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SENATE FILE 2314
BY COMMITTEE ON COMMERCE
Appropriations (p. 640)
(SUCCESSOR TO SSB 2269)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to franchise agreements by establishing
2 registration and disclosure requirements, establishing a civil
3 cause of action, and establishing fees and penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 523G.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Franchise Investment Act".

4 Sec. 2. NEW SECTION. 523G.2 FINDINGS AND PURPOSE.

5 This chapter seeks to assure that each offeree receives the
6 information necessary to make an informed decision about the
7 offered franchise and to prohibit the sale of franchises when
8 there is a likelihood that the promises of the franchisor will
9 not be fulfilled.

10 Sec. 3. NEW SECTION. 523G.3 DEFINITIONS.

11 When used in this chapter, unless the context otherwise
12 requires:

13 1. "Administrator" means the commissioner of insurance.

14 2. "Advertisement" means a communication published in
15 connection with an offer or sale of a franchise.

16 3. "Affiliate" means a person controlling, controlled by,
17 or under common control with another person, every officer or
18 director of such a person, and every person occupying a
19 similar status or performing similar functions.

20 4. "Business day" means a day other than a Saturday,
21 Sunday, or federal holiday.

22 5. "Disclosure document" means the uniform franchise
23 offering circular as adopted and amended by the north American
24 securities administrators association, incorporated.

25 6. "Franchise" means either of the following:

26 a. An oral or written agreement, either express or
27 implied, which provides all of the following:

28 (1) Grants the right to distribute goods or provide
29 services under a marketing plan prescribed or suggested in
30 substantial part by the franchisor.

31 (2) Requires payment of a franchise fee to a franchisor or
32 its affiliate.

33 (3) Allows the franchise business to be substantially
34 associated with a trademark, service mark, trade name,
35 logotype, advertisement, or other commercial symbol of or

1 designating the franchisor or its affiliate.

2 b. A master franchise.

3 "Franchise" does not include any business that is operated
4 under a lease or license on the premises of the lessor or
5 licensor as long as such business is incidental to the
6 business conducted by the lessor or licensor on such premises,
7 including, without limitation, leased departments, licensed
8 departments, and concessions and the leased or licensed
9 department operates only under the trademark, trade name,
10 service mark, or other commercial symbol designating the
11 lessor or licensor.

12 "Franchise" also does not include any contract under which
13 a petroleum retailer or petroleum distributor is authorized or
14 permitted to occupy leased marketing premises, which premises
15 are to be employed in connection with the sale, consignment,
16 or distribution of motor fuel under a trademark which is owned
17 or controlled by a refiner which is regulated by the federal
18 Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq.
19 The term "refiner" means any person engaged in the refining of
20 crude oil to produce motor fuel, and includes any affiliate of
21 such person. "Franchise" also does not include a contract
22 entered into by any person regulated under chapter 117, 123,
23 322, 322A, 322B, 322C, 322D, 322F, 323, 323A, or 522, or a
24 retailer selling construction equipment, or lawn and garden
25 equipment.

26 7. "Franchise fee" means a direct or indirect payment to
27 purchase or operate a franchise. Franchise fee does not
28 include any of the following:

29 a. Payment of a reasonable service charge to the issuer of
30 a credit card by an establishment accepting the credit card.

31 b. Payment to a trading stamp company by a person issuing
32 trading stamps in connection with a retail sale.

33 c. An agreement to purchase at a bona fide wholesale price
34 a reasonable quantity of tangible goods for resale.

35 8. "Franchisee" means a person to whom a franchise is

1 granted. Franchisee includes the following:

2 a. A subfranchisor with regard to its relationship with a
3 franchisor.

4 b. A subfranchisee with regard to its relationship with a
5 subfranchisor.

6 9. "Franchisor" means a person who grants a franchise or
7 an affiliate of such a person. Franchisor includes a
8 subfranchisor with regard to its relationship with a
9 franchisee, unless stated otherwise in this chapter.

10 10. "Fraud" and "deceit" are not limited to common law
11 fraud and deceit.

12 11. "Marketing plan" means a plan or system concerning a
13 material aspect of conducting business. Indicia of a
14 marketing plan include any of the following:

15 a. Price specification, special pricing systems, or
16 discount plans.

17 b. Sales or display equipment or merchandising devices.

18 c. Sales techniques.

19 d. Promotional or advertising materials or cooperative
20 advertising.

21 e. Training regarding the promotion, operation, or
22 management of the business.

23 f. Operational, managerial, technical, or financial
24 guidelines or assistance.

25 12. "Master franchise" means an agreement by which a
26 person pays a franchisor for the right to sell or negotiate
27 the sale of franchises.

28 13. "Offer" or "offer to sell" means every attempt to
29 offer or to dispose of, or solicitation of an offer to buy, a
30 franchise or interest in a franchise for value.

31 14. "Order" means a consent, authorization, approval, or
32 prohibition, issued by the administrator in a specific matter.

33 15. "Person" means a person as defined in section 4.1,
34 subsection 13.

35 16. "Publish" means to circulate generally by mail, print

1 media, or electronic media, or otherwise to disseminate
2 generally to the public.

3 17. "Registration application" means an initial franchise
4 application on the uniform franchise registration application
5 as adopted and amended by the north American securities
6 administrators association, incorporated, and any amendment or
7 renewal of the application.

8 18. "Sale" or "sell" means every contract or agreement of
9 sale of, contract to sell or disposition of, a franchise or
10 interest in a franchise for value.

11 19. "Salesperson" means a person employed by or
12 representing a franchisor in effecting or attempting to effect
13 the offer or sale of a franchise.

14 20. "Subfranchise" means an agreement by which a person
15 pays a franchisor for the right to sell or negotiate the sale
16 of franchises.

17 21. "Subfranchisor" means a person who grants a master
18 franchise.

19 22. "Subfranchisee" means a person who is granted a master
20 franchise or a subfranchise from a subfranchisor.

21 Sec. 4. NEW SECTION. 523G.4 SCOPE AND APPLICABILITY.

22 1. This chapter applies to a franchise that is offered or
23 sold in this state.

24 2. A franchise is offered or sold in this state if an
25 offer to sell is made or accepted in this state or an offer to
26 buy is accepted in this state.

27 3. An offer to sell is made in this state if the offer is
28 directed by the offeror into this state from within or from
29 outside this state and is received where it is directed. An
30 offer to sell is accepted in this state if the offeree directs
31 acceptance to the offeror in this state and acceptance is
32 received where it is directed.

33 4. This chapter also applies to a franchised business
34 offered or sold outside this state if it is offered or sold to
35 a resident of this state and is to be operated in this state.

1 5. An offer to sell is not made in this state solely
2 because the offer appears in a newspaper or other publication
3 of general and regular circulation which had more than two-
4 thirds of its circulation outside this state during the past
5 twelve months or solely because the offer appears in a
6 broadcast or transmission originating outside this state.

7 Sec. 5. NEW SECTION. 523G.5 REGISTRATION OF FRANCHISES.

8 It is unlawful for a person to offer or sell a franchise
9 unless the offer is registered under this chapter or is exempt
10 from registration under section 523G.6.

11 Sec. 6. NEW SECTION. 523G.6 EXEMPTIONS FROM
12 REGISTRATION.

13 The following transactions are exempt from the registration
14 requirement of section 523G.5:

15 1. The offer or sale of a franchise if all of the
16 following conditions are satisfied:

17 a. Either the franchisor's most recent audited financial
18 statements show a net worth of at least ten million dollars or
19 the franchisor is at least eighty percent owned by a person
20 who unconditionally guarantees the franchisor's performance,
21 who consents to service of process in this state, and whose
22 most recent audited financial statements show a net worth of
23 at least ten million dollars.

24 b. The franchisor or person owning at least eighty percent
25 of the franchisor had and currently has at least twenty-five
26 franchisees that have conducted substantially the same
27 franchised business to be offered or sold at no fewer than
28 twenty-five locations for the entire five-year period
29 immediately preceding the offer or sale of the franchise.

