CHAPTER 553

WISCONSIN FRANCHISE INVESTMENT LAW

SUBCHAPTER I
TITLE AND DEFINITIONS
553.01 Short title.
553.03 Definitions.
SUBCHAPTER II
REGISTRATION OF FRANCHISES
553.21 Registration requirement.
553.22 Excluded franchises.
553.23 Private franchisee and subfranchisor sales exempted.
553.235 Experienced franchisee exempt transactions.
553.24 Exemption proceedings.
553.25 Exemption by division.
553.26 Registration by notification.
553.27 General registration provisions; offering circular; consent to service of process.
553.28 Denial, suspension or revocation of registrations.
553.31 Amendment to registration statement.
SUBCHAPTER III
FRAUDULENT AND PROHIBITED PRACTICES
553.41 Fraudulent and prohibited practices.
SUBCHAPTER IV
ENFORCEMENT AND GENERAL PROVISIONS
553.51 Civil liability; sale in violation.
553.52 Criminal penalties.
553.54 Injunctions.
553.55 Investigations and subpoenas.
553.56 Hearings and judicial review.
553.57 Enforcement of criminal penalties.
553.58 Rules, forms and orders.
553.59 Scope of chapter.
553.60 Miscellaneous powers.
553.605 Administrative assessments; investor education.
SUBCHAPTER V
ADMINISTRATION
553.71 Administration.
553.72 Fees and expenses.
553.73 Service of process.
553.74 Open records; publication.
553.75 Administrative files and opinions.
553.76 Waivers of compliance void.
553.78 Preemption.

SUBCHAPTER I

TITLE AND DEFINITIONS

553.01 Short title. This chapter shall be known and may be cited as the "Wisconsin Franchise Investment Law".

History: 1971 c. 241.

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

The Wisconsin franchise investment law. Mett, 1972 WBB No. 5.

Avoiding the Accidental Franchise. Modell & Fittante. Wis. Law. May 2003.

553.03 Definitions. In this chapter:

(2) "Area franchise" means any contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

(3) "Division" means the division of securities.

(4) (a) "Franchise" means a contract or agreement, either express or implied, whether oral or written, between 2 or more persons by which:

1. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and

2. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

3. The franchisee is required to pay, directly or indirectly, a franchise fee.

(b) Unless specifically stated otherwise, "franchise" includes area franchise.

(5) "Franchisee" means a person to whom a franchise is granted.

(5m) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any such payment for goods and services. The following shall not be considered the payment of a "franchise fee":

(a) The purchase or agreement to purchase goods at a bona fide wholesale price. The division may issue rules defining wholesale transactions exempt under this paragraph.

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card.

(c) Amounts paid in connection with trading stamp promotions permitted under s. 100.15 by a person issuing trading stamps in connection with the retail sale of merchandise or service.

(d) Any other consideration which the division by rule excludes from "franchise fee".

(6) "Franchisor" means a person who grants a franchise.

(8) "Fraud" and "deceit" are not limited to common law fraud or deceit.

(8g) "Notification" means notification under s. 553.26.

(8r) "Offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value. This term does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(9) "Order" means every direction or determination of the division designated an order and made in writing by the division, except a rule as defined under s. 227.01 (13).

(11) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value. This term does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(12) "Subfranchisor" means a person to whom an area franchise is granted.

History: 1971 c. 241; 1983 a. 189, 538; 1985 a. 182 s. 57; 1987 a. 381; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 31.01, Wis. adm. code.

Service stations leased to their operators under agreements under which the rent was based on the amount of gasoline sold were not franchises subject to the Wisconsin Franchise Investment Law. Clark Oil & Refining Corp. v. Leistikow, 69 Wis. 2d 226, 230 N.W.2d 736 (1975).

Franchise tie−ins and antitrust; a critical analysis. Boer. 1973 WLR 847.

SUBCHAPTER II

REGISTRATION OF FRANCHISES

553.21 Registration requirement. No person may sell in this state any franchise unless the franchise has been registered under this chapter or is exempted under s. 553.23, 553.235 or 553.25.

