CHAPTER 51-19
FRANCHISE INVESTMENT LAW

51-19-01. Short title.
This chapter must be known and may be cited as the Franchise Investment Law.

51-19-02. Definitions.
When used in this chapter, unless the context otherwise requires:

1. "Advertisement" means any written or printed communication by means of recorded telephone messages or spoken on radio, television, or similar communications media published in connection with an offer or sale of a franchise.
2. "Area franchise" means any contract or agreement between a franchisor and a subfranchisor by which the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.
3. "Business days" are all days other than every Saturday, every Sunday, and such other days as are specified or provided for as holidays in this code.
4. "Commissioner" means the insurance commissioner.
5. a. "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
      (1) 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 in substantial part by a franchisor;
      (2) 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
      (3) The franchisee is required to pay, directly or indirectly, a franchise fee.
   b. When used in this chapter, unless specifically stated otherwise, "franchise" includes "area franchise".
6. "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 under a franchise agreement, including, but not limited to, any such payment for such goods and services. However, the following may not be considered the payment of a franchise fee:
   a. The purchase or agreement to purchase goods at a bona fide wholesale price if no obligation is imposed upon the purchaser to purchase or pay for a quantity of such goods in excess of that which a reasonable businessperson normally would purchase by way of a starting inventory or supply or to maintain a going inventory or supply.
   b. The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card.
   c. Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services.
   d. Any other consideration which the commissioner by rule excludes from "franchise fee".
7. "Franchisee" means a person to whom a franchise is granted.
8. "Franchisor" means a person who grants a franchise.
9. "Fraud" and "deceit" are not limited to common-law fraud and deceit.
10. "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the commissioner.
11. "Person" means an individual, a corporation, a limited liability company, a partnership, a joint venture, an association, a joint-stock company, a trust, or an unincorporated organization.
12. "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

13. "Rule" means any published regulation or standard of general application issued by the commissioner.
14. a. (1) "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.
    (2) "Offer" or "offer to sell" includes every attempt to offer to dispose of or solicitation of an offer to buy a franchise or interest in a franchise for value. The terms defined in this subsection do not include the renewal or extension of an existing franchise where there is no interruption of the operation of the franchised business by the franchisee.
    (3) "Offer to purchase" includes every attempt to offer to acquire, or solicitation of an offer to sell, a franchise or interest in a franchise for value.
    b. (1) An offer or sale of a franchise is made in this state when an offer to sell is made in this state or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.
    (2) An offer to sell 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 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.
    (3) An offer to sell is not made in this state merely because the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation outside this state during the past twelve months, or a radio or television program originating outside this state is received in this state.
15. "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.
16. "Subfranchisor" means a person to whom an area franchise is granted.

51-19-03. Registration of offer.

It is unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under section 51-19-04.

51-19-04. Exemptions.

1. There must be exempted from the provisions of section 51-19-03 the offer to sell, the offer to purchase, the sale, and the purchase of a franchise if the franchisor:
    a. Has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars; or the franchisor has a net worth according to its most recent financial statement of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars;
    b. Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; or if any corporation which owns at least eighty percent of the franchisor has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale;
    c. Except as provided in subdivision d, discloses in writing to each prospective franchisee, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days

prior to the receipt of any consideration, whichever occurs first, the following information:

(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 its agent in this state authorized to receive service of process.

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

(4) The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, has granted franchises for such business, and has granted franchises in other lines of business.

(5) A copy of the typical franchise contract or agreement proposed for use or in use in this state.

(6) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

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

(8) A statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor.

(9) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or the franchisor's designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business, together with a description thereof.

(10) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by the franchisee to customers.

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

(12) A statement of any past or present practice 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.

(13) If any statement of estimated or projected franchisee earnings is used, a statement of such estimation or projection and the data upon which it is based.