30 c. The offeree receives the disclosure document at least
31 ten business days prior to the execution by the offeree of any
32 binding agreement or at least ten business days prior to the
33 date agreed upon by the parties for the direct or indirect
34 receipt of a franchise fee by the franchisor from the offeree,
35 whichever occurs first.

1 d. The franchisor annually files a notice of exemption
2 with the administrator. The notice of exemption shall include
3 the disclosure document and the fee prescribed by section
4 523G.20 and shall be filed prior to an offer or sale of a
5 franchise in this state. The exemption expires fifteen months
6 from the date of the most recent audited financial statement
7 filed unless the administrator prescribes a different period
8 by rule or order.

9 2. The offer or sale of a franchise by a franchisee who is
10 not an affiliate of the franchisor, for the franchisee's own
11 account, if the franchisee's entire franchise is sold and the
12 sale is not effected by or through the franchisor. A sale is
13 not effected by or through a franchisor merely because a
14 franchisee signs agreements with terms which do not materially
15 differ from agreements with the existing franchisee or because
16 a franchisor has a right to approve or disapprove the sale or
17 requires payment of a reasonable transfer fee. This exemption
18 applies to the offer or sale of a master franchise if the
19 entire master franchise is sold.

20 3. The offer or sale of a franchise to a person who has
21 been for at least two years, an officer, director, partner, or
22 affiliate of the franchisor, for that person's own account.

23 4. The offer or sale of a franchise to a person for that
24 person's own account if the person meets both of the following
25 requirements:

26 a. Has a net worth of at least one million dollars which,
27 in the case of an individual, includes the property of the
28 person's spouse, but excludes the primary residence, personal
29 vehicles, and personal effects, or had an individual income,
30 or joint income including the person's spouse, in excess of
31 two hundred thousand dollars in each of the two most recent
32 years and has a reasonable expectation of reaching the same
33 income level in the current year.

34 b. Has such knowledge and experience in financial and
35 business matters that the person is capable of evaluating the

1 merits and risks of the franchise.

2 5. The offer or sale to an existing franchisee of an
3 additional franchise that is substantially the same as the
4 franchise that the franchisee has operated for at least two
5 years at the time of the offer or sale.

6 6. The offer or sale of a franchise involving a renewal,
7 extension, modification, or amendment of an existing franchise
8 agreement if there is no interruption in the operation of the
9 franchised business and there is no material change in the
10 franchise agreement. For purposes of this subsection, an
11 interruption in the operation of the franchised business
12 solely for the purpose of renovating or relocating that
13 business is not a material change in the franchise
14 relationship or an interruption in the operation of the
15 franchise business.

16 7. The offer or sale of a franchise if the franchisee
17 agrees to pay, directly or indirectly, a franchise fee
18 computed on an annual basis of two hundred fifty dollars or
19 less.

20 8. The offer or sale of a franchise by an executor,
21 administrator, sheriff, marshal, receiver, trustee, trustee in
22 bankruptcy, guardian, or conservator on behalf of a person
23 other than the franchisor or the estate of the franchisor.

24 9. The offer of a franchise by the franchisor during the
25 period a registration has expired and is pending renewal under
26 section 523G.9 has been filed, or an application to amend a
27 registration under section 523G.9, if the offeree receives the
28 newly registered document at least ten business days before
29 the offeree's execution of any binding agreement or at least
30 ten business days prior to the direct or indirect receipt of a
31 franchise fee by the franchisor from the offering, whichever
32 occurs first. Changes from the documents last registered must
33 be marked to show changes.

34 10. The offer or sale of rights to a person to sell goods
35 or services within or adjacent to a retail establishment as a

1 department or division, if the person is not required to
2 purchase goods or services from the operator of the retail
3 establishment.

4 11. Any other transactions which the administrator by rule
5 or order exempts as not being within the purposes of this
6 chapter and the registration of which the administrator finds
7 is not necessary or appropriate in the public interest or for
8 the protection of investors.

9 Sec. 7. NEW SECTION. 523G.7 OUT-OF-STATE SALES
10 EXEMPTION.

11 An offer or sale of a franchise is exempted from sections
12 523G.5, 523G.8, 523G.9, and 523G.13, if all of the following
13 apply:

14 1. The franchise is offered or sold to a nonresident of
15 this state.

16 2. The franchise business will not be operated wholly or
17 partly in this state.

18 3. The offer or sale does not violate federal law or the
19 law of the foreign jurisdiction.

20 4. The offeree is not actually present in this state
21 during any offer or sale.

22 Sec. 8. NEW SECTION. 523G.8 DELIVERY REQUIREMENTS.

23 1. It is unlawful to sell a franchise in this state
24 without first providing a copy of a disclosure document
25 reflecting all material changes together with a copy of all
26 proposed agreements relating to the sale of the franchise,
27 unless otherwise provided in subsection 2, to the prospective
28 franchisee, at the earlier of the following:

29 a. The prospective franchisee's first personal meeting
30 with the franchisor which is held for the purpose of
31 discussing the sale or possible sale of a franchise.

32 b. Ten business days prior to the execution of an
33 agreement or the date agreed upon by the parties for the
34 payment of any consideration relating to the franchise
35 relationship.

1 2. The delivery requirements in subsection 1 do not apply
2 to the offer or sale which is exempt under section 523G.6,
3 subsection 2, 3, 6, or 8.

4 Sec. 9. NEW SECTION. 523G.9 GENERAL REGISTRATION
5 PROVISIONS.

6 1. A registration application must include the disclosure
7 document, the filing fee, and the consent to service of
8 process. The administrator may require the filing of audited
9 financial statements examined and reported upon by an
10 independent certified public accountant and prepared in
11 accordance with generally accepted accounting principles, and
12 of additional documents or disclosures.

13 2. If the franchisor fails to demonstrate to the
14 administrator the franchisor's financial ability to fulfill
15 its initial obligations to franchisees, the administrator may
16 require an escrow of funds paid by the franchisee or
17 subfranchisor to the franchisor until the franchisor performs
18 its initial obligations and the franchisee has commenced
19 operations. The administrator may allow alternatives to
20 escrow.

21 3. a. Except as provided in paragraph "b", if no order
22 under section 523G.15 is in effect, a franchise registration
23 application is effective on the thirtieth business day after
24 filing of the application or the last amendment to the
25 application, or at an earlier time ordered by the
26 administrator, unless the applicant requests postponement of
27 effectiveness of the application or the administrator has made
28 a good faith effort to communicate why the application does
29 not meet the requirements of this chapter.

30 b. If the administrator requires the submission of
31 additional information under this section or section 523G.11,
32 523G.12, 523G.13, or 523G.17 before the franchise registration
33 application becomes effective under paragraph "a", and if no
34 order under section 523G.15 is in effect, the application
35 becomes effective on the fifteenth business day after the

1 additional information is filed with the administrator, or at
2 such earlier time as the administrator determines, unless the
3 applicant requests postponement of effectiveness of the
4 application.

5 4. Registration of a franchise under this chapter expires
6 on July 1 following the application date, unless the
7 administrator prescribes a different period by rule or order.
8 A franchise registration may be renewed for periods of one
9 year or for shorter periods if designated by the
10 administrator, by filing an application to renew thirty days
11 prior to the expiration of the registration.

12 5. An applicant or registrant may withdraw a franchise
13 registration application or franchise registration if it files
14 a written request for withdrawal with the administrator.
15 Withdrawal is effective fifteen business days from the day on
16 which the withdrawal request is filed with the administrator.

17 6. The administrator may accept the examination of a
18 registration application by another state administrator as
19 complying with this chapter.

20 Sec. 10. NEW SECTION. 523G.10 NEGOTIATED CHANGES
21 PERMITTED.

22 This chapter does not preclude negotiation of the terms and
23 conditions of a franchise before it is sold. After the
24 initial offer, a franchisor need not amend its disclosure
25 document to negotiate with an offeree, or make supplementary
26 disclosure to that offeree, by reason of a change negotiated
27 in the terms and conditions of a franchise.