History: 1971 c. 241; 1981 c. 54 ss. 1, 32; 1987 a. 381; 1989 a. 56 s. 259; 1995 a. 364.

Cross−reference: See also s. DFI−Sec 32.05, Wis. adm. code.

A franchisor who illegally sold a franchise had no right to set off the value of "benefits conferred" upon the franchisee against the franchisor's liability for its illegal actions. Hiltpold v. T−Shirts Plus, Inc. 98 Wis. 2d 711, 298 N.W.2d 217 (Ct. App. 1980).

Failure to register an offer of franchises under this section affords only an action for rescission and does not add any additional rights over what a plaintiff has under the law of equity. Lulling v. Barnaby's Family Inns, Inc. 499 F. Supp. 1353 (1980).

553.22 Excluded franchises. This chapter does not apply to the offer or sale of the following franchises:

(1) Any relationship if the person described in the offer as a franchisee, or any of the current directors or executive officers of that person, has been in the type of business of the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would account for no more than 20 percent of the gross sales revenue of the franchisee for a period of at least one year after the franchisee begins selling the goods or services involved in the franchise.

(2) An association of producers of agricultural products authorized by 7 USC 291.

(3) An organization that is operated on a cooperative basis by and for independent retailers and that sells goods at wholesale to, or furnishes services primarily to, its members.

History: 1995 a. 364.

553.23 Private franchisee and subfranchisor sales exempted. The sale of a franchise by a franchisee for the franchisee's own account and the sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account are exempted from s. 553.21 if the sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee or because a franchisor imposes or has the right to impose a fee or charge to reimburse the franchisor for reasonable and actual expenses incurred in connection with the sale.

History: 1971 c. 241; 1981 c. 54; 1987 a. 381; 1995 a. 364.

Exemption under this section applied. Godfrey v. Schroeckenthaler, 177 Wis. 2d 1, 501 N.W.2d 812 (Ct. App. 1993).

553.235 Experienced franchisee exempt transactions. (1) CONDITIONS OF EXEMPTION. Except as provided in sub. (2), a registration exemption is available for the sale of a franchise that meets all of the following conditions:

(a) The immediate cash payment required by the franchisee upon purchase of the franchise is at least $100,000 and does not exceed 20 percent of the franchisee's net worth, excluding the franchisee's principal residence, furnishings and automobiles for personal use.

(b) With respect to each sale in this state, the franchisor reasonably believes immediately before making the sale that the prospective franchisee, either alone or with the prospective franchisee's representative, has sufficient knowledge and experience in the type of business operated under the franchise that the prospective franchisee is capable of evaluating the merits and risks of the prospective franchise investment.

(2) EXCEPTIONS. (a) The exemption under sub. (1) is not available for the sale of a franchise in which the franchisee would be a motor vehicle dealer or a motor vehicle distributor or wholesaler, as defined in s. 218.0101.

(b) The division may, by rule or order, withdraw or further condition the availability of the exemption under sub. (1).

History: 1987 a. 381; 1995 a. 27, 364; 1999 a. 31.

553.24 Exemption proceedings. (1) The division may by order deny or revoke any exemption under s. 553.23, 553.235 or 553.25 with respect to the 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 division may, by order, summarily deny or revoke any exemption under s. 553.23, 553.235 or 553.25 with respect to the sale of a franchise.

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

(4) A person who sells a franchise pursuant to an exemption under s. 553.23, 553.235 or 553.25 after the exemption is denied or revoked by an order of the division 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.

(6) Within 10 days after the filing date of an application for an exemption under s. 553.25, the division may require that additional information be filed if the division determines that the information is reasonably necessary to establish an exemption under s. 553.25. If the division requires additional information, the exemption is not effective until 10 days after the additional information is filed with the division, unless a shorter period is permitted by the division.

History: 1981 c. 54; 1987 a. 381; 1993 a. 200; 1995 a. 27, 364.

