

CHAPTER 553

WISCONSIN FRANCHISE INVESTMENT LAW

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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

553.03 Definitions. In this chapter:

(1) "Advertisement" means any circular, prospectus, advertising or other material or any communication by radio, television, pictures or similar means used in connection with a sale or purchase of, or offer to sell or purchase, any franchise.

(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) "Commissioner" means the commissioner 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 commissioner 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 commissioner 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.

(8m) "Offer to purchase" includes every attempt to offer to acquire, or solicitation of an offer to sell, 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.

(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 commissioner designated an order and made in writing over the signature and seal of the commissioner, except a rule as defined under s. 227.01 (13).

(10) "Publish" means publicly to issue or circulate by newspaper, mail, radio or television, or otherwise to disseminate to the public. Private use of written materials shall not constitute the publication thereof.

(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

In actions by a corporate plaintiff to regain possession of 4 service stations leased to operators under agreements where rent was based upon the amount of gasoline sold, such agreements did not constitute franchises subject to the Wisconsin Franchise Investment Law. *Clark Oil & Refining Corp. v. Leistikow*, 69 W (2d) 226, 230 NW (2d) 736.

Franchise tie-ins and antitrust; a critical analysis. *Boer*, 1973 WLR 847

SUBCHAPTER II

REGISTRATION OF FRANCHISES

553.21 Registration requirement. (1) No person may sell or offer in this state any franchise unless the offer of the franchise has been registered under this chapter or exempted under s. 553.22, 553.23, 553.235 or 553.25.

(2) It is unlawful for any franchisor whose franchises are registered under this chapter, or any person in control of or controlled by or under common control with the franchisor, to offer or sell any of the registered franchises in this state in violation of this chapter or any rule under this chapter, or of any order under this chapter of which he or she has notice, or if the registration statement relating to the franchise, as of the date of the offer or sale, is incomplete in any material respect or contains any statement which is false or misleading with respect to any material fact. Any person acting under an order or rule under this chapter containing any terms or conditions shall be deemed to have accepted and waived all objections to such terms and conditions.

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

Defendant who resigned position as president but continued to solicit franchisees, call meetings, tell the president what to do and write checks on company checking account was in "control" under (2). *Vigil v. State*, 76 W (2d) 133, 250 NW (2d) 378

Franchisor who illegally sold franchise had no right to set off value of "benefits conferred" upon franchisee against franchisor's liability for its illegal actions. *Hilt-pold v. T-Shirts Plus, Inc.* 98 W (2d) 711, 298 NW (2d) 217 (Ct. App. 1980).

See note to 553.76, citing *Lulling v. Barnaby's Family Inns, Inc.* 482 F Supp. 318 (1980).

Failure to register offer of franchises under (1) affords only an action for rescission and does not add any additional rights over what plaintiffs have under law of equity. *Lulling v. Barnaby's Family Inns, Inc.* 499 F Supp. 1353 (1980)

553.22 Exempt public offers and sales; extensions.

(1) EXEMPTION A franchisor may obtain an exemption for one year from registering an offer to sell or a sale of a franchise under s. 553.21 if the franchisor satisfies all of the following conditions other than any condition waived by the commissioner:

(a) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5,000,000; or has a net worth, according to its most recent financial statement, of not less than \$3,000,000 and is at least 80% owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5,000,000.

(b) Has had at least 25 franchisees conducting the business of the franchisor at 25 locations at all times during the 5-year period immediately preceding the offer or sale; or has conducted business which is the subject of the franchise continuously for not less than 5 years preceding the offer or sale; or if any corporation which owns at least 80% of the franchisor has had at least 25 franchisees conducting the business of the franchisor at 25 locations at all times during the 5-year period immediately preceding the offer or sale.

(c) 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.

(d) Files with the commissioner at least 10 days before any offer or sale of a franchise in this state that relies on the exemption under this subsection a notice consisting of a copy of the information to be distributed to each prospective franchisee under par. (c),

together with the consent to service of process as specified in s. 553.27 (10), the fee prescribed by rule of the commissioner and any additional information required under s. 553.24 (6).

(2) EFFECTIVE DATE The commissioner may, by order, disallow the exemption within 10 days after the date on which the information required under sub. (1) is filed or, if additional information is required under s. 553.24 (6), within 10 days after the date on which that information is filed. If the commissioner does not disallow the exemption within the applicable time period, the exemption takes effect on the day after the time period expires.