28 Sec. 11. NEW SECTION. 523G.11 CHANGE IN CONDITION.

29 The franchisor shall promptly amend its franchise
30 registration application to reflect every material change in
31 the information filed with the administrator.

32 Sec. 12. NEW SECTION. 523G.12 ADVERTISING.

33 A person shall not publish in this state an advertisement
34 offering to sell a franchise required to be registered under
35 this chapter unless the advertisement and required filing fee

1 have been filed with the administrator at least five business
2 days prior to its first publication.

3 Sec. 13. NEW SECTION. 523G.13 BOOKS AND RECORDS.

4 A franchisor offering or selling a franchise in this state
5 shall maintain a complete and accurate set of books and
6 records of the offers and sales of franchises. The books and
7 records must include disclosure documents, advertising
8 correspondence with franchisees and prospective franchisees,
9 past and present operations manuals, training records,
10 training manuals, copies of executed agreements, and any due
11 diligence records concerning franchisees. These books and
12 records must be maintained for five years at an office readily
13 accessible to the administrator. The books and records may be
14 kept on photographic or electronic media but must be printed
15 if the administrator requests. This section does not limit
16 the investigative authority of the administrator.

17 Sec. 14. NEW SECTION. 523G.14 FRAUDULENT, DECEPTIVE, AND
18 PROHIBITED PRACTICES.

19 In connection with the offer or sale of a franchise it is
20 unlawful for a person, directly or indirectly, to do any of
21 the following:

22 1. Employ a device, scheme, or artifice to defraud.

23 2. Make an untrue statement of material fact or omit to
24 state a material fact necessary in order to make the statement
25 made, in the light of the circumstances under which the
26 statement is made, not misleading.

27 3. Engage in an act, practice, or course of business which
28 operates or would operate as a fraud or deceit on a person.

29 4. Represent to an offeree of a franchise that the filing
30 of a franchise registration application or the registration of
31 a franchise constitutes a finding by the administrator that a
32 document filed under this chapter is true, complete, and not
33 misleading, or that the administrator has passed upon the
34 merits of the franchise.

35 5. Misrepresent that a franchise is registered or exempted

1 from registration under this chapter.

2 6. Violate an order of the administrator after the person
3 receives notice that the order was issued.

4 7. Fail to notify the administrator of a material change
5 in the information required in a document required to be filed
6 by this chapter or by a rule adopted or order issued under
7 this chapter.

8 8. Omit to state a material fact or make or cause to be
9 made an untrue statement of a material fact in any
10 application, notice, or report filed with the administrator
11 under this chapter.

12 Sec. 15. NEW SECTION. 523G.15 ENFORCEMENT.

13 1. The administrator may by order deny a franchise
14 registration application or suspend or revoke the
15 effectiveness of a registration of a franchise if any of the
16 following apply:

17 a. The franchisor failed to comply with this chapter or a
18 rule, order, or condition of the administrator adopted or
19 issued under this chapter.

20 b. The registration application is incomplete or
21 inaccurate in any material respect.

22 c. The registration application includes a false or
23 misleading statement of a material fact or omits to state a
24 material fact required to be stated or necessary to make a
25 required statement not misleading.

26 d. The sale of the franchise would constitute a
27 misrepresentation, deceit, or fraud upon an offeree.

28 e. A person is engaging in, has engaged in, or is about to
29 engage in a false, fraudulent, or deceptive practice or a
30 device, scheme, or artifice to defraud in connection with the
31 offer or sale of the franchise.

32 f. A partner, officer, or director of the franchisor or a
33 person who occupies a similar status or performs similar
34 functions, or a person who directly or indirectly controls or
35 is controlled by the franchisor is or has been found guilty or

1 liable in a proceeding required to be described in the
2 registration application and the involvement of such person
3 creates an unreasonable risk to franchisees or offerees.

4 g. An advertisement prohibited by this chapter has been
5 used in connection with the offer or sale of a franchise.

6 h. The franchisor's enterprise or method of business
7 includes activities that are illegal where performed.

8 i. The financial condition of the franchisor impairs or
9 would impair the ability of the franchisor to fulfill
10 obligations under the franchise agreement.

11 2. The administrator may by order deny, suspend, or revoke
12 an exemption under section 523G.6 on any of the grounds
13 described in subsection 1.

14 3. If it appears to the administrator that a person has
15 violated or is about to violate this chapter, or a rule
16 adopted or order issued under this chapter, the administrator
17 may do any of the following:

18 a. Issue an order directing the person to cease and desist
19 from continuing the act or practice.

20 b. Forward a request to the attorney general to bring an
21 action in a court of competent jurisdiction to enjoin the act
22 or practice, and to enforce compliance with this chapter or a
23 rule adopted or an order issued pursuant to this chapter.
24 Upon a proper showing, the court may grant a permanent or
25 preliminary injunction, restraining order, or writ of mandate.
26 The court may grant appropriate ancillary relief, including
27 appointment of a receiver or conservator for the defendant or
28 the defendant's assets. The court may exercise all powers
29 necessary or appropriate for these purposes. The court shall
30 not require the administrator to post a bond.

31 c. Forward a request to the attorney general to bring an
32 action on behalf of the state in any court of competent
33 jurisdiction against any officer, director, trustee, manager,
34 or agent of a franchisor or against a franchisor to recover a
35 penalty in a sum not to exceed fifty thousand dollars for each

1 violation of this chapter or a rule adopted or an order issued
2 pursuant to this chapter. The action must be brought within
3 four years after the commission of the act or practice on
4 which it is based.

5 4. The administrator may impose an administrative
6 assessment against a person named in an order issued under
7 subsection 1 or 3. The amount of the administrative
8 assessment shall not exceed five thousand dollars for each act
9 or omission that constitutes the basis for issuing the order.
10 The administrative assessment may only be imposed if either of
11 the following apply:

12 a. Following an opportunity for a hearing under section
13 523G.16, if the notice delivered to all named persons includes
14 notice of the administrator's authority to impose an
15 administrative assessment under this section.

16 b. As part of an order issued under subsection 1 or 3, if
17 the order is stipulated to by each person subject to the
18 administrative assessment.

19 5. If an administrator prevails in an action under this
20 chapter, the court shall award the administrator costs,
21 including expenses of taking depositions, expert witness fees,
22 and reasonable attorney fees, incurred incident to the action.

23 6. In connection with an action or proceeding under this
24 section, the administrator may exercise any of the powers
25 specified in section 523G.17.

26 7. The administrator, upon a finding that it is in the
27 public interest, may issue a temporary order summarily under
28 this section.

29 Sec. 16. NEW SECTION. 523G.16 HEARINGS AND JUDICIAL
30 REVIEW.

31 1. Except as provided by subsection 3, the administrator
32 shall not enter an order under section 523G.15 without
33 appropriate prior notice to all named persons, opportunity for
34 hearing, and written findings of fact and conclusions of law.

35 2. Notice required by this chapter is sufficient if

1 delivered personally, or if sent by certified or restricted
2 certified mail and addressed to the person, or the person's
3 attorney of record at the person's or attorney's last known
4 address appearing in the records of the administrator. Notice
5 served in accordance with section 523G.19 is also sufficient.

6 3. A person named in an order may apply to the
7 administrator for a hearing in respect to any matter
8 determined by the order within thirty days after the
9 administrator has summarily issued an order. A hearing shall
10 be held within thirty days after the administrator receives a
11 written request for hearing unless extended by mutual consent
12 of the parties. During the pendency of any hearing requested
13 under this subsection, the order issued summarily shall remain
14 in effect unless vacated or modified by the administrator.

15 4. After a hearing, the administrator may issue a final
16 order. The final order may affirm, vacate, or modify an order
17 issued summarily in effect during the pendency of the hearing,
18 or may include such other sanctions as are provided for under
19 section 523G.15. An order issued summarily against a person
20 becomes a final order if the person fails to request a hearing
21 under subsection 3 or if the person fails to appear after
22 requesting a hearing.