553.25 Exemption by division. The division may by rule or order exempt from registration under s. 553.21 any franchise if registration is not necessary or appropriate in the public interest or for the protection of investors.

History: 1971 c. 241; 1981 c. 54; 1995 a. 27, 364.

Cross−reference: See also ss. DFI−Sec 32.03, 32.05, and 35.01, Wis. adm. code.

553.26 Registration by notification. (1) A person who wishes to sell a franchise in this state that is not excluded under s. 553.22 and that is not exempt from registration under s. 553.23, 553.235 or 553.25 shall register the franchise by notification to the division. The notification shall be on a notice form prescribed by the division, which need include only the name of the franchisor or subfranchisor, the name or names under which the franchisor or subfranchisor intends to do business and the franchisor's or subfranchisor's principal business address. Nothing other than a copy of the offering circular required under s. 553.27 (4), the consent to service of process required by s. 553.27 (10), if it is not already on file with the division, and the registration fee required under s. 553.72 (1) need accompany the notification.

(2) A franchisor may register only one franchise system on each notification.

(3) Registration is effective upon receipt of the notification by the division. The notice shall be effective for one year from the date on which the division receives it.

(4) Upon receipt of notification, the division shall endorse upon the notice form "received" and the date and shall return a copy to the person who filed the notice form.

(4m) A person who has complied with sub. (1) need not file with the division, during the period when the registration is effective, any more information, other than an application or amendment required to be filed under s. 553.31. The division may not require changes in the offering circular filed by the franchisor,

subject to the division's authority to suspend or revoke a registration for any of the causes under s. 553.28.

History: 1971 c. 241; 1979 c. 110 s. 60 (6); 1979 c. 162 s. 38 (2) (a); 1979 c. 341 s. 12 (1); 1991 a. 316; 1995 a. 27, 364; 2005 a. 158.

Cross−reference: See also ss. DFI−Sec 32.06 and 32.07, Wis. adm. code.

553.27 General registration provisions; offering circular; consent to service of process. (2) If the division finds that the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering and if the franchisee so requests, the division may by rule or order require the escrow of franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business, or, at the option of the franchisor, the furnishing of a surety bond as provided by rule of the division, if the division finds that such requirement is necessary and appropriate to protect prospective franchisees or subfranchisors.

(4) No franchise subject to registration under this chapter may be sold in this state unless a copy of an offering circular is provided to the prospective franchisee at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement with the franchisor or any affiliate of the franchisor or at least 14 days prior to the payment of any consideration to the franchisor or any affiliate of the franchisor, whichever first occurs. The offering circular may be in a form that the division requires by rule, in a form permitted under 16 CFR 436 or in a form permitted by a successor to that regulation.

(10) Every franchisor who files a notification shall file with the division, in the form that the division by rule prescribes, an irrevocable consent appointing the division to be the applicant's attorney to receive service of any lawful process in any civil action against the applicant or the applicant's successor or personal representative that arises under this chapter or any rule or order 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 a consent in connection with a previous registration or exemption under this chapter need not file another. Service may be made by leaving a copy of the process in the office of the division, but it is not effective unless the plaintiff, who may be the division in an action instituted by the division, 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 division, 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 the time that the court allows.

History: 1971 c. 241; 1981 c. 54 ss. 10, 11, 32; 1981 c. 314; 1987 a. 381; 1995 a. 27, 364; 2001 a. 102; 2007 a. 150.

Cross−reference: See also ss. DFI−Sec 32.08 and 32.09, Wis. adm. code.

553.28 Denial, suspension or revocation of registrations. (1) The division may issue an order suspending or revoking the effectiveness of any registration if the division finds any of the following:

(a) That the franchisor or any person acting on behalf of the franchisor failed to provide an offering circular to a person purchasing a franchise in this state within the time period prescribed in s. 553.27 (4).

(b) That any person in this state was sold a franchise by means of any written or oral communication that contained an untrue statement of a material fact, or that omitted to state a material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading.