(14) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory;

d. In the case of a material modification of an existing franchise, discloses in writing to each franchisee information concerning the specific sections of the franchise agreement proposed to be modified and such additional information as may be required by rule or order of the commissioner. Any agreement by such franchisee to such material modifications is not binding upon the franchisee if the franchisee, within ten business days after the receipt of such writing identifying the material modification, notifies the franchisor in writing that the agreement to such modification is rescinded. A writing identifying the material modification is received when delivered to the franchisee. A written notice by the franchisee rescinding an agreement to a material modification is effective when delivered to the franchisor or when deposited in the mail, postage prepaid, and addressed to the franchisor in accordance with any notice provisions in the franchise

agreement, or when delivered or mailed to the person designated in the franchise agreement for the receipt of notices on behalf of the franchisor; and

e. Has filed with the commissioner a notice of exemption and paid the fee required by section 51-19-17 prior to the offer or sale of a franchise in this state. Any notice of exemption and the renewal must contain the following:
   (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 its agent in this state authorized to receive service of process.
   (3) The business form of the franchisor, whether corporate, limited liability company, partnership, or otherwise.
   (4) A copy of the typical franchise contract or agreement proposed for use or in use in this state.
   (5) Information sufficient to establish that the franchisor satisfies the exemption conditions contained in subdivisions a and b.

   Any notice of exemption remains in effect for a period of one year from the date the notice is received by the commissioner.

2. The offer or sale of a franchise by a franchisee for the franchisee's own account or the offer or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account is exempted from the provisions of section 51-19-03 if the sale is not effected by or through a franchisor; provided, however, that no subfranchisor may offer or sell a franchise under this subsection without first obtaining the written approval of the commissioner. The commissioner may require that the subfranchisor and the franchisor provide the prospective purchaser and the commissioner with such information and disclosures as the commissioner deems necessary or appropriate to carry out the purposes of this chapter. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.
3. There must be exempted from the provisions of section 51-19-03 any other transaction which the commissioner by rule exempts as not being comprehended within the purposes of this chapter and the registration of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of investors.

51-19-05. Exemption proceedings.

The commissioner may by order deny or revoke any exemption specified in section 51-19-04 with respect to the offer or sale of a specific franchise. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated section 51-19-03 by reason of any offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care would not have known, of the order.

51-19-06. Application for registration.

The application for registration of an offer must be filed with the commissioner and must contain the following:

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 its agent in this state authorized to receive service of process.
3. The business form of the franchisor, whether corporate, partnership, limited liability company, or otherwise.
4. Such information concerning the identity and business experience of persons affiliated with the franchisor as the commissioner may by rule prescribe.
5. a. A statement whether any person identified in the application for registration:
    (1) Has been convicted of a felony or pleaded nolo contendere to a felony charge or held liable in a civil action by final judgment if such felony or civil action involved fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, or misappropriation of property;
    (2) Has pending against the person any indictment or information or complaint relating to a felony or is the subject of a civil action involving fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, or misappropriation of property;
    (3) 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 adviser, or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange;
    (4) Is subject to any currently effective order or ruling of the federal trade commission; or
    (5) Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by any public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesman.

    b. Such statement must set forth the court, the nature of the matter, the date of conviction or judgment or current status of any pending action or proceeding, and any penalty imposed or damages assessed.
6. The business experience of the franchisor, including the length of time the franchisor has conducted 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.
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 commissioner may by rule or order prescribe the form and content of financial statements required under this chapter, the circumstances under which consolidated financial statements must be filed, and the circumstances under which financial statements must be audited by independent certified public accountants or public accountants.
8. A copy of the typical franchise contract or agreement proposed for use or in use in this state, including all amendments thereto.
9. A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned; and a statement of the estimated total investment to be made for:
    a. The initial franchise fee and other fees, whether payable in one sum or in installments;
    b. Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing, or otherwise;
    c. Working capital, deposits, and prepaid expenses;

d. Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property; and
e. All other goods and services which the franchisee will be required to purchase or lease.