23 5. Hearings and rehearings shall be open to the public.

24 6. Orders and other official acts of the administrator are
25 subject to judicial review pursuant to section 17A.19.

26 7. Orders originally entered without a hearing under
27 section 523G.15 may be reviewed judicially only if the person
28 seeking review has requested a hearing within the time
29 provided under subsection 3. A petition for judicial review
30 under this subsection may be filed only after service of the
31 order finally disposing of the person's request for hearing
32 under subsection 3.

33 Sec. 17. NEW SECTION. 523G.17 POWERS OF ADMINISTRATOR.

34 1. The administrator may make public or private
35 investigations inside or outside this state to determine

1 whether a person has violated, is violating, or is about to
2 violate this chapter or a rule adopted or order issued under
3 this chapter. The administrator may conduct investigations to
4 aid in the enforcement of this chapter or in prescribing rules
5 under this chapter. The administrator may publish information
6 concerning a violation of this chapter or of a rule adopted or
7 order issued under this chapter.

8 2. The administrator may keep confidential any information
9 obtained in the course of an investigation.

10 3. The administrator may investigate suspected criminal
11 violations of this chapter and may refer evidence to the
12 attorney general or a county attorney. Upon request of the
13 attorney general or a county attorney, the administrator and
14 the administrator's attorneys, deputies, or assistants may
15 assist in presenting the law or facts at trial.

16 4. For the purpose of any civil investigation or
17 proceeding under this chapter, the administrator may subpoena
18 witnesses, compel their attendance, examine them under oath,
19 or require the production of any documents, or tangible items,
20 which the administrator deems relevant or material to this
21 investigation or proceeding. The subpoena must state the
22 date, place, and time at which the person is required to
23 appear or produce documentary material.

24 5. An administrator's subpoena shall be served in
25 accordance with the service of process requirements of civil
26 litigation.

27 6. Upon application of the administrator, a court may
28 compel compliance with a subpoena through a contempt
29 proceeding.

30 Sec. 18. NEW SECTION. 523G.18 RULES, ORDERS, FORMS, AND
31 INTERPRETATIVE OPINIONS.

32 1. The administrator may adopt or issue rules, forms, and
33 orders necessary or appropriate to administer this chapter and
34 may define terms, whether or not used in this chapter. The
35 administrator may classify franchises, persons, and matters

1 within the administrator's jurisdiction and prescribe
2 different rules for different classes. This chapter imposes
3 no liability for an act or omission done in good faith in
4 conformity with an order or rule of the administrator.

5 2. A rule, order, or form shall not be made unless the
6 administrator finds that the action is necessary or
7 appropriate in the public interest or for the protection of
8 franchises, and consistent with the purposes fairly intended
9 by the policy and provisions of this chapter.

10 3. The administrator may honor requests from interested
11 persons for interpretative opinions, or may issue
12 determinations that the administrator will not institute
13 enforcement proceedings against a person engaging in certain
14 specified activities, if the determination is consistent with
15 purposes fairly intended by the policy and provisions of this
16 chapter.

17 Sec. 19. NEW SECTION. 523G.19 SERVICE OF PROCESS.

18 1. A person who offers for sale or sells a franchise
19 subject to the registration requirement of this chapter shall
20 file with the administrator an irrevocable consent to service
21 of process appointing the administrator as the person's agent
22 to receive service of process in a civil action or proceeding
23 arising under this chapter.

24 2. A person who offers for sale or sells a franchise in
25 this state without filing a consent to service of process is
26 deemed to appoint the administrator as the person's agent to
27 receive service of process in a civil action or proceeding
28 arising under this chapter.

29 3. A person may effect service of process under this
30 section by service on the administrator. The time to respond
31 begins to run when the person sends notice of the service and
32 a copy of the process by certified mail to the defendant or
33 respondent or attorney of record at its last address on file
34 with the administrator. If an address is not on file with the
35 administrator, the time to respond begins to run when the

1 process is served on the administrator. The plaintiff shall
2 file an affidavit of compliance with the court or tribunal
3 hearing the matter.

4 Sec. 20. NEW SECTION. 523G.20 FEES.

5 1. The administrator shall charge and collect the fees
6 fixed by this section. The administrator shall not refund any
7 fees.

8 2. The fee for filing an application for initial
9 registration of a franchise under section 523G.9 is five
10 hundred dollars.

11 3. The fee for filing a notice of exemption under section
12 523G.6, subsection 1, is three hundred dollars.

13 4. The fee for filing an application for renewal of a
14 registration under section 523G.9 is two hundred fifty
15 dollars.

16 5. The fee for filing a request for an interpretative
17 opinion under section 523G.18, subsection 3, is three hundred
18 dollars.

19 6. The fee for filing advertisements is ten dollars per
20 item.

21 Sec. 21. NEW SECTION. 523G.21 COOPERATION WITH OTHER
22 AGENCIES OR ORGANIZATIONS.

23 To encourage uniform application and interpretation of this
24 chapter and effective franchise regulation and enforcement,
25 the administrator may cooperate with federal, state, or
26 foreign agencies or administrators, and law enforcement
27 agencies, including engaging in any of the following acts:

28 1. Conducting joint examinations and investigations.

29 2. Holding joint administrative hearings.

30 3. Filing and prosecuting joint civil or administrative
31 proceedings.

32 4. Sharing and exchanging information and documents
33 subject to the restrictions of this state's law.

34 5. Sharing and exchanging personnel.

35 6. Formulating rules, regulations, statements of policy,

1 guidelines, proposed statutory changes, and interpretative
2 opinions and releases.

3 7. Issuing and enforcing subpoenas at the request of the
4 federal trade commission or an agency administering franchise
5 statutes in another jurisdiction if the information sought
6 would also be subject to lawful subpoena for conduct occurring
7 in this state.

8 Sec. 22. NEW SECTION. 523G.22 FILING OF DOCUMENTS.

9 A document is filed when the document is received by the
10 administrator.

11 Sec. 23. NEW SECTION. 523G.23 PRIVATE CIVIL ACTIONS.

12 1. A person who violates a provision of this chapter, or a
13 rule adopted under this chapter, is liable to the franchisee
14 for damages, costs, and attorney and expert witness fees, and
15 subject to other appropriate relief including equitable
16 relief. In the case of a violation of section 523G.5, 523G.8,
17 or 523G.14, the franchisee may also sue for rescission. A
18 person is not liable under this section if the defendant
19 proves that the plaintiff knew the facts concerning the
20 violation when the violation occurred.

21 2. Every person who directly or indirectly controls a
22 person liable under this section, every principal executive
23 officer or director of a person so liable, every person
24 occupying a similar status or performing similar functions,
25 and every agent or employee of a person so liable, who
26 materially aids in the act or transaction constituting the
27 violation, is also liable jointly and severally with, and to
28 the same extent as such person, unless the person who would
29 have been liable under this subsection proves that the person
30 did not know, and in the exercise of reasonable care, could
31 not have known, of the existence of the facts by reason of
32 which the liability is alleged to exist.

33 Sec. 24. NEW SECTION. 523G.24 PERIOD OF LIMITATION.

34 An action under section 523G.23 must be commenced not later
35 than the earliest of the following:

1 1. Four years after the act or transaction constituting
2 the violation.

3 2. Ninety days after the receipt by the franchisee of a
4 rescission offer in a form approved by the administrator.

5 Sec. 25. NEW SECTION. 523G.25 NO OTHER CIVIL LIABILITY.

6 Except as expressly provided in this chapter, civil
7 liability does not arise from a violation of any provision of
8 this chapter. This chapter does not limit liability that may
9 exist under another statute or at common law. Prior law
10 governs all actions based on facts occurring before the
11 effective date of this Act.