(d) That any person identified in the franchisor's offering circular has been convicted of an offense that is required to be disclosed in the offering circular, or is subject to an order, or has had a civil judgment entered against him or her that is required to be disclosed in the offering circular, and the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

(e) That the franchisor has failed to pay the proper filing fee, but the division shall vacate any such order when the deficiency has been corrected.

(2) If the public interest and the protection of investors so require, the division may by order summarily suspend or revoke the effectiveness of the registration.

(3) The division may vacate or modify an order entered under s. 553.24 or this section if the division finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

History: 1971 c. 241; 1981 c. 54 ss. 12 to 14, 32; 1995 a. 27, 364.

If a ch. 135 "dealer" is also a "franchisee" under ch. 553, the commissioner of securities may deny, suspend, or revoke a franchisor's registration or revoke its exemption if the franchisor has contracted to violate or avoid provisions of ch. 135. Ch. 135 expresses public policy and its provisions may not be waived. 66 Atty. Gen. 11.

553.31 Amendment to registration statement. (1) Except as provided in sub. (3), a franchisor shall within 30 days after the happening of any material event affecting a registered franchise notify the division in writing, by an application to amend the registration statement, of any material change in the information contained in the application as originally submitted, amended or renewed. The division may by rule further define what shall be considered a material change for such purposes, and the circumstances under which a revised offering prospectus must accompany such application.

(2) An amendment filed after the effective date of the registration of the sale of franchises is effective upon receipt of the amendment by the division.

(3) If a franchisor and prospective franchisee in the offer or sale of a franchise negotiate changes to the terms or conditions of a franchise that is the subject of an effective registration statement, the franchisor is not required to amend the registration statement for purposes of that offer or sale. If the changes are material with respect to prospective franchisees who were not involved in negotiating the changes, the franchisor shall amend the registration statement under sub. (1) for purposes of offers or sales involving those prospective franchisees.

History: 1971 c. 241; 1981 c. 54; 1987 a. 381; 1995 a. 27; 2005 a. 158.

Cross−reference: See also s. DFI−Sec 35.01, Wis. adm. code.

SUBCHAPTER III

FRAUDULENT AND PROHIBITED PRACTICES

553.41 Fraudulent and prohibited practices. (1) No person may make or cause to be made, in any document filed with the division or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with any statement required to be made under s. 553.31 (1), omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading.

(2) No person may violate any order of the division or condition therein of which the person has notice.

(3) No person may offer or sell a franchise in this state by means of any written or oral communication not included in sub. (4) that includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(4) No person may make any untrue statement of a material fact in any statement required to be disclosed in writing in a timely manner under s. 553.27 or omit to state in any such statement any material fact that is required to be stated in the statement.

(5) No person may willfully represent to any prospective franchisee in this state that the division has passed in any way upon the merits of any franchise or that a franchise is registered or exempted when that is not the case.

History: 1971 c. 241; 1981 c. 54 ss. 32, 33; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 34.01, Wis. adm. code.

SUBCHAPTER IV

ENFORCEMENT AND GENERAL PROVISIONS

553.51 Civil liability; sale in violation. (1) Any person who sells a franchise in violation of s. 553.27 (4), if the violation was material in the franchisee's or subfranchisor's decision to purchase the franchise, shall be liable to the franchisee or subfranchisor, who may bring an action for rescission.

(2) Any person who violates s. 553.41 (3), (4) or (5) is liable for damages to any person who does not know or have cause to believe that the statement or representation was false or misleading and who, while relying upon the statement or representation, purchased a franchise, unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know, or if the defendant had exercised reasonable care would not have known, of the untruth or omission.

(3) Every person who directly or indirectly controls a person liable under sub. (1) or (2), every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions and every employee of a person so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be liable hereunder had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

(4) No action may be maintained against any person to enforce any liability under this section unless it is brought before the expiration of 3 years after the act or transaction constituting the violation upon which the liability is based or 90 days after delivery to the franchisee of a written notice from or on behalf of that person that discloses any violation of this chapter and that is filed with the division, whichever first expires.