(3) EXTENSION The exemption under sub. (1) may be extended for additional one-year periods if the franchisor files all of the following with the commissioner before the one-year exemption period, or an extension of the exemption period, expires or before a date set by the commissioner if the commissioner permits the franchisor to file for an extension after the expiration of the franchisor's previous exemption period:

(a) A copy of either the franchisor's current offering circular prepared in the form required by rule of the commissioner under s. 553.27 (4) for offering circulars used in connection with a registered franchise or the franchisor's current disclosure document prepared in the form required by 16 CFR 436

(b) Information establishing that the requirements under sub. (1) (a) and (b) are met.

(c) An undertaking by the franchisor that the franchisor shall comply with sub. (1) (c).

(d) The fee prescribed by rule of the commissioner.

History: 1971 c. 241; 1981 c. 54; 1987 a. 381; 1993 a. 200

553.23 Private franchisee and subfranchisor sales exempted.

The offer or sale of a franchise by a franchisee for the franchisee's own account or the offer or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account is 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.

Exemption under this section applied. *Godfrey v. Schroeckenthaler*, 177 W (2d) 1, 501 NW (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 offer or 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% 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 offer or 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. 218.01 (1).

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

History: 1987 a. 381

553.24 Exemption proceedings. (1) The commissioner may by order deny or revoke any exemption under s. 553.22, 553.23, 553.235 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, 553.235 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, 553.235 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.

(6) Within 10 days after the filing date of the information required under s. 553.22 or an application for an exemption under s. 553.25, the commissioner may require that additional information be filed if the commissioner determines that the information is reasonably necessary to establish an exemption under s. 553.22 or 553.25. If the commissioner requires additional information, the exemption is not effective until 10 days after the additional information is filed with the commissioner, unless a shorter period is permitted by the commissioner.

History: 1981 c. 54; 1987 a. 381; 1993 a. 200.

553.25 Exemption by commissioner. The commissioner may by rule or order exempt from registration 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.

History: 1971 c. 241; 1981 c. 54.

553.26 Application for registration. The application for registration of an offer shall be filed with the commissioner and shall contain the following:

(1) The name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any parent or affiliated company that will engage in business transactions with franchisees.

(2) The franchisor's principal business address and the name and address of its agent in this state authorized to receive service of process.

(3) The business form of the franchisor, whether corporate, partnership or otherwise.

(4) Such information concerning the identity and business experience of persons affiliated with the franchisor, as the commissioner may by rule prescribe.

(5) (a) A statement whether any person identified in the application for registration:

1. Has been convicted of a felony, or pleaded no contest to a felony charge, or held liable in a civil action by final judgment if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or

2. Is subject to any currently effective order of the U.S. securities and exchange commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment adviser or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the federal securities and exchange act of 1934, suspending or expelling such person from membership in such association or exchange; or

3. Is subject to any currently effective order or ruling of the federal trade commission; or

4. Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by any public agency or department, including, without limita-

tion, actions affecting a license as a real estate broker or salesperson.

(b) Such statement shall set forth the court, date of conviction or judgment, any penalty imposed or damages assessed, or the date, nature and issuer of such order.

(6) The length of time the franchisor has conducted a business of the type to be operated by the franchisees, has granted franchises for such business, and has granted franchises in other lines of business.

(7) A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The commissioner may by rule or order prescribe:

(a) The form and content of financial statements required under this subsection;

(b) The circumstances under which consolidated financial statements shall be filed; and

(c) The circumstances under which financial statements shall be audited by independent certified public accountants or public accountants.

(8) A copy of the typical franchise contract or agreement proposed for use or in use in this state.

(9) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

(10) A statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a 3rd party.

(11) A statement of the conditions under which the franchise agreement or portions thereof may be assigned, terminated or renewal refused, or the franchise repurchased at the option of the franchisor.

(12) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or the franchisor's designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description thereof as to kind and amount.

(13) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by the franchisee to the franchisee's customers.

(14) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.

(15) A statement of any past or present practice or of any intent of the franchisor to sell, assign or discount to a 3rd party any note, contract or other obligation of the franchisee or subfranchisor in whole or in part.