12 Sec. 26. NEW SECTION. 523G.26 BURDEN OF PROOF.

13 In an administrative, civil, or criminal proceeding arising
14 under this chapter, the burden of proving an exemption, or an
15 exclusion from a definition, is on the person claiming the
16 exemption or exclusion.

17 Sec. 27. NEW SECTION. 523G.27 CONSTRUCTION.

18 This chapter shall be applied and construed with a view to
19 uniformity among states enacting it. This chapter shall be
20 liberally construed to effectuate its purposes.

21 EXPLANATION

22 This bill incorporates certain provisions contained in the
23 north American securities association's model Act. The bill
24 establishes a new chapter 523G and requires that a person
25 offering to sell a franchise in this state must register with
26 the insurance commissioner and provide certain documentation
27 concerning the franchised business.

28 The bill prohibits certain fraudulent and deceptive acts
29 and empowers the administrator with certain enforcement
30 authority which includes the authority to issue cease and
31 desist orders and impose administrative assessments against
32 persons violating this chapter. The bill also establishes a
33 civil cause of action against a person violating a provision of
34 this chapter.

35

STURGEON, CH.
GRONSTAL
JENSEN

SSB 2269

COMMERCE

[Handwritten signature]

SENATE/HOUSE FILE 2314
BY (RECOMMENDED BY FRANCHISE
REGULATION STUDY COMMITTEE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to franchise agreements by establishing
2 registration and disclosure requirements, and establishing
3 fees and penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 523G.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Franchise Investment Act".

4 Sec. 2. NEW SECTION. 523G.2 FINDINGS AND PURPOSE.

5 This chapter seeks to assure that each offeree receives the
6 information necessary to make an informed decision about the
7 offered franchise and to prohibit the sale of franchises when
8 there is a likelihood that the promises of the franchisor will
9 not be fulfilled.

10 Sec. 3. NEW SECTION. 523G.3 DEFINITIONS.

11 When used in this chapter, unless the context otherwise
12 requires:

13 1. "Administrator" means the commissioner of insurance.

14 2. "Advertisement" means a communication published in
15 connection with an offer or sale of a franchise.

16 3. "Affiliate" means a person controlling, controlled by,
17 or under common control with another person, every officer or
18 director of such a person, and every person occupying a
19 similar status or performing similar functions.

20 4. "Business day" means a day other than a Saturday,
21 Sunday, or federal holiday.

22 5. "Disclosure document" means the uniform franchise
23 offering circular as adopted and amended by the north American
24 securities administrators association, incorporated.

25 6. "Franchise" means either of the following:

26 a. An oral or written agreement, either express or
27 implied, which provides all of the following:

28 (1) Grants the right to distribute goods or provide
29 services under a marketing plan prescribed or suggested in
30 substantial part by the franchisor.

31 (2) Requires payment of a franchise fee to a franchisor or
32 its affiliate.

33 (3) Allows the franchise business to be substantially
34 associated with a trademark, service mark, trade name,
35 logotype, advertisement, or other commercial symbol of or

1 designating the franchisor or its affiliate.

2 b. A master franchise.

3 "Franchise" does not include any business that is operated
4 under a lease or license on the premises of the lessor or
5 licensor as long as such business is incidental to the
6 business conducted by the lessor or licensor on such premises,
7 including, without limitation, leased departments, licensed
8 departments, and concessions and the leased or licensed
9 department operates only under the trademark, trade name,
10 service mark, or other commercial symbol designating the
11 lessor or licensor.

12 "Franchise" also does not include any contract under which
13 a petroleum retailer or petroleum distributor is authorized or
14 permitted to occupy leased marketing premises, which premises
15 are to be employed in connection with the sale, consignment,
16 or distribution of motor fuel under a trademark which is owned
17 or controlled by such refiner, and does not include a person
18 regulated by the federal Petroleum Marketing Practices Act, 15
19 U.S.C. § 2801 et seq. The term "refiner" means any person
20 engaged in the refining of crude oil to produce motor fuel,
21 and includes any affiliate of such person. "Franchise" also
22 does not include any person regulated under chapter 117, 123,
23 322, 322A, 322B, 322C, 322D, 322F, or 522, or the selling or
24 manufacturing of construction equipment.

25 7. "Franchise fee" means a direct or indirect payment to
26 purchase or operate a franchise. Franchise fee does not
27 include any of the following:

28 a. Payment of a reasonable service charge to the issuer of
29 a credit card by an establishment accepting the credit card.

30 b. Payment to a trading stamp company by a person issuing
31 trading stamps in connection with a retail sale.

32 c. An agreement to purchase at a bona fide wholesale price
33 a reasonable quantity of tangible goods for resale.

34 8. "Franchisee" means a person to whom a franchise is
35 granted. Franchisee includes the following:

1 a. A subfranchisor with regard to its relationship with a
2 franchisor.

3 b. A subfranchisee with regard to its relationship with a
4 subfranchisor.

5 9. "Franchisor" means a person who grants a franchise or
6 an affiliate of such a person. Franchisor includes a
7 subfranchisor with regard to its relationship with a
8 franchisee, unless stated otherwise in this chapter.

9 10. "Fraud" and "deceit" are not limited to common law
10 fraud and deceit.

11 11. "Marketing plan" means a plan or system concerning a
12 material aspect of conducting business. Indicia of a
13 marketing plan include any of the following:

14 a. Price specification, special pricing systems, or
15 discount plans.

16 b. Sales or display equipment or merchandising devices.

17 c. Sales techniques.

18 d. Promotional or advertising materials or cooperative
19 advertising.

20 e. Training regarding the promotion, operation, or
21 management of the business.

22 f. Operational, managerial, technical, or financial
23 guidelines or assistance.

24 12. "Master franchise" means an agreement by which a
25 person pays a franchisor for the right to sell or negotiate
26 the sale of franchises.

27 13. "Offer" or "offer to sell" means every attempt to
28 offer or to dispose of, or solicitation of an offer to buy, a
29 franchise or interest in a franchise for value.

30 14. "Order" means a consent, authorization, approval, or
31 prohibition, issued by the administrator in a specific matter.

32 15. "Person" means a person as defined in section 4.1,
33 subsection 13.

34 16. "Publish" means to circulate generally by mail, print
35 media, or electronic media, or otherwise to disseminate

1 generally to the public.

2 17. "Registration application" means an initial franchise
3 application on the uniform franchise registration application
4 as adopted and amended by the north American securities
5 administrators association, incorporated, and any amendment or
6 renewal of the application.

7 18. "Sale" or "sell" means every contract or agreement of
8 sale of, contract to sell or disposition of, a franchise or
9 interest in a franchise for value.

10 19. "Salesperson" means a person employed by or
11 representing a franchisor in effecting or attempting to effect
12 the offer or sale of a franchise.

13 20. "Subfranchise" means an agreement by which a person
14 pays a franchisor for the right to sell or negotiate the sale
15 of franchises.

16 21. "Subfranchisor" means a person who grants a master
17 franchise.

18 22. "Subfranchisee" means a person who is granted a master
19 franchise or a subfranchise from a subfranchisor.

20 Sec. 4. NEW SECTION. 523G.4 SCOPE AND APPLICABILITY.

21 1. This chapter applies to a franchise that is offered or
22 sold in this state.

23 2. A franchise is offered or sold in this state if an
24 offer to sell is made or accepted in this state or an offer to
25 buy is accepted in this state.

26 3. An offer to sell is made in this state if the offer is
27 directed by the offeror into this state from within or from
28 outside this state and is received where it is directed. An
29 offer to sell is accepted in this state if the offeree directs
30 acceptance to the offeror in this state and acceptance is
31 received where it is directed.

32 4. This chapter also applies to a franchised business
33 offered or sold outside this state if it is offered or sold to
34 a resident of this state and is to be operated in this state.

35 5. An offer to sell is not made in this state solely

1 because the offer appears in a newspaper or other publication
2 of general and regular circulation which had more than two-
3 thirds of its circulation outside this state during the past
4 twelve months or solely because the offer appears in a
5 broadcast or transmission originating outside this state.