(5) The rights and remedies under this chapter are in addition to any other rights or remedies that may exist at law or in equity.

History: 1971 c. 241; 1981 c. 54 s. 32; 1983 a. 216; 1985 a. 332; 1995 a. 27, 364, 415; 1997 a. 35.

A franchisor who illegally sold a franchise had no right to set off the value of "benefits conferred" upon the franchisee against the franchisor's liability for its illegal actions. Hiltpold v. T−Shirts Plus, Inc. 98 Wis. 2d 711, 298 N.W.2d 217 (Ct. App. 1980).

553.52 Criminal penalties. (1) Any person who willfully violates s. 553.41 (2) to (5) or any order of which 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, is guilty of a Class G felony. Each of the acts specified is a separate offense, and a prosecution or conviction for any one of those offenses does not bar prosecution or conviction for any other offense.

(2) Any person who employs, directly or indirectly, any device, scheme or artifice to defraud in connection with the offer or sale of any franchise or engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer or sale of any franchise is guilty of a Class G felony.

(3) Nothing in this section limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

History: 1971 c. 241; 1981 c. 54; 1995 a. 364; 1997 a. 283; 2001 a. 109.

553.54 Injunctions. (1) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any act or practice constituting a violation of this chapter or any rule or order hereunder. The division may refer such evidence as is available concerning any violation to the district attorney of the county in which the violation occurred or to the attorney general who may institute proceedings under this section.

(2) (a) The court may, prior to the entry of final judgment, issue such orders or judgments as are necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of the pecuniary loss is submitted to the satisfaction of the court. Orders or judgments under this paragraph shall not provide restoration of any pecuniary loss to persons for whom recovery is sought where the defendant in the action establishes that the persons were in possession of knowledge which would defeat recovery by them in a private civil action under s. 553.51 (2). Persons liable for pecuniary losses under this paragraph are the same as provided under s. 553.51 (3).

(b) Upon a proper showing, a temporary or permanent injunction or restraining order shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the department of justice to post a bond.

(3) The department of justice may subpoena persons, administer oaths, take testimony, require the production of books and other documents and may request the division to exercise the division's authority under s. 553.55 to aid in the investigation of alleged violations of this chapter. If a person fails to obey any subpoena issued by the department of justice, that person may be coerced under s. 885.12, except that no person shall be required to furnish any testimony or evidence under this subsection which might tend to incriminate that person.

(4) In lieu of instituting or continuing an action pursuant to this section, the division or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this chapter from the person who has engaged in such act or practice. The acceptance of such assurance by either the division or the department of justice shall be deemed acceptance by other state officials if the terms of the assurance so provide. An assurance entered into pursuant to this subsection shall not be considered evidence of a violation of this chapter, however, a violation of such an assurance constitutes a violation of this chapter and shall be subject to all penalties and remedies provided therefor.

History: 1971 c. 241, 307; 1981 c. 54; 1991 a. 316; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 35.03, Wis. adm. code.

553.55 Investigations and subpoenas. (1) The division may make such public or private investigations within or outside of this state as the division deems necessary to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, and publish information concerning the violation of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this chapter, the division or any officer designated by the division may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the division deems relevant or material to the inquiry. Failure to obey a subpoena or give evidence may be dealt with under s. 885.12.

(3) (a) No person is excused from attending and testifying or from producing any document or record before the division, or in obedience to the subpoena of the division or any officer designated by the division, or in any proceeding instituted by the division, on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to

a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of his or her testimony or evidence, after claiming his or her privilege against self−incrimination, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

History: 1971 c. 241; 1981 c. 54 ss. 21, 32; 1989 a. 122; 1995 a. 27; 1997 a. 35.

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

(2) Within 30 days after the division has issued an order summarily, an interested party may apply to the division for a hearing in respect to any matters determined by the order. Within 10 days after an interested party files a written request with the division 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 division 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 division.