(16) A copy of any statement of estimated or projected franchisee earnings prepared for presentation to prospective franchisees or subfranchisors, or other persons, together with a statement setting forth the data upon which such estimation or projection is based.

(17) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of the public figure in the name or symbol of the franchise or the indorsement or recommendation of the franchise by the public figure in advertisements.

(18) A statement of the number of franchises presently operating and proposed to be sold, as may be required by rule of the commissioner.

(19) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory and, if so, a graphic representation thereof.

(20) Other information related to the application as the commissioner may reasonably require.

(21) Other information the franchisor may desire to present.

(22) If the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

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.

553.27 General registration provisions. (1) Applications for registration, registration renewal statements and amendments thereto, shall be signed and notarized by the franchisor or by the subfranchisor.

(2) If the commissioner 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, the commissioner 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 commissioner, if the commissioner finds that such requirement is necessary and appropriate to protect prospective franchisees or subfranchisors.

(3) The application for registration shall be accompanied by a proposed offering prospectus, which shall contain the material information set forth in the application for registration, as specified by rule of the commissioner, and such additional disclosures as the commissioner may require. The prospectus shall recite in bold type of not less than 10-point type that registration does not constitute approval recommendation or indorsement by the commissioner.

(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.

(5) Every franchisor or subfranchisor offering franchises for sale in this state shall at all times keep and maintain a complete set of books, records and accounts of such sales.

(6) The commissioner may accept and act upon the opinions, appraisals and reports of any engineers, appraisers or other experts which may be presented by an applicant or any interested party, on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisals and reports, the commissioner may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon and certified to the commissioner by engineers, appraisers or other experts selected by the commissioner.

(7) Any document filed under this chapter or ch. 551 may be incorporated by reference in a subsequent application filed under this chapter if it was filed within 2 years prior to the filing of such application, or is otherwise available in the files of the commissioner, to the extent that the document is currently accurate.

(8) The registration statement shall consist of a circular containing those items required by s. 553.26 to be disclosed to investors together with other documents which the commissioner by rule prescribes.

(9) Neither the fact that an application for registration under this chapter has been filed, nor the fact that such registration has become effective constitutes a finding by the commissioner that any document filed under this chapter is true, complete or not mis-

leading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise or transaction. No person may make or cause to be made to any prospective purchaser or offeree any representation inconsistent with this subsection.

(10) Every applicant for registration of an offer to sell franchises under this chapter shall file with the commissioner, in such form as the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office 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, executor or administrator, which 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 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 an action instituted by 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.

(11) (a) A registrant may withdraw a registration statement, registration renewal statement or an amendment to the registration statement, and an applicant may withdraw an application for registration or an amendment to the application, if the registrant or applicant files with the commissioner a written request for withdrawal. Except as provided in par. (b), withdrawal is effective at 12 midnight of the day on which the withdrawal request is filed with the commissioner.

(b) Withdrawal is effective at the time and upon the conditions set by the commissioner by order if a proceeding to deny effectiveness to, or to postpone, suspend or revoke effectiveness of, the registration statement is pending when the request for withdrawal is filed or is begun within 30 days after the request for withdrawal is filed.

History: 1971 c. 241; 1981 c. 54 ss. 10, 11, 32; 1981 c. 314; 1987 a. 381.

553.28 Denial, suspension or revocation of registrations or exemptions. (1) The commissioner may issue an order denying effectiveness to, or postponing, suspending or revoking effectiveness of, any registration statement if the commissioner finds any of the following:

(a) That there has been a failure to comply with this chapter or the rules of the commissioner pertaining thereto.

(b) That the offer, purchase or sale of the franchise would constitute misrepresentation to or deceit or fraud upon purchasers thereof, or has worked or tended to work a fraud upon purchasers or would so operate.

(c) That any person in this state is engaging or about to engage in false, fraudulent or deceptive practices in connection with the offer, purchase or sale of a franchise in this state.

(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 the person in the same or management of the franchise creates an unreasonable risk to prospective franchisees.

(e) That the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this paragraph and the commissioner shall vacate any such order when the deficiency has been corrected.

(f) That advertising prohibited by s. 553.53 has been used in connection with the offer, purchase or sale of franchises.

(g) That the financial condition of the franchisor affects or would affect the ability of the franchisor to fulfill obligations under the franchise agreement.