6 Sec. 5. NEW SECTION. 523G.5 REGISTRATION OF FRANCHISES.

7 It is unlawful for a person to offer or sell a franchise
8 unless the offer is registered under this chapter or is exempt
9 from registration under section 523G.6.

10 Sec. 6. NEW SECTION. 523G.6 EXEMPTIONS FROM
11 REGISTRATION.

12 The following transactions are exempt from the registration
13 requirement of section 523G.5:

14 1. The offer or sale of a franchise if all of the
15 following conditions are satisfied:

16 a. Either the franchisor's most recent audited financial
17 statements show a net worth of at least ten million dollars or
18 the franchisor is at least eighty percent owned by a person
19 who unconditionally guarantees the franchisor's performance,
20 who consents to service of process in this state, and whose
21 most recent audited financial statements show a net worth of
22 at least ten million dollars.

23 b. The franchisor or person owning at least eighty percent
24 of the franchisor had and currently has at least twenty-five
25 franchisees that have conducted substantially the same
26 franchised business to be offered or sold at no fewer than
27 twenty-five locations for the entire five-year period
28 immediately preceding the offer or sale of the franchise.

29 c. The offeree receives the disclosure document at least
30 ten business days prior to the execution by the offeree of any
31 binding agreement or at least ten business days prior to the
32 date agreed upon by the parties for the direct or indirect
33 receipt of a franchise fee by the franchisor from the offeree,
34 whichever occurs first.

35 d. The franchisor annually files a notice of exemption

1 with the administrator. The notice of exemption shall include
2 the disclosure document and the fee prescribed by section
3 523G.20 and shall be filed prior to an offer or sale of a
4 franchise in this state. The exemption expires fifteen months
5 from the date of the most recent audited financial statement
6 filed unless the administrator prescribes a different period
7 by rule or order.

8 2. The offer or sale of a franchise by a franchisee who is
9 not an affiliate of the franchisor, for the franchisee's own
10 account, if the franchisee's entire franchise is sold and the
11 sale is not effected by or through the franchisor. A sale is
12 not effected by or through a franchisor merely because a
13 franchisee signs agreements with terms which do not materially
14 differ from agreements with the existing franchisee or because
15 a franchisor has a right to approve or disapprove the sale or
16 requires payment of a reasonable transfer fee. This exemption
17 applies to the offer or sale of a master franchise if the
18 entire master franchise is sold.

19 3. The offer or sale of a franchise to a person who has
20 been for at least two years, an officer, director, partner, or
21 affiliate of the franchisor, for that person's own account.

22 4. The offer or sale of a franchise to a person for that
23 person's own account if the person meets both of the following
24 requirements:

25 a. Has a net worth of at least one million dollars which,
26 in the case of an individual, includes the property of the
27 person's spouse, but excludes the primary residence, personal
28 vehicles, and personal effects, or had an individual income,
29 or joint income including the person's spouse, in excess of
30 two hundred thousand dollars in each of the two most recent
31 years and has a reasonable expectation of reaching the same
32 income level in the current year.

33 b. Has such knowledge and experience in financial and
34 business matters that the person is capable of evaluating the
35 merits and risks of the franchise.

1 5. The offer or sale to an existing franchisee of an
2 additional franchise that is substantially the same as the
3 franchise that the franchisee has operated for at least two
4 years at the time of the offer or sale.

5 6. The offer or sale of a franchise involving a renewal,
6 extension, modification, or amendment of an existing franchise
7 agreement if there is no interruption in the operation of the
8 franchised business and there is no material change in the
9 franchise agreement. For purposes of this subsection, an
10 interruption in the operation of the franchised business
11 solely for the purpose of renovating or relocating that
12 business is not a material change in the franchise
13 relationship or an interruption in the operation of the
14 franchise business.

15 7. The offer or sale of a franchise if the franchisee
16 agrees to pay, directly or indirectly, a franchise fee
17 computed on an annual basis of two hundred fifty dollars or
18 less.

19 8. The offer or sale of a franchise by an executor,
20 administrator, sheriff, marshal, receiver, trustee, trustee in
21 bankruptcy, guardian, or conservator on behalf of a person
22 other than the franchisor or the estate of the franchisor.

23 9. The offer of a franchise by the franchisor during the
24 period a registration has expired and is pending renewal under
25 section 523G.9 has been filed, or an application to amend a
26 registration under section 523G.9, if the offeree receives the
27 newly registered document at least ten business days before
28 the offeree's execution of any binding agreement or at least
29 ten business days prior to the direct or indirect receipt of a
30 franchise fee by the franchisor from the offering, whichever
31 occurs first. Changes from the documents last registered must
32 be marked to show changes.

33 10. The offer or sale of rights to a person to sell goods
34 or services within or adjacent to a retail establishment as a
35 department or division, if the person is not required to

1 purchase goods or services from the operator of the retail
2 establishment.

3 11. Any other transactions which the administrator by rule
4 or order exempts as not being within the purposes of this
5 chapter and the registration of which the administrator finds
6 is not necessary or appropriate in the public interest or for
7 the protection of investors.

8 Sec. 7. NEW SECTION. 523G.7 OUT-OF-STATE SALES
9 EXEMPTION.

10 An offer or sale of a franchise is exempted from sections
11 523G.5, 523G.8, 523G.9, and 523G.13, if all of the following
12 apply:

13 1. The franchise is offered or sold to a nonresident of
14 this state.

15 2. The franchise business will not be operated wholly or
16 partly in this state.

17 3. The offer or sale does not violate federal law or the
18 law of the foreign jurisdiction.

19 4. The offeree is not actually present in this state
20 during any offer or sale.

21 Sec. 8. NEW SECTION. 523G.8 DELIVERY REQUIREMENTS.

22 1. It is unlawful to sell a franchise in this state
23 without first providing a copy of a disclosure document
24 reflecting all material changes together with a copy of all
25 proposed agreements relating to the sale of the franchise,
26 unless otherwise provided in subsection 2, to the prospective
27 franchisee, at the earlier of the following:

28 a. The prospective franchisee's first personal meeting
29 with the franchisor which is held for the purpose of
30 discussing the sale or possible sale of a franchise.

31 b. Ten business days prior to the execution of an
32 agreement or the date agreed upon by the parties for the
33 payment of any consideration relating to the franchise
34 relationship.

35 2. The delivery requirements in subsection 1 do not apply

1 to the offer or sale which is exempt under section 523G.6,
2 subsection 2, 3, 6, or 8.

3 Sec. 9. NEW SECTION. 523G.9 GENERAL REGISTRATION
4 PROVISIONS.

5 1. A registration application must include the disclosure
6 document, the filing fee, and the consent to service of
7 process. The administrator may require the filing of audited
8 financial statements examined and reported upon by an
9 independent certified public accountant and prepared in
10 accordance with generally accepted accounting principles, and
11 of additional documents or disclosures.

12 2. If the franchisor fails to demonstrate to the
13 administrator the franchisor's financial ability to fulfill
14 its initial obligations to franchisees, the administrator may
15 require an escrow of funds paid by the franchisee or
16 subfranchisor to the franchisor until the franchisor performs
17 its initial obligations and the franchisee has commenced
18 operations. The administrator may allow alternatives to
19 escrow.

20 3. a. Except as provided in paragraph "b", if no order
21 under section 523G.15 is in effect, a franchise registration
22 application is effective on the thirtieth business day after
23 filing of the application or the last amendment to the
24 application, or at an earlier time ordered by the
25 administrator, unless the applicant requests postponement of
26 effectiveness of the application or the administrator has made
27 a good faith effort to communicate why the application does
28 not meet the requirements of this chapter.

29 b. If the administrator requires the submission of
30 additional information under this section or section 523G.11,
31 523G.12, 523G.13, or 523G.17 before the franchise registration
32 application becomes effective under paragraph "a", and if no
33 order under section 523G.15 is in effect, the application
34 becomes effective on the fifteenth business day after the
35 additional information is filed with the administrator, or at

1 such earlier time as the administrator determines, unless the
2 applicant requests postponement of effectiveness of the
3 application.

