

CHAPTER 54 , Laws of 1981

AN ACT to repeal 553.28 (2) (b); to renumber and amend 553.28 (2) (a) and 553.56 (1), (3) and (4); to amend 553.21 (1), 553.23, 553.25, 553.27 (10), 553.28 (1) (intro.) and (d), 553.29 (1), 553.30 (1), 553.31 (2), 553.52 (1), 553.53, 553.54 (2) (a), 553.55 (3), 553.58 (2), 553.59 (4), 553.73, 553.74 (1) and 553.75 (3); to repeal and recreate 553.22 (3), 553.24 and 553.27 (4); and to create 553.56 (1) and (3) and 553.60 of the statutes, relating to changes in statutes regulating franchises and the offer or sale of franchises and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 553.21 (1) of the statutes is amended to read:

553.21 (1) No person may sell or offer in this state any franchise ~~in this state~~ unless the offer of the franchise has been registered under this chapter or exempted under s. 553.22, 553.23 or 553.25.

SECTION 2. 553.22 (3) of the statutes is repealed and recreated to read:

553.22 (3) Discloses in writing the information prescribed by rule of the commissioner to each prospective franchisee at least 10 business days prior to the execution by the prospective franchisee of any binding franchise or other agreement or at least 10 business days prior to the receipt of any consideration, whichever first occurs; and

SECTION 3. 553.23 of the statutes is amended to read:

553.23 Private franchisee and subfranchisor sales exempted. The offer or sale of a franchise by a franchisee for his the franchisee's own account or the offer or sale of the entire area franchise owned by a subfranchisor for his the subfranchisor's own account is exempted from s. 553.21 if the sale is not effected by or through a franchisor. ~~Disclosure as required by s. 553.22 (3) shall be made in all such transfers as a condition of this exemption except where a bona fide attempt to obtain information necessary for such disclosure has been made by the seller and the source from which the information is available refuses to produce the information.~~ A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

SECTION 4. 553.24 of the statutes is repealed and recreated to read:

553.24 Exemption proceedings. (1) The commissioner may by order deny or revoke any exemption under s. 553.22, 553.23 or 553.25 with respect to the offer or sale of a franchise for any of the grounds specified in s. 553.28 (1).

(2) If the public interest and the protection of investors so require, the commissioner may, by order, summarily deny or revoke any exemption under s. 553.22, 553.23 or 553.25 with respect to the offer or sale of a franchise.

(3) No order under this section may operate retroactively.

(4) A person who offers or sells a franchise pursuant to an exemption under s. 553.22, 553.23 or 553.25 after the exemption is denied or revoked by an order of the commissioner does not violate s. 553.21 if:

(a) The person was not given notice of the order; and

(b) The person sustains the burden of proof to establish that he or she was not given notice and did not know and, in the exercise of reasonable care, could not have known of the order.

(5) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

SECTION 5. 553.25 of the statutes is amended to read:

~~553.25 Exemption by commissioner. There shall be exempted from s. 553.21 any other transaction which the~~ The commissioner may by rule exempts as not being comprehended within the purposes of this chapter and the or order exempt from registration of which he finds under s. 553.21 any offer or sale of a franchise if registration is not necessary or appropriate in the public interest or for the protection of investors.

SECTION 10. 553.27 (4) of the statutes is repealed and recreated to read:

553.27 (4) No franchise subject to registration under this chapter may be sold in this state unless a copy of the offering circular in the form prescribed by rule of the commissioner is provided to the prospective franchisee at least 10 business days prior to the execution by the prospective franchisee of any binding franchise or other agreement or at least 10 business days prior to the receipt of any consideration, whichever first occurs.

SECTION 11. 553.27 (10) of the statutes is amended to read:

553.27 (10) Every applicant for registration of an offer to sell franchises under this chapter shall file with the commissioner, in such form as ~~he~~ the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or ~~his~~ the commissioner's successor in office to be ~~his~~ the applicant's attorney to receive service of any lawful process in any civil action against ~~him~~ the applicant or his the applicant's successor, executor or administrator, which arises under this chapter or any rule or order ~~hereunder~~ under this chapter 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 action instituted by ~~him~~ 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 ~~his or her~~ last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection 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.

SECTION 12. 553.28 (1) (intro.) and (d) of the statutes are amended to read:

553.28 (1) (intro.) The commissioner may ~~summarily issue a stop an~~ order denying the effectiveness of to, or postponing, suspending or revoking effectiveness of, any registration statement or revoking any exemption in accordance with s. 553.24 if he the commissioner finds any of the following:

(d) That any person identified in an application for registration has been convicted of an offense specified under s. 553.26 (5), or is subject to an order, or has had a civil judgment entered against him or her as described in s. 553.26 (5), and the involvement of ~~such~~ the person in the same or management of the franchise creates an unreasonable risk to prospective franchisees.