(3) After a hearing, the division 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.

(4) Hearings and rehearings shall be public.

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

History: 1971 c. 241; 1975 c. 414; 1981 c. 54; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 36.01, Wis. adm. code.

553.57 Enforcement of criminal penalties. The division may refer such evidence as is available concerning any violation of this chapter or of any rule or order hereunder to the district attorney of the county in which the violation occurred, or to the attorney general, who may, with or without any reference, institute the appropriate criminal proceedings under this chapter.

History: 1971 c. 241; 1995 a. 27.

553.58 Rules, forms and orders. (1) The division may make, amend and rescind any rules, forms and orders that are necessary to carry out this chapter, including rules and forms governing registrations and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The division may define by rule false, fraudulent or deceptive practices in the offer and sale of franchises. For the purpose of rules and forms, the division may classify franchises, persons and matters within the division's jurisdiction and may prescribe different requirements for different classes. Rules shall be made and published and all administrative procedures, including hearings under s. 553.56 and issuance of orders, shall be in accordance with ch. 227.

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

(4) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the division, notwithstanding that the rule, form or order may later be amended or rescinded or be determined to be invalid for any reason.

(5) All orders shall take effect when made and filed or at such later time as the division prescribes, and the division shall, upon making and filing such order, forthwith deliver personally or by mail a copy thereof to every person to whom such order relates at the person's last−known address as it appears on the records of the division and that delivery shall constitute notice thereof.

History: 1971 c. 241; 1977 c. 418; 1981 c. 54 ss. 26, 32; 1987 a. 381; 1995 a. 27, 364.

553.59 Scope of chapter. (1) The provisions of this chapter concerning sales and offers to sell apply when a sale is made in this state or when an offer to sell is made or accepted in this state, except that s. 553.21 does not apply to an offer to sell that is not directed to, or received by, the offeree in this state.

(2) For the purpose of this section, an offer to sell is made in this state if the offer either originates in this state or is directed by the offeror to this state and received by the offeree in this state.

(3) For the purpose of this section, an offer to sell is accepted in this state if acceptance is communicated to the offeror from this state.

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

History: 1971 c. 241; 1981 c. 54; 1995 a. 364.

553.60 Miscellaneous powers. The division may by order summarily prohibit offers or sales of a franchise that are being, or have been, made in this state in violation of this chapter, unless the franchise is registered or exempted from registration under this chapter.

History: 1981 c. 54; 1995 a. 27, 364.

553.605 Administrative assessments; investor education. (1) IMPOSING ADMINISTRATIVE ASSESSMENT WITH CERTAIN ORDERS. (a) The division or any officer designated by the division may impose an administrative assessment in the amount provided in par. (b) on any person who is subject to an order that is issued under s. 553.24, 553.28, 553.58 (1) and (2) or 553.60 in any of the following circumstances:

1. Following a hearing under s. 553.56 if the notice delivered to all interested parties includes notice of the division's authority to impose an administrative assessment under this subsection.

2. Pursuant to an order that is issued under any of the sections referred to in this paragraph and that is stipulated to by each person subject to the administrative assessment.

(b) The amount of an administrative assessment imposed on any person under this subsection may not exceed $5,000 for each act or omission that constitutes the basis for issuing the order under any of the sections referred to in par. (a), except that the amount of the administrative assessment may not exceed $50,000 for any person subject to the order.

(c) The division shall include any administrative assessment imposed under this subsection in the order issued under any of the sections referred to in par. (a) in the manner described in par. (a) 1. or 2.

(d) Upon the request of the division, the department of justice may bring a civil action in the circuit court for Dane County to compel payment of any unpaid administrative assessment, unless payment of the administrative assessment is stayed under s. 227.54.

(e) The administrative assessment under this subsection is in addition to any other penalty, remedy or sanction under this chapter.

