) (from Ch. 121 1/2, par. 1715)

Sec. 15. Escrow of franchise fees; surety bonds; franchise fee deferrals. If the Administrator finds that a franchisor has

failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items to be included in the establishment and opening of the franchise business being offered, the Administrator may by rule or order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until such obligations have been fulfilled, or, at the option of the franchisor, the furnishing of a surety bond as provided by rule of the Administrator, if he finds that such requirement is necessary and appropriate to protect prospective franchisees, or, at the option of the franchisor, the deferral of payment of the initial fee until the opening of the franchise business.

(Source: P.A. 85-551.)

(815 ILCS 705/16) (from Ch. 121 1/2, par. 1716)

Sec. 16. Form and contents of disclosure statements. The disclosure statement required under this Act shall be prepared in accordance with the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Part 436, as it may be ~~Uniform Franchise Offering Circular Guidelines as adopted and amended,~~ the Guidelines promulgated by the North American Securities Administrators Association, Inc., as they may be amended, and the rules adopted by the Administrator pursuant to Section 32 of this Act. Incorporated.

All statements in the disclosure statement shall be free from any false or misleading statement of a material fact, shall not omit to state any material fact required to be stated or necessary to make the statements not misleading, and shall be accurate and complete as of the effective date thereof.

(Source: P.A. 90-642, eff. 7-24-98.)

(815 ILCS 705/21) (from Ch. 121 1/2, par. 1721)

Sec. 21. Franchise Advisory Board. There is created in the Office of the Administrator a Franchise Advisory Board. The Franchise Advisory Board shall consist of such members as the Administrator deems appropriate to advise him on franchising and franchise related matters. The members shall be persons who have knowledge and experience in franchising. The members of the Franchise Advisory Board shall serve at the pleasure of the Administrator. The Franchise Advisory Board from time to time shall make recommendations concerning the administration and enforcement of this Act. Members of the Franchise Advisory Board shall serve without compensation ~~but shall be reimbursed for actual and necessary expenses incurred in their official capacities~~. The Board shall select its own chairman, establish rules and procedures, and keep a record of matters transpiring at all meetings.

(Source: P.A. 85-551.)

(815 ILCS 705/22) (from Ch. 121 1/2, par. 1722)

Sec. 22. Enforcement.

(a) The Administrator may suspend, terminate, prohibit or deny the sale of any franchise or registration of any franchise, or ~~franchise broker or~~ salesperson if it appears to him that: (1) there has been a failure to comply with any of the provisions of this Act or the rules or orders of the Administrator pertaining thereto; or (2) that the disclosure statement or any amendment thereto includes any false or misleading statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or (3) that the disclosure statement filed in conjunction with an initial registration under Section 10 is materially deficient. A disclosure statement is "materially deficient" if it fails to comply with the requirements of ~~the Uniform Franchise Offering Circular Guidelines referred to in~~ Section 16; or (4) that the sale of the franchise would constitute a misrepresentation, deceit or fraud upon prospective franchisees; or (5) that any person in this State is engaging in or about to engage in false, fraudulent or deceptive practices or any device, scheme, or artifice to defraud in connection with the offer or sale of the franchise; or (6) that any person identified in the disclosure statement or any person engaged in the offer or sale of the franchise in this State has been convicted of an offense, is subject to an order or civil judgment or is a defendant in a proceeding required to be described in the

disclosure statement and the involvement of such person creates an unreasonable risk to prospective franchisees; or (7) (blank); or (8) (blank); or (9) that the franchisor's enterprise or method of business includes or would include activities which are illegal where performed; or (10) (blank); or (11) (blank).

In no case shall the Administrator, or any person designated by him, in the administration of this Act, incur any official or personal liability by issuing an order or other proceeding or by suspending, denying, prohibiting or terminating the registration of a franchise broker or salesperson, or by denying, suspending, terminating or prohibiting the registration of franchises, or prohibiting the sale of franchises, or by suspending or prohibiting any person from acting as a franchise broker or salesperson.

The Administrator may exercise any of the powers specified in Section 31 of this Act.