10. A statement describing any payments or 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 renewal refused or repurchased at the option of the franchisor, of any limitations on the right of the franchisee to sell, transfer, assign, move, renew, or terminate the franchise, and of any provisions regarding franchisee equity upon sale, termination, refusal to renew, or repurchase.
12. A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by the franchisee to the franchisee's customers.
13. A statement of any conditions imposed by the franchisor, whether by the terms of the franchise agreement or by other device or practice, whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee, together with a statement of whether and of the means by which the franchisor derives income from such purchases.
14. A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
15. A statement of any past or present practice or 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.
16. A copy of any statement of estimated or projected franchisee earnings prepared for presentation to prospective franchisees or subfranchisors or other persons, together with a statement setting forth the data upon which such estimation or projection is based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees.
17. A statement describing the training program, supervision, and assistance the franchisor has provided and will provide the franchisee.
18. 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, and the extent to which such public figure is involved in the actual management of the franchisor.
19. A statement of the number of franchises presently operating and proposed to be sold.
20. A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in this state during the two-year period preceding the date of the statement.
21. A list of the names, addresses, and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in this state.
22. A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.
23. A statement as to whether franchisees or subfranchisors receive an exclusive area or territory, and, if so, a map thereof.
24. Any other information the commissioner may require.
25. Any other information the franchisor may desire to present.
26. When the person filing the application for registration is a subfranchisor, the application must also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

51-19-07. Provisions applicable to registration generally.

1. Applications for registration, registration renewal statements, and amendments thereto must be signed and notarized by the franchisor or by the subfranchisor.
2. If the commissioner finds that it is necessary and appropriate for the protection of prospective franchisees or subfranchisors because the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the commissioner may by rule or order require the escrow or impoundment of franchise fees and other funds paid by the franchisee or subfranchisor until such obligations have been satisfied. The franchisor may, at the franchisor's option, furnish an adequate surety bond as provided by rule of the commissioner.
3. The commissioner shall have power to place such conditions, limitations, and restrictions on any registration as may be necessary to carry out the purposes of this chapter.
4. a. If no stop order under section 51-19-09 is in effect under this chapter, registration of the offer of franchises becomes effective after the filing of the application for registration or the last amendment thereto and upon entry by the commissioner into the register of franchises.
   b. A franchise offering must be deemed duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.
5. a. The registration may be renewed for additional periods of one year each, unless the commissioner by rule or order specifies a different period, by submitting to the commissioner a registration renewal statement no later than fifteen business days prior to the expiration of the registration unless such period is waived by order of the commissioner. If no stop order or other order under section 51-19-09 is in effect under this chapter, registration of the offer of the franchises becomes renewed upon entry by the commissioner into the register of franchises.
   b. The registration renewal statement must be in the form prescribed by the commissioner and must be accompanied by a proposed prospectus. Each such registration renewal statement must be accompanied by the fee prescribed in section 51-19-17.
6. a. A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended, or renewed. The commissioner may by rule further define what shall be considered a material change for such purposes and the circumstances under which a revised prospectus must accompany such application.
   b. An amendment to an application filed after the effective date of the registration of the sale of franchises, if such amendment is approved by the commissioner, becomes effective on such date as the commissioner may determine, having due regard for the public interest and the protection of franchisees.

51-19-08. Prospectus requirements.

1. The application for registration must be accompanied by a proposed prospectus which must contain the material information set forth in the application for registration, as specified by rule of the commissioner, and such additional disclosures as the commissioner may require.
2. Except as otherwise provided in this chapter, no part of the prospectus may be underscored, italicized, or printed in larger or bolder type than the rest of the prospectus unless the commissioner requires or permits it. The prospectus must recite in bold type of not less than ten-point type that registration does not constitute approval, recommendation, or endorsement by the commissioner.
3. The commissioner may by rule or order require that specified parts of the prospectus be emphasized by italics, boldfaced type, or other means, that earnings or sales

projections or estimates be qualified by appropriate legend and by the filing with the commissioner of such other information or documents as are necessary or appropriate in the public interest or for the protection of prospective franchisees or subfranchisors and may require that such additional information or documents be furnished to prospective franchisees or subfranchisors as part of the prospectus.