SECTION 13. 553.28 (2) (a) of the statutes is renumbered 553.28 (2) and amended to read:

553.28 (2) ~~The~~ If the public interest and the protection of investors so require, the commissioner may issue a summary order denying, postponing, suspending or revoking by order summarily deny, postpone, suspend or revoke the effectiveness of the registration pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify each person specified in par. (b) that it has been entered and the reasons therefor and that within 15 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 par. (b), may modify or vacate the order or extend it until final determination.~~

SECTION 14. 553.28 (2) (b) of the statutes is repealed.

SECTION 15. 553.29 (1) of the statutes is amended to read:

553.29 (1) If no stop order under s. 553.24, 553.28 or 553.60 is in effect, registration of the offer of franchises becomes effective at 12 ~~m.~~ midnight of the 15th business day after the filing of the application for registration or the last amendment thereto, or at such earlier time as the commissioner determines.

SECTION 16. 553.30 (1) of the statutes is amended to read:

553.30 (1) The registration statement 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 15 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 s. 553.28 under this chapter is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the commissioner determines.~~

SECTION 17. 553.31 (2) of the statutes is amended to read:

553.31 (2) An amendment to an application filed after the effective date of the registration of the sale of franchises, if ~~such the~~ such the amendment is approved by the commissioner, ~~shall become is~~ is effective on ~~such the~~ such the date as the commissioner determines, having due regard for the public interest ~~and or~~ or the protection of franchisees.

SECTION 18. 553.52 (1) of the statutes is amended to read:

553.52 (1) Any person who wilfully violates any provision of this chapter except s. 553.41 (1), or any rule under this chapter, or any order of which ~~he the person~~ he the person has notice, or who violates s. 553.41 (1) knowing or having reasonable cause to believe either that the statement made was false or misleading in any material respect or that the failure to report a material event under s. 553.31 (1) was false or misleading in any material respect, may be fined not more than \$5,000 or imprisoned not more than 5 years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of ~~such those~~ such those offenses shall not bar prosecution or conviction for any other offense. ~~No indictment or information may be returned under this chapter more than 6 years after the alleged violation.~~

SECTION 19. 553.53 of the statutes is amended to read:

553.53 Advertising. (1) No person may publish, distribute or use in this state any advertisement offering to sell or to purchase a franchise unless 2 true copies of the advertisement have been filed in the office of the commissioner at least 5 days prior to the first publication, distribution or use thereof or such shorter period as the commissioner by rule or order may allow, or unless the advertisement has been exempted from this section by rule of the commissioner.

(2) The commissioner may by rule or order prohibit the use of advertising deemed false, fraudulent, misleading or deceptive.

SECTION 20. 553.54 (2) (a) of the statutes is amended to read:

553.54 (2) (a) The court may, prior to the entry of final judgment, ~~make issue~~ make issue such orders or judgments as ~~may be are~~ are necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof ~~thereof of the~~ thereof of the pecuniary loss is submitted to the satisfaction of the court. ~~Such orders~~ Orders or judgments ~~under this paragraph~~ shall not provide restoration of any pecuniary loss to persons for whom ~~such~~ recovery was is sought where the defendant in the action ~~can establish~~

establishes that such the persons were in possession of knowledge such as which would defeat recovery by them in a private civil action under s. 553.51 (1) or (2). Persons liable for pecuniary losses under this paragraph are the same as provided under s. 553.51 (3).

SECTION 21. 553.55 (3) of the statutes is amended to read:

553.55 (3) 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 ~~him~~ the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no.~~ No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he the individual is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 22. 553.56 (1) of the statutes is renumbered 553.56 (2) and amended to read:

~~553.56 (2) Within 30 days after any order issued under s. 553.24 or 553.28 has become effective without a hearing, any the commissioner has issued an order summarily, an interested party may apply to the commissioner for a hearing in respect to any matters determined by the order, and a hearing shall be held within 15 days after the application is filed. After the hearing the commissioner may affirm, modify or vacate the order as he deems appropriate. Within 10 days after an interested party files a written request with the commissioner for a hearing the matter shall be noticed for a hearing, and a hearing shall be held within 60 days after notice unless extended by the commissioner for good cause. During the pendency of any hearing requested under this subsection, the order issued summarily shall remain in effect unless vacated or modified by the commissioner.~~

SECTION 23. 553.56 (1) of the statutes is created to read:

553.56 (1) Except as provided by sub. (2), no order may be entered by the commissioner under s. 553.24, 553.28 or 553.53 (2) without appropriate prior notice to all interested parties, opportunity for hearing and written findings of fact and conclusions of law.