4 4. Registration of a franchise under this chapter expires
5 on July 1 following the application date, unless the
6 administrator prescribes a different period by rule or order.
7 A franchise registration may be renewed for periods of one
8 year or for shorter periods if designated by the
9 administrator, by filing an application to renew thirty days
10 prior to the expiration of the registration.

11 5. An applicant or registrant may withdraw a franchise
12 registration application or franchise registration if it files
13 a written request for withdrawal with the administrator.
14 Withdrawal is effective fifteen business days from the day on
15 which the withdrawal request is filed with the administrator.

16 6. The administrator may accept the examination of a
17 registration application by another state administrator as
18 complying with this chapter.

19 Sec. 10. NEW SECTION. 523G.10 NEGOTIATED CHANGES
20 PERMITTED.

21 This chapter does not preclude negotiation of the terms and
22 conditions of a franchise before it is sold. After the
23 initial offer, a franchisor need not amend its disclosure
24 document to negotiate with an offeree, or make supplementary
25 disclosure to that offeree, by reason of a change negotiated
26 in the terms and conditions of a franchise.

27 Sec. 11. NEW SECTION. 523G.11 CHANGE IN CONDITION.

28 The franchisor shall promptly amend its franchise
29 registration application to reflect every material change in
30 the information filed with the administrator.

31 Sec. 12. NEW SECTION. 523G.12 ADVERTISING.

32 A person shall not publish in this state an advertisement
33 offering to sell a franchise required to be registered under
34 this chapter unless the advertisement and required filing fee
35 have been filed with the administrator at least five business

1 days prior to its first publication.

2 Sec. 13. NEW SECTION. 523G.13 BOOKS AND RECORDS.

3 A franchisor offering or selling a franchise in this state
4 shall maintain a complete and accurate set of books and
5 records of the offers and sales of franchises. The books and
6 records must include disclosure documents, advertising
7 correspondence with franchisees and prospective franchisees,
8 past and present operations manuals, training records,
9 training manuals, copies of executed agreements, and any due
10 diligence records concerning franchisees. These books and
11 records must be maintained for five years at an office readily
12 accessible to the administrator. The books and records may be
13 kept on photographic or electronic media but must be printed
14 if the administrator requests. This section does not limit
15 the investigative authority of the administrator.

16 Sec. 14. NEW SECTION. 523G.14 FRAUDULENT, DECEPTIVE, AND
17 PROHIBITED PRACTICES.

18 In connection with the offer or sale of a franchise it is
19 unlawful for a person, directly or indirectly, to do any of
20 the following:

- 21 1. Employ a device, scheme, or artifice to defraud.
- 22 2. Make an untrue statement of material fact or omit to
23 state a material fact necessary in order to make the statement
24 made, in the light of the circumstances under which the
25 statement is made, not misleading.
- 26 3. Engage in an act, practice, or course of business which
27 operates or would operate as a fraud or deceit on a person.
- 28 4. Represent to an offeree of a franchise that the filing
29 of a franchise registration application or the registration of
30 a franchise constitutes a finding by the administrator that a
31 document filed under this chapter is true, complete, and not
32 misleading, or that the administrator has passed upon the
33 merits of the franchise.
- 34 5. Misrepresent that a franchise is registered or exempted
35 from registration under this chapter.

1 6. Violate an order of the administrator after the person
2 receives notice that the order was issued.

3 7. Fail to notify the administrator of a material change
4 in the information required in a document required to be filed
5 by this chapter or by a rule adopted or order issued under
6 this chapter.

7 8. Omit to state a material fact or make or cause to be
8 made an untrue statement of a material fact in any
9 application, notice, or report filed with the administrator
10 under this chapter.

11 Sec. 15. NEW SECTION. 523G.15 ENFORCEMENT.

12 1. The administrator may by order deny a franchise
13 registration application or suspend or revoke the
14 effectiveness of a registration of a franchise if any of the
15 following apply:

16 a. The franchisor failed to comply with this chapter or a
17 rule, order, or condition of the administrator adopted or
18 issued under this chapter.

19 b. The registration application is incomplete or
20 inaccurate in any material respect.

21 c. The registration application includes a false or
22 misleading statement of a material fact or omits to state a
23 material fact required to be stated or necessary to make a
24 required statement not misleading.

25 d. The sale of the franchise would constitute a
26 misrepresentation, deceit, or fraud upon an offeree.

27 e. A person is engaging in, has engaged in, or is about to
28 engage in a false, fraudulent, or deceptive practice or a
29 device, scheme, or artifice to defraud in connection with the
30 offer or sale of the franchise.

31 f. A partner, officer, or director of the franchisor or a
32 person who occupies a similar status or performs similar
33 functions, or a person who directly or indirectly controls or
34 is controlled by the franchisor is or has been found guilty or
35 liable in a proceeding required to be described in the

1 registration application and the involvement of such person
2 creates an unreasonable risk to franchisees or offerees.

3 g. An advertisement prohibited by this chapter has been
4 used in connection with the offer or sale of a franchise.

5 h. The franchisor's enterprise or method of business
6 includes activities that are illegal where performed.

7 i. The financial condition of the franchisor impairs or
8 would impair the ability of the franchisor to fulfill
9 obligations under the franchise agreement.

10 2. The administrator may by order deny, suspend, or revoke
11 an exemption under section 523G.6 on any of the grounds
12 described in subsection 1.

13 3. If it appears to the administrator that a person has
14 violated or is about to violate this chapter, or a rule
15 adopted or order issued under this chapter, the administrator
16 may do any of the following:

17 a. Issue an order directing the person to cease and desist
18 from continuing the act or practice.

19 b. Forward a request to the attorney general to bring an
20 action in a court of competent jurisdiction to enjoin the act
21 or practice, and to enforce compliance with this chapter or a
22 rule adopted or an order issued pursuant to this chapter.
23 Upon a proper showing, the court may grant a permanent or
24 preliminary injunction, restraining order, or writ of mandate.
25 The court may grant appropriate ancillary relief, including
26 appointment of a receiver or conservator for the defendant or
27 the defendant's assets. The court may exercise all powers
28 necessary or appropriate for these purposes. The court shall
29 not require the administrator to post a bond.

30 c. Forward a request to the attorney general to bring an
31 action on behalf of the state in any court of competent
32 jurisdiction against any officer, director, trustee, manager,
33 or agent of a franchisor or against a franchisor to recover a
34 penalty in a sum not to exceed fifty thousand dollars for each
35 violation of this chapter or a rule adopted or an order issued

1 pursuant to this chapter. The action must be brought within
2 four years after the commission of the act or practice on
3 which it is based.

4 4. The administrator may impose an administrative
5 assessment against a person named in an order issued under
6 subsection 1 or 3. The amount of the administrative
7 assessment shall not exceed five thousand dollars for each act
8 or omission that constitutes the basis for issuing the order.
9 The administrative assessment may only be imposed if either of
10 the following apply:

11 a. Following an opportunity for a hearing under section
12 523G.16, if the notice delivered to all named persons includes
13 notice of the administrator's authority to impose an
14 administrative assessment under this section.

15 b. As part of an order issued under subsection 1 or 3, if
16 the order is stipulated to by each person subject to the
17 administrative assessment.

18 5. If an administrator prevails in an action under this
19 chapter, the court shall award the administrator costs,
20 including expenses of taking depositions, expert witness fees,
21 and reasonable attorney fees, incurred incident to the action.

22 6. In connection with an action or proceeding under this
23 section, the administrator may exercise any of the powers
24 specified in section 523G.17.

25 7. The administrator, upon a finding that it is in the
26 public interest, may issue a temporary order summarily under
27 this section in accordance with section 523G.15.