(b) The Administrator, with such assistance as he may from time to time request of the state's attorneys in the several counties, may institute proceedings in the circuit court to prevent and restrain violations of this Act or of any rule or order prescribed or issued under this Act. In such a proceeding, the court shall determine whether a violation has been committed, and shall enter such judgment or decree as it considers necessary to remove the effects of any violation and to prevent such violation from continuing or from being renewed

in the future. The court, in its discretion, may exercise all powers necessary for this purpose, including, but not limited to, injunction, revocation, forfeiture or suspension of the charter, franchise, certificate of authority or privileges of any corporation, association, limited partnership or other business organization operating under the laws of this State, dissolution of domestic corporations or associations, suspension or termination of the right of foreign corporations or associations to do business in this State, or restitution or payment of damages by a franchisor to persons injured by violations of this Act, including without limitation an award of reasonable attorneys fees and costs.

(Source: P.A. 90-642, eff. 7-24-98.)

(815 ILCS 705/26) (from Ch. 121 1/2, par. 1726)

Sec. 26. Private civil actions. Any person who offers, sells, terminates, or fails to renew a franchise in violation of this Act shall be liable to the franchisee who may sue for damages caused thereby. This amendatory Act of 1992 is intended to clarify the existence of a private right of action under existing law with respect to the termination or nonrenewal of a franchise in violation of this Act. In the case of a violation of Section 5, 6, 10, 11, or 15 of the Act, the franchisee may also sue for rescission.

No franchisee may sue for rescission under this Section 26 who shall fail, within 30 days from the date of receipt

thereof, to accept an offer to return the consideration paid or to repurchase the franchise purchased by such person. Every offer provided for in this Section shall be in writing, shall be delivered to the franchisee or sent by certified mail addressed to the franchisee at such person's last known address, shall offer to return any consideration paid or to repurchase the franchise for a price equal to the full amount paid less any net income received by the franchisee, plus the legal rate of interest thereon, and may require the franchisee to return to the person making such offer all unsold goods, equipment, fixtures, leases and similar items received from such person. Such offer shall continue in force for 30 days from the date on which it was received by the franchisee and shall advise the franchisee of such rights and the period of time limited for acceptance thereof. Any agreement not to accept or refusing or waiving any such offer made during or prior to the expiration of said 30 days shall be void.

The term "franchisee" as used in this Section shall include the personal representative or representatives of the franchisee.

Every person who directly or indirectly controls a person liable under this Section 26, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every manager of a limited liability company so liable, every person occupying a similar status or performing similar functions, and every employee of a person so

liable, who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless said person who otherwise is liable had no knowledge or reasonable basis to have knowledge of the facts, acts or transactions constituting the alleged violation.

Every franchisee in whose favor judgment is entered in an action brought under this Section shall be entitled to the costs of the action including, without limitation, reasonable attorney's fees.

(Source: P.A. 87-1143.)

(815 ILCS 705/29) (from Ch. 121 1/2, par. 1729)

Sec. 29. Certificate of registration or filing of annual report; admissibility in evidence. In any civil or criminal action brought under this Act, a Certificate under the seal of this State, signed by the Administrator, stating whether or not a franchise is registered, or whether or not an annual report of a franchisor has been filed under Section 10 of this Act, ~~or whether or not a person has registered as a franchise broker under Section 13 of this Act,~~ shall constitute prima facie evidence of such matter, and shall be admissible into evidence at trial without proof of foundation or additional authenticity.

(Source: P.A. 85-551.)

(815 ILCS 705/31) (from Ch. 121 1/2, par. 1731)

Sec. 31. Powers of the Administrator. (a) Investigations. The Administrator may in his discretion: (1) make such public or private investigations inside or outside this State as he deems necessary (i) to determine whether any person has violated, is violating, or is about to violate any provision of this Act or any rule or order prescribed or issued under this Act or (ii) to aid in the enforcement of this Act or in the prescribing of rules under this Act; and (2) publish information concerning the violation of this Act or any rule or order prescribed or issued under this Act. No actions taken or orders issued by the Administrator shall be binding on, nor in any way preclude the Administrator from conducting any investigation or commencing any action authorized under this Act. The Administrator or any of his assistants may participate in any hearings conducted by the Administrator under this Act and the Administrator may provide such assistance as the Administrator believes necessary to effectively fulfill the purposes of this Act.