4. The commissioner may by rule or order provide that any information required to be included in the prospectus need not be included in respect of any class of franchisees if the commissioner finds that such information is inappropriate to such class and that disclosure adequate for the protection of prospective franchisees or subfranchisors is otherwise included within the prospectus.
5. The commissioner may accept, in lieu of the prospectus meeting the requirements set forth in this chapter, a prospectus which complies with the requirements of any federal law or administrative rule or with the law of any other state requiring substantially the same disclosure of information as is required under this chapter.
6. It is unlawful to sell any franchise in this state which is subject to registration under this chapter without first providing the prospective franchisee at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement or at least seven days prior to the receipt of any consideration, whichever occurs first, a copy of the prospectus, together with a copy of all proposed agreements relating to the sale of the franchise. The franchisee must be permitted to retain the prospectus prior and subsequent to the execution of any franchise or other agreement. The person offering or selling the franchise shall obtain a receipt signed by the prospective franchisee acknowledging that the prospective franchisee has received a copy of the prospectus as required under this subsection. The receipt must be kept in the possession of the person offering or selling the franchise, subject to inspection by the commissioner, for a period of three years from the date the receipt is taken.

51-19-09. Denial, suspension, or revocation of registration or exemption.

1. The commissioner may summarily issue a stop order denying the effectiveness of any registration or of any exemption under section 51-19-05 if the commissioner finds:
   a. That there has been a failure to comply with any of the provisions of this chapter or the rules of the commissioner pertaining thereto.
   b. That the offer, sale, or purchase of the franchise would constitute misrepresentation to or deceit or fraud upon purchasers thereof or has worked or tended to work a fraud upon purchasers or would so operate.
   c. That any person is engaging or about to engage in false, fraudulent, or deceptive practices in connection with the offer, sale, or purchase of a franchise.
   d. That any person identified in an application for registration has been charged with or convicted of a felony or a civil action or proceeding is then pending against the person or the person is subject to an order or has had a civil judgment entered against the person as described in subsection 5 of section 51-19-06 and the involvement of such person in the sale of franchises or the business of the franchisor creates a substantial risk to prospective franchisees.
   e. That the applicant or registrant has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected.
   f. That advertising prohibited by section 51-19-10 has been used in connection with the offer, sale, or purchase of franchises.
   g. That the financial condition of the franchisor adversely affects or would adversely affect the ability of the franchisor to fulfill obligations under the franchise agreement.
   h. That the franchisor's enterprise or method of business includes or would include activities which are illegal where performed.
   i. That the method of sale or proposed method of sale of franchises or the operation of the business of the franchisor or any term or condition of the

franchise agreement or any practice of the franchisor is or would be unfair, unjust, or inequitable to franchisees.

2. a. The commissioner may issue a summary order denying, postponing, suspending, or revoking the effectiveness of the registration pending final determination of any proceeding under this subsection. Upon the entry of an order, the commissioner shall promptly notify each person specified in subdivision b that it has been entered and the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person specified in subdivision b, may modify or vacate the order or extend it until final determination.
   b. No stop order may be entered under this section, except under subdivision a, without appropriate prior notice to the applicant or registrant and the person on whose behalf the franchise is to be or has been offered, opportunity for hearing, and written findings of fact and conclusions of law.
   c. The commissioner may vacate or modify an order entered under section 51-19-05 or this section if the commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.
   d. If a hearing is requested or ordered under this section, it must be conducted in accordance with chapter 28-32.
3. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

51-19-10. Advertisement.

1. No person may 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 with the office of the commissioner at least five business days prior to the first publication or such shorter period as the commissioner by rule or order may allow or unless such advertisement has been exempted by rule of the commissioner.
2. No person may publish any advertisement concerning any franchise in this state after the commissioner finds that the advertisement contains any statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice of hearing. At any time after the issuance of a notification under this subsection, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such a written request, the matter must be set down for hearing to commence within fifteen business days after such receipt unless the person making the request consents to a later date. After such hearing, the commissioner shall determine whether to affirm and continue or to rescind such order.

51-19-11. Fraudulent and prohibited practices.

1. It is unlawful for any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, notice, report, or other document filed under any provision of this chapter or to omit to state any material statement or fact in any such application, financial statement, notice, report, or document which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to fail to notify the commissioner of any material change as required under subsection 6 of section 51-19-07.
2. It is unlawful for any person in connection with the offer, sale, or purchase of any franchise, directly or indirectly:
   a. To employ any device, scheme, or artifice to defraud;

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

3. It is unlawful for any person to violate any order of the commissioner or condition to the effectiveness of the registration of the offer or sale of franchises.
4. It is unlawful for any person to effect or attempt to effect a sale of a franchise in this state unless such person is identified in an application or amended application or prospectus filed with the commissioner.
5. It is unlawful for any person to represent or cause to be represented to any prospective purchaser of a franchise that the filing of any document under this chapter or the registration or exemption from registration of a franchise constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading, or that the commissioner has passed in any way upon the merits of any franchise, or that a franchise is registered or exempted from registration when in fact such is not the case.
6. No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

51-19-12. Civil liability.

1. Any person who violates any provision of this chapter or any rule or order issued by the commissioner thereunder is liable to the franchisee or subfranchisor who may bring an action for damages, for rescission, or for such other relief as the court may deem appropriate.
2. Every person who directly or indirectly controls a person liable under subsection 1, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every president or governor 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 the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.
3. In any action under this section, the franchisee or subfranchisor, if successful, is also entitled to costs and disbursements plus reasonable attorney's fees.
4. No franchisee or subfranchisor may file or maintain an action under this section if the person received a written offer before the action was commenced and at a time when the person owned the franchise to refund the consideration paid together with interest at the rate of seven percent per annum from the date of purchase, less the amount of income received on the franchise, conditioned only upon tender by the franchisee or subfranchisor of all items received by the person for the consideration and not sold, and failed to accept the offer within thirty days of its receipt or if the franchisee received the offer before the action was commenced and at a time when the person did not own the franchise, unless the person rejected the offer in writing within thirty days of its receipt; provided, that in either instance the offering documents and rescission prospectus must be submitted to the commissioner for approval at least fifteen days prior to submission to the franchisee or subfranchisor. The rescission offer must recite the provisions of this section. If the franchise involves a substantial building or substantial equipment and a significant period of time has elapsed since the sale of the franchise, the commissioner, in approving a rescission offer, may approve an equitable offer recognizing depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisor.
5. No action may be brought under this section after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the

basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

6. Except as explicitly provided in this section, no civil liability in favor of any private party may arise against any person by implication from or as a result of the violation of any provision of this chapter or any rule or order issued by the commissioner thereunder. Nothing herein limits any liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

51-19-13. Powers of the commissioner - Civil penalty.

1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the commissioner may bring an action in the name of the people of the state of North Dakota in the district court to enjoin the acts or practices or to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.
2. a. The commissioner may make such public and private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder and publish information concerning the violation of this chapter or any rule or order hereunder.
   b. The commissioner may require or permit any person to file a statement under oath or otherwise subject to the penalties of perjury as the commissioner requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to reply with all required information to the commissioner's letter within fifteen days after receipt thereof shall be the basis for issuance of a cease and desist order.
   c. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
   d. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court upon application by the commissioner may issue to the person an order requiring the person to appear before the commissioner or the officer designated by the commissioner there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.
   e. No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
   f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this chapter and it is being or has been offered for sale without

the offer first being registered, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until the offer has been duly registered under this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held within fifteen business days after the request is made unless the persons affected consent to a later date. If a request for hearing is not made within the fifteen days permitted herein, the order is final.

g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with section 51-19-04 or subsection 2 of section 51-19-11, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until an offer is made in compliance with this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held within fifteen business days after the date. If a request for hearing is not made within the fifteen days permitted herein, the order is final.

h. The commissioner may refer evidence available concerning any violation of this chapter or of any rule or order issued under this chapter to the appropriate criminal prosecutor who may, with or without the reference, institute criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

3. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

51-19-14. Criminal penalties.

1. Any person who willfully violates any provision of this chapter or who willfully violates any rule or order under this chapter is guilty of a class B felony.
2. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise is guilty of a class B felony.
3. Nothing in this chapter limits the power of the state to punish any person for any conduct that constitutes a crime.
4. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
5. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being

violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.

