

SENATE BILL REPORT

SB 6172

As Passed Senate, February 10, 2012

Title: An act relating to franchise investment protection.

Brief Description: Revising franchise investment protection provisions.

Sponsors: Senators Benton, Hobbs, Prentice, Keiser, Fain and Chase; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/18/12, 1/25/12 [DP].
Passed Senate: 2/10/12, 46-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Edward Redmond (786-7471)

Background: The Franchise Investment Protection Act (FIPA) regulates the sale and registration of franchises. A franchise is an agreement that grants the right to engage in a business under a marketing plan prescribed by the franchisor, the operation of which is substantially associated with a particular trade name or symbol. To sell or offer to sell a franchise, the franchise must be registered with the Department of Financial Institutions (DFI). An exception applies where the franchisor meets certain requirements and delivers an offering circular to the prospective franchisee at least ten business days prior to execution of the agreement. The offering circular must comply with DFI's guidelines, which are based on the North American Securities Administrators Association's (NASAA) Uniform Franchise Offering Circular. A franchise offering remains registered for one year and may be renewed by filing a renewal application 15 business days before the expiration of the registration.

It is unlawful for a person to sell a franchise that is registered or required to be registered without delivering the offering circular to the franchisee at least ten business days prior to execution of the agreement.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Director of the DFI (Director) has the authority to issue a stop order to suspend or revoke a registration statement. The applicant has 15 days to request a hearing on entry of the stop order. In addition, the Director may issue a cease and desist order if it appears a person has violated or is about to violate the FIPA. The order becomes final if the person does not request a hearing within 15 days of receiving notice.

In 2007 the Federal Trade Commission (FTC) adopted a rule applicable to the offer or sale of a franchise located in the United States. Terminology and deadlines in that rule differ from Washington law.

Summary of Bill: Various terms are amended and new definitions are added. The term disclosure document is substituted for the term offering circular. DFI's guidelines for preparation of the disclosure document must be based on guidelines of either the FTC or the NASAA. The term prospective franchisee is substituted throughout the law for the term offeree. Definitions are provided for the terms file, record, and prospective franchisee.

Specific deadlines are also amended. To qualify for an exception from registration, a franchisor must deliver a disclosure document to the prospective franchisee 14 calendar days prior to execution of the agreement. A franchisor may renew the registration by filing an application 20 calendar days before expiration of the registration.

A franchisor must furnish a prospective franchisee with a copy of the disclosure document at least 14 calendar days prior to payment or execution of a binding agreement. It is unlawful for the franchisor to unilaterally and materially alter the terms and conditions of a franchise agreement without furnishing the prospective franchisee with a copy of the revisions at least seven calendar days before he or she signs the agreement. Changes that arise out of negotiations initiated by the prospective franchisee do not trigger this period.

A person has 20 calendar days to request a hearing on a stop order or cease and desist order.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill makes several technical changes to the franchise act to better conform to the federal law and the Administrative Procedure Act of Washington. The sale of franchises is regulated by the FIPA. The primary purpose of the bill is to conform the terminology, filing, and delivery dates of FIPA to those in the FTC rule. The bill has been distributed to over 800 interested parties, including all current franchise registrants. DFI has received no objections to the bill. The bill is also supported by the business section of the Washington State Bar Association.

Persons Testifying: PRO: Catherine Mele-Hetter, DFI.