28 Sec. 16. NEW SECTION. 523G.16 HEARINGS AND JUDICIAL
29 REVIEW.

30 1. Except as provided by subsection 3, the administrator
31 shall not enter an order under section 523G.15 without
32 appropriate prior notice to all named persons, opportunity for
33 hearing, and written findings of fact and conclusions of law.

34 2. Notice required by this chapter is sufficient if
35 delivered personally, or if sent by certified or restricted

1 certified mail and addressed to the person, or the person's
2 attorney of record at the person's or attorney's last known
3 address appearing in the records of the administrator. Notice
4 served in accordance with section 523G.19 is also sufficient.

5 3. A person named in an order may apply to the
6 administrator for a hearing in respect to any matter
7 determined by the order within thirty days after the
8 administrator has summarily issued an order. A hearing shall
9 be held within thirty days after the administrator receives a
10 written request for hearing unless extended by mutual consent
11 of the parties. During the pendency of any hearing requested
12 under this subsection, the order issued summarily shall remain
13 in effect unless vacated or modified by the administrator.

14 4. After a hearing, the administrator may issue a final
15 order. The final order may affirm, vacate, or modify an order
16 issued summarily in effect during the pendency of the hearing,
17 or may include such other sanctions as are provided for under
18 section 523G.15. An order issued summarily against a person
19 becomes a final order if the person fails to request a hearing
20 under subsection 3 or if the person fails to appear after
21 requesting a hearing.

22 5. Hearings and rehearings shall be open to the public.

23 6. Orders and other official acts of the administrator are
24 subject to judicial review pursuant to section 17A.19.

25 7. Orders originally entered without a hearing under
26 section 523G.15 may be reviewed judicially only if the person
27 seeking review has requested a hearing within the time
28 provided under subsection 3. A petition for judicial review
29 under this subsection may be filed only after service of the
30 order finally disposing of the person's request for hearing
31 under subsection 3.

32 Sec. 17. NEW SECTION. 523G.17 POWERS OF ADMINISTRATOR.

33 1. The administrator may make public or private
34 investigations inside or outside this state to determine
35 whether a person has violated, is violating, or is about to

1 violate this chapter or a rule adopted or order issued under
2 this chapter. The administrator may conduct investigations to
3 aid in the enforcement of this chapter or in prescribing rules
4 under this chapter. The administrator may publish information
5 concerning a violation of this chapter or of a rule adopted or
6 order issued under this chapter.

7 2. The administrator may keep confidential any information
8 obtained in the course of an investigation.

9 3. The administrator may investigate suspected criminal
10 violations of this chapter and may refer evidence to the
11 attorney general or a county attorney. Upon request of the
12 attorney general or a county attorney, the administrator and
13 the administrator's attorneys, deputies, or assistants may
14 assist in presenting the law or facts at trial.

15 4. For the purpose of an investigation or proceeding under
16 this chapter, the administrator may subpoena witnesses, compel
17 their attendance, examine them under oath, or require the
18 production of any documents, or tangible items, which the
19 administrator deems relevant or material to this investigation
20 or proceeding. The subpoena must state the date, place, and
21 time at which the person is required to appear or produce
22 documentary material.

23 5. An administrator's subpoena shall be served in
24 accordance with the service of process requirements of civil
25 litigation.

26 6. Upon application of the administrator, a court may
27 compel compliance with a subpoena through a contempt
28 proceeding.

29 Sec. 18. NEW SECTION. 523G.18 RULES, ORDERS, FORMS, AND
30 INTERPRETATIVE OPINIONS.

31 1. The administrator may adopt or issue rules, forms, and
32 orders necessary or appropriate to administer this chapter and
33 may define terms, whether or not used in this chapter. The
34 administrator may classify franchises, persons, and matters
35 within the administrator's jurisdiction and prescribe

1 different rules for different classes. This chapter imposes
2 no liability for an act or omission done in good faith in
3 conformity with an order or rule of the administrator.

4 2. A rule, order, or form shall not be made unless the
5 administrator finds that the action is necessary or
6 appropriate in the public interest or for the protection of
7 franchises, and consistent with the purposes fairly intended
8 by the policy and provisions of this chapter.

9 3. The administrator may honor requests from interested
10 persons for interpretative opinions, or may issue
11 determinations that the administrator will not institute
12 enforcement proceedings against a person engaging in certain
13 specified activities, if the determination is consistent with
14 purposes fairly intended by the policy and provisions of this
15 chapter.

16 Sec. 19. NEW SECTION. 523G.19 SERVICE OF PROCESS.

17 1. A person who offers for sale or sells a franchise
18 subject to the registration requirement of this chapter shall
19 file with the administrator an irrevocable consent to service
20 of process appointing the administrator as the person's agent
21 to receive service of process in a civil action or proceeding
22 arising under this chapter.

23 2. A person who offers for sale or sells a franchise in
24 this state without filing a consent to service of process is
25 deemed to appoint the administrator as the person's agent to
26 receive service of process in a civil action or proceeding
27 arising under this chapter.

28 3. A person may effect service of process under this
29 section by service on the administrator. The time to respond
30 begins to run when the person sends notice of the service and
31 a copy of the process by certified mail to the defendant or
32 respondent or attorney of record at its last address on file
33 with the administrator. If an address is not on file with the
34 administrator, the time to respond begins to run when the
35 process is served on the administrator. The plaintiff shall

1 file an affidavit of compliance with the court or tribunal
2 hearing the matter.

3 Sec. 20. NEW SECTION. 523G.20 FEES.

4 1. The administrator shall charge and collect the fees
5 fixed by this section. The administrator shall not refund any
6 fees.

7 2. The fee for filing an application for initial
8 registration of a franchise under section 523G.9 is five
9 hundred dollars.

10 3. The fee for filing a notice of exemption under section
11 523G.6, subsection 1, is three hundred dollars.

12 4. The fee for filing an application for renewal of a
13 registration under section 523G.9 is two hundred fifty
14 dollars.

15 5. The fee for filing a request for an interpretative
16 opinion under section 523G.18, subsection 3, is three hundred
17 dollars.

18 6. The fee for filing advertisements is ten dollars per
19 item.

20 Sec. 21. NEW SECTION. 523G.21 COOPERATION WITH OTHER
21 AGENCIES OR ORGANIZATIONS.

22 To encourage uniform application and interpretation of this
23 chapter and effective franchise regulation and enforcement,
24 the administrator may cooperate with federal, state, or
25 foreign agencies or administrators, and law enforcement
26 agencies, including engaging in any of the following acts:

27 1. Conducting joint examinations and investigations.

28 2. Holding joint administrative hearings.

29 3. Filing and prosecuting joint civil or administrative
30 proceedings.

31 4. Sharing and exchanging information and documents
32 subject to the restrictions of this state's law.

33 5. Sharing and exchanging personnel.

34 6. Formulating rules, regulations, statements of policy,
35 guidelines, proposed statutory changes, and interpretative

1 opinions and releases.

2 7. Issuing and enforcing subpoenas at the request of the
3 federal trade commission or an agency administering franchise
4 statutes in another jurisdiction if the information sought
5 would also be subject to lawful subpoena for conduct occurring
6 in this state.

7 Sec. 22. NEW SECTION. 523G.22 FILING OF DOCUMENTS.

8 A document is filed when the document is received by the
9 administrator.

10 Sec. 23. NEW SECTION. 523G.23 CONSTRUCTION.

11 This chapter shall be applied and construed with a view to
12 uniformity among states enacting it. This chapter shall be
13 liberally construed to effectuate its purposes.

14 EXPLANATION

15 This bill incorporates certain provisions contained in the
16 north American securities association's model Act. The bill
17 establishes a new chapter 523G and requires that a person
18 offering to sell a franchise in this state must register with
19 the insurance commissioner and provide certain documentation
20 concerning the franchised business.

21 The bill prohibits certain fraudulent and deceptive acts
22 and empowers the administrator with certain enforcement
23 authority which includes the authority to issue cease and
24 desist orders and impose administrative assessments against
25 persons violating this chapter.

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