(2) INVESTOR EDUCATION. All moneys collected from the administrative assessment under sub. (1) shall be credited to the appropriation under s. 20.144 (1) (i). Subject to s. 20.144 (1) (i), the division shall use moneys credited to that appropriation to provide information to residents of this state about franchise invest-

ments to help investors and potential investors evaluate their investment decisions, protect themselves from false, fraudulent or deceptive practices in connection with the offer, sale or purchase of a franchise, be alert for false or misleading advertising or other harmful practices, and know their rights as investors.

History: 1987 a. 381; 1995 a. 27, 364.

SUBCHAPTER V

ADMINISTRATION

553.71 Administration. (1) This chapter shall be administered by the division and by the department of justice when exercising its authority under s. 553.54.

(2) It is unlawful for the division or any of the division's officers or employees to use for personal benefit any information which is filed with or obtained by the division and which is not generally available to the public. Nothing in this chapter authorizes the division or any of the division's officers or employees to disclose any confidential information except among themselves or to other securities administrators or regulatory authorities or when necessary or appropriate in a proceeding or investigation under this chapter. 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 division or any of the division's officers or employees.

History: 1971 c. 241; 1981 c. 54 s. 32; 1995 a. 27.

553.72 Fees and expenses. The division shall charge and collect the fees fixed by this section.

(1) The fee for filing a notice for the one−year effectiveness of the registration of a franchise under s. 553.26 is $400.

(3) The expenses reasonably attributable to the examination of any matter arising under this chapter shall be charged to the applicant or registrant involved, but the expenses so charged shall not exceed such maximum amounts as the division by rule prescribes.

History: 1971 c. 241; 1973 c. 333; 1977 c. 418; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 35.01, Wis. adm. code.

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 under this chapter, whether or not the person has filed a consent to service of process under s. 553.27 (10), and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the division to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor or personal representative that grows out of that conduct and that is brought under this law or any rule or order under this chapter, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process at the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action, or proceeding instituted by the division, immediately 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 that 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 any further time that the court allows.

History: 1971 c. 241; 1981 c. 54; 1995 a. 27; 2001 a. 102.

553.74 Open records; publication. All notifications and other papers and documents filed with the division under this chapter shall be open to public inspection in accordance with rules adopted by the division. The division may publish any information filed with or obtained by the division, if, in the judgment of the division, such action is in the public interest.

History: 1971 c. 241; 1981 c. 54 ss. 30, 32; 1995 a. 27, 364.

Cross−reference: See also s. DFI−Sec 35.04, Wis. adm. code.

553.75 Administrative files and opinions. (1) A document is filed when it is received by the division.

(2) The division shall keep a register of all filings which are or have ever been effective under this chapter and predecessor laws and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(3) The information contained in or filed with any notification shall be made available to the public in accordance with rules adopted by the division.

(4) The division upon request shall furnish to any person at a reasonable charge photostatic or other copies, certified by the division if certification is requested, of any entry in the register or any order or other document on file with the division. Any copy so certified is admissible in evidence under s. 889.18.

(5) The division may honor requests from interested persons for interpretative opinions.

History: 1971 c. 241; 1981 c. 54 ss. 31, 32; 1995 a. 27, 364.

Cross−reference: See also ss. DFI−Sec 35.01 and 35.03, Wis. adm. code.

553.76 Waivers of compliance void. Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order under this chapter is void. This section does not affect the settlement of disputes, claims or civil lawsuits arising or brought under this chapter.

History: 1971 c. 241; 1987 a. 381; 1995 a. 364.

A contractual choice−of−forum clause was void under this section. Lulling v. Barnaby's Family Inns, Inc. 482 F. Supp. 318 (1980).

553.78 Preemption. This chapter shall not preempt the administration of ch. 96, 100, 125, 133, 168 or 218. False, fraudulent and deceptive practices in connection with the offer, purchase or sale of a franchise defined by rule of the division under s. 553.58 (1) may also constitute unfair methods of competition in business or unfair trade practices in business under s. 100.20 (1) or fraudulent advertising under s. 100.18.

History: 1971 c. 241; 1981 c. 79 s. 18; 1995 a. 27.