(b) Subpoenas. For the purpose of any investigation or proceeding under this Act and prior to the commencement of any civil or criminal action as provided for in this Act, the Administrator has the authority to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records or tangible things, hereafter referred to as "documentary material", which the

Administrator deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as are hereafter set forth. Any subpoena issued by the Administrator shall contain the following information: (1) the statute and section thereof, the alleged violation of which is under investigation; (2) the date, place and time at which the person is required to appear or produce documentary material in his possession, custody or control at a designated office of the Administrator, which date shall not be less than 10 days from date of service of the subpoena; and (3) where documentary material is required to be produced, the same shall be prescribed by class so as to clearly indicate the material demanded.

(c) Production of documentary material. The Administrator is hereby authorized, and may so elect to require the production, pursuant to this Section of documentary material prior to the taking of any testimony of the person subpoenaed, in which event such documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be agreed upon by the person served and the Administrator. When documentary material is demanded by subpoena, said subpoena shall not (1) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or (2) require the disclosure of any documentary

material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

(d) Service of subpoenas. Service of a subpoena of the Administrator as provided herein may be made by (1) delivery of a duly executed copy thereof to the person served or if a person is not a natural person, to the principal place of business of the person to be served, or (2) mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in this State, or, if said person has no place of business in this State, to his principal office.

(e) Examination of witnesses. The examination of all witnesses under this Section shall be conducted by the Administrator, or by his deputy designated by him, before an officer authorized to administer oaths in this State. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

(f) Fees. All persons served with a subpoena by the Administrator under this Act shall be paid the same fees and mileage as are paid to witnesses in the courts of this State.

(g) Judicial enforcement of subpoenas. In the event a witness served with a subpoena by the Administrator under this Act fails or refuses to obey same or to produce documentary material as provided herein or to give testimony relevant or material to the investigation being conducted, the

Administrator may petition any circuit court for an order requiring said witness to attend and testify or produce the documentary material demanded. Thereafter, any failure or refusal on the part of the witness to obey such order of court may be punishable by the court as a contempt thereof.

(h) Immunity from prosecution. No person is excused from attending and testifying or from producing any document or records before the Administrator in obedience to the subpoena of the Administrator, in any proceeding instituted by the Administrator and authorized by this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(i) Administrator entitled to recover costs. In any action brought under the provisions of this Act, the Administrator is entitled to recover costs for the use of this State.

(j) In the administration of this Act, the Attorney General may accept an Assurance of Voluntary Compliance with respect to any method, act, or practice deemed to be violative of the Act from any person who has engaged in, is engaging in, or was

about to engage in such method, act, or practice. Evidence of a violation of an Assurance of Voluntary Compliance shall be prima facie evidence of a violation of this Act in any subsequent proceeding brought by the Attorney General against the alleged violator. The Administrator may require that an Assurance of Voluntary Compliance be disclosed in the disclosure statement.

(Source: P.A. 85-551.)

(815 ILCS 705/40) (from Ch. 121 1/2, par. 1740)

Sec. 40. Fees.

(a) The Administrator shall charge and collect the fees fixed by this Section, or as prescribed by rule of the Administrator. All fees and charges collected under this Section shall be transmitted to the State Treasurer at least weekly, accompanied by a detailed statement thereof. Such fees and charges shall be refundable at the discretion of the Administrator.

(b) The fee for the initial registration of a franchise shall be \$500.

(c) The fee for filing an amended disclosure statement shall be \$100 if the amendment pertains to a material change, otherwise \$25.

(d) The fee for an interpretive opinion shall be \$50.

(e) The fee for filing an initial large franchisor exemption under Section 200.202 of Title 14 of the Illinois

Administrative Code shall be \$500 and the fee for renewals of this exemption shall be \$100 ~~registration of a franchise broker shall be \$100 with a renewal fee of \$100.~~

(f) The fee for filing an annual report shall be \$100.

(Source: P.A. 85-551.)

(815 ILCS 705/13 rep.)

Section 25. The Franchise Disclosure Act of 1987 is amended by repealing Section 13.

Section 99. Effective date. This Act takes effect October 1, 2009.