(h) That the franchisor's enterprise or method of business includes or would include activities which are illegal where performed.

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

(3) The commissioner may vacate or modify an order entered under s. 553.24 or this section if the commissioner 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

See note to 135.07, citing 66 Atty. Gen. 11

553.29 Effective date and duration of registration.

(1) (a) Except as provided in par. (b), if no order under s. 553.24, 553.28 or 553.60 is in effect, registration of the offer of franchises becomes effective at 12 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.

(b) If the commissioner requires the submission of additional information under s. 553.26 (20) before the registration of the offer of franchises becomes effective under par. (a) and if no order under s. 553.24, 553.28 or 553.60 is in effect, the registration becomes effective at 12 midnight of the 15th business day after the additional information is filed with the commissioner, or at such earlier time as the commissioner determines.

(2) A franchise offering shall be duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.

(3) Registration of franchises shall be by order of the commissioner, but the failure to issue an order shall not delay the effectiveness of a registration statement meeting the requirements of s. 553.26.

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

553.30 Registration statement renewal. (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 order 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.

(2) The registration renewal statement shall be in the form and content prescribed by the commissioner, and shall be accompanied by 2 copies of the proposed offering prospectus.

History: 1971 c. 241; 1977 c. 418; 1981 c. 54

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 commissioner 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 commissioner 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 to an application filed after the effective date of the registration of the sale of franchises, if the amendment is approved by the commissioner, is effective on the date the commissioner determines, having due regard for the public interest or the protection of franchisees.

(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

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 commissioner 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 commissioner or condition therein of which the person has notice.

(3) No person may offer, purchase or sell a franchise in this state by means of any written or oral communication not included in sub. (1) which 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 pursuant to s. 553.22 or 553.27 or omit to state in any such statement any material fact which is required to be stated therein.

(5) No person may wilfully represent to any prospective purchaser or seller of a franchise in this state that the filing of a franchise registration application or the registration of a franchise constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading, or in relation to an exemption or exception, that the commissioner has passed in any way upon the merits of any franchise or wilfully represent in a similar manner that a franchise is registered or exempted when in fact, such is not the case.

History: 1971 c. 241; 1981 c. 54 ss. 32, 33

SUBCHAPTER IV

ENFORCEMENT AND GENERAL PROVISIONS

553.51 Civil liability; offer or sale in violation.

(1) Any person who offers, purchases or sells a franchise in violation of s. 553.21 or 553.41 (1), (2), (4) or (5) shall be liable to the franchisee or subfranchisor, who may bring an action for rescission, unless, in the case of a violation of s. 553.41 (1), (2), (4) or (5), 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.

(2) Any person who violates s. 553.41 (3) shall be liable to any person not knowing or having cause to believe that such statement was false or misleading who, while relying upon such statement, shall have sold or purchased a franchise, for damages, 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 employe 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 to enforce any liability under this section unless 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 disclosing any violation of s. 553.21 or 553.41, which notice shall be approved as to form by the commissioner, 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.

See note to 553.21, citing *Hiltpold v T-Shirts Plus, Inc.* 98 W (2d) 711, 298 NW (2d) 217 (Ct. App. 1980).

553.52 Criminal penalties. (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 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 those offenses shall 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, purchase or sale of any franchise shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(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.

See note to 553.21, citing *Hiltpold v T-Shirts Plus, Inc.* 98 W (2d) 711, 298 NW (2d) 217 (Ct. App. 1980).

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.

History: 1971 c. 241; 1981 c. 54.

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 commissioner 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 per-

sons 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 (1) or (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 commissioner to exercise the commissioner'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 commissioner 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 commissioner or the department 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.

553.55 Investigations and subpoenas. (1) The commissioner may make such public or private investigations within or outside of this state as the commissioner 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 commissioner or any officer designated by the commissioner 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 commissioner 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 commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, 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.

553.56 Hearings and judicial review. (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.

(2) Within 30 days after 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. 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.

(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.

(4) Hearings and rehearings shall be public.

(5) Orders and other official acts of the commissioner 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.

553.57 Enforcement of criminal penalties. The commissioner 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.

553.58 Rules, forms and orders. (1) The commissioner may make, amend and rescind any rules, forms and orders that are necessary to carry out this chapter, including rules and forms governing registration statements, applications and reports, defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The commissