

523H.1 Definitions.

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

1. *"Affiliate"* means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

2. *"Business day"* means a day other than a Saturday, Sunday, or federal holiday.

3. a. *"Franchise"* means either of the following:

(1) An oral or written agreement, either express or implied, which provides all of the following:

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

(b) Requires payment of a franchise fee to a franchisor or its affiliate.

(c) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(2) A master franchise.

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

c. *"Franchise"* also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term *"refiner"* means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. *"Franchise"* also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

4. *"Franchise fee"* means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

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

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

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

d. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

- e. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.
 - f. Payment of rent which reflects payment for the economic value of leased real or personal property.
 - g. The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.
5. "*Franchisee*" means a person to whom a franchise is granted. Franchisee includes the following:
- a. A subfranchisor with regard to its relationship with a franchisor.
 - b. A subfranchisee with regard to its relationship with a subfranchisor.
6. "*Franchisor*" means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this chapter.
7. "*Marketing plan*" means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:
- a. Price specification, special pricing systems, or discount plans.
 - b. Sales or display equipment or merchandising devices.
 - c. Sales techniques.
 - d. Promotional or advertising materials or cooperative advertising.
 - e. Training regarding the promotion, operation, or management of the business.
 - f. Operational, managerial, technical, or financial guidelines or assistance.
8. "*Master franchise*" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.
9. "*Offer*" or "*offer to sell*" means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.
10. "*Person*" means a person as defined in section 4.1, subsection 20.
11. "*Sale*" or "*sell*" means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.
12. "*Subfranchise*" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.
13. "*Subfranchisee*" means a person who is granted a franchise from a subfranchisor.
14. "*Subfranchisor*" means a person who is granted a master franchise.