SECTION 24. 553.56 (3) and (4) of the statutes are renumbered 553.56 (4) and (5) and amended to read:

553.56 (4) Hearings and rehearings shall be public ~~unless the commissioner grants a request joined in by all parties that the hearing be conducted privately.~~

(5) Orders and other official acts of the commissioner ~~shall be~~ are subject to judicial review under ch. 227 but orders originally entered without a hearing under s. 553.24 ~~or~~, 553.28 or 553.60 may be reviewed only if the party seeking review has requested a hearing within the time provided by sub. ~~(1)~~ (2).

SECTION 25. 553.56 (3) of the statutes is created to read:

553.56 (3) After a hearing, the commissioner may issue a final order as appropriate. The final order may affirm, vacate or modify an order issued summarily in effect during the pendency of the hearing as appropriate, or may include such other sanctions as are provided for under s. 553.24 or 553.28. An order issued summarily against a party becomes a final order if the party fails to request a hearing under sub. (2) or if the party defaults after requesting a hearing.

SECTION 26. 553.58 (2) of the statutes is amended to read:

553.58 (2) No rule, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest ~~and or~~ for the protection of investors. ~~In prescribing~~ adopting rules and forms the commissioner may cooperate with official administrators of other states.

SECTION 27. 553.59 (4) of the statutes is amended to read:

553.59 (4) An offer to sell or to purchase is not made in this state when the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

SECTION 28. 553.60 of the statutes is created to read:

553.60 Miscellaneous powers of the commissioner. The commissioner may by order summarily prohibit offers or sales of a franchise subject to s. 553.21 (1) which are being or have been made in this state, unless the offer or sale of the franchise is registered or exempted from registration under this chapter.

SECTION 29. 553.73 of the statutes is amended to read:

553.73 Service of process. 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~~ under this chapter, whether or not ~~he~~ the person has filed a consent to service of process under s. 553.27 (10), and personal jurisdiction over ~~him~~ the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to ~~his~~ the person's appointment of the commissioner or ~~his~~ the commissioner's successor in office to be ~~his~~ the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against ~~him~~ the person or ~~his~~ the person's successor, executor or administrator which grows out of that conduct and which is brought under this law or any rule or order ~~hereunder~~ under this chapter, with the same force and validity as if served on ~~him~~ 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 unless the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by ~~him~~ 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 his or her 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, or within such further time as the court allows.

SECTION 30. 553.74 (1) of the statutes is amended to read:

553.74 (1) All applications, reports and other papers and documents filed with the commissioner under this chapter shall be open to public inspection in accordance with rules ~~prescribed~~ adopted by the commissioner. The commissioner may publish any information filed with ~~him~~ or obtained by ~~him~~ 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 ~~his~~ 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 ~~his~~ the commissioner's assistants, clerks or deputies.

SECTION 31. 553.75 (3) of the statutes is amended to read:

553.75 (3) The information contained in or filed with any registration statement, application or report shall be made available to the public in accordance with rules ~~prescribed~~ adopted by the commissioner.

SECTION 32. **Change in terminology.** (1) Wherever the term "he" or "him" appears in the following sections of the statutes, the term "the commissioner" is substituted: 553.27 (2) and (6), 553.28 (1) (e) and (3) and 553.55 (1) and (2).

(2) Wherever the term "he" appears in the following section of the statutes, the term "the defendant" is substituted: 553.51 (1) and (2).

(3) Wherever the term "he" appears in the following section of the statutes, the term "he or she" is substituted: 553.21 (2).

(4) Wherever the term "his" appears in the following sections of the statutes, the term "the commissioner's" is substituted: 553.58 (1), 553.71 (2), 553.74 (2) and 553.75 (4).

(5) Wherever the term "he" appears in the following section of the statutes, the term "the person" is substituted: 553.41 (2).

SECTION 33. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
553.41 (4)	553.22, 553.23 or 553.27	553.22 or 553.27

SECTION 34. Applicability. Section 553.52 (1) of the 1979 statutes applies to any violation which occurred prior to the date after which is 6 years prior to the day this act is published. Section 939.74 of the statutes applies to any violation which occurs after that date.

SECTION 35. Effective dates. (1) Except as provided by subsection (2), this act takes effect on January 1, 1982, or on the day after publication, whichever is later.

(2) The treatment of section 553.52 (1) of the statutes by this act takes effect on the day after publication.