51-19-15. Service of process.

1. Every applicant for registration of an offer to sell franchises under this chapter, other than a domestic corporation or limited liability company, shall file with the commissioner in such form as the commissioner prescribes an irrevocable consent appointing the commissioner or commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or applicant's successor, 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 the consent. A person who has filed such a consent in connection with a previous registration under this chapter need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner and 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 time as the court allows.
2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, whether or not the person has filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct must be considered equivalent to the person's appointment of the commissioner or commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective until the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last-known address or takes other steps which are reasonably calculated to give actual notice and 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, and within such further time as the court allows.

51-19-16. General provisions.

1. Every franchisor or subfranchisor offering franchises for sale in this state shall at all times keep and maintain a complete set of books, records, and accounts of such sales, which must at all times be open to inspection by the commissioner, and shall make and file with the commissioner such reports as the commissioner may by rule or order prescribe.
2. The commissioner may accept and act upon the opinions, appraisals, and reports of any engineers, appraisers, or other experts which may be presented by an applicant or any interested party on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisals, and reports, the commissioner may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon, and certified to the commissioner by engineers, appraisers, or other experts selected by the commissioner.

3. Any document filed under this chapter may be incorporated by reference in a subsequent application filed under this chapter if it was filed within four years prior to the filing of such application or is otherwise available in the files of the commissioner, to the extent that the document is currently accurate.
4. In any proceeding under this chapter, the burden of proving an exemption or exception from a definition is upon the person claiming it.
5. The commissioner may honor requests from interested persons for interpretive opinions.
6. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, order, or written interpretive opinion of the commissioner or any opinion of the attorney general, notwithstanding that the rule, form, order, or written interpretive opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.
7. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order hereunder is void.
8. Every final order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with chapter 28-32.

51-19-17. Administration.

1. This chapter must be administered by the commissioner.
2. a. The commissioner shall charge and collect the fees fixed by this section. All fees and charges collected under this section must be transmitted to the state treasurer and must be credited to the general fund.
   b. The fee for filing an application for registration of the sale of franchises is two hundred fifty dollars.
   c. The fee for filing an application for renewal of an application is one hundred dollars.
   d. The fee for filing an amendment to the application is fifty dollars.
   e. The fee for filing a notice of exemption is one hundred dollars.
   f. The fee for filing for renewal of a notice of exemption is fifty dollars.
   g. The expenses reasonably attributable to the investigation or examination of any matter arising under this chapter must be charged to the applicant or registrant involved, but the expenses so charged may not exceed such maximum amounts as the commissioner by rule prescribes.
3. a. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing applications and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.
   b. All rules of the commissioner, other than those relating solely to the internal administration of the commissioner's office, must be made, amended, or rescinded in accordance with chapter 28-32.
4. a. All applications, reports, and other papers and documents filed with the commissioner under this chapter must be open to public inspection, except that the commissioner may withhold from public inspection any information the disclosure of which is, in the judgment of the commissioner, not necessary in the public interest or for the protection of investors. The commissioner may publish any information filed with the commissioner or obtained by the commissioner, if, in the judgment of the commissioner, such action is in the public interest. No provision of this chapter authorizes the commissioner or any of the commissioner's assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when

documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's assistants, clerks, or deputies.

b. It is unlawful for the commissioner or any of the commissioner's assistants, clerks, or deputies to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.

5. A document is filed when it is received by the commissioner.

6. Upon request and at such reasonable charges as the commissioner prescribes by rule, the commissioner shall furnish to any person photostatic or other copies, certified under the commissioner's seal of office if requested, of any document which is retained as a matter of public record except that the commissioner may not charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity. In any judicial proceeding or prosecution, any copy so certified is prima facie evidence of the contents of the document certified.

51-19-18. Franchisor-franchisee liability protection.

Notwithstanding any other provision of law or any voluntary agreement between the United States department of labor and a franchisee, a franchisee or an employee of a franchisee is not considered an employee of the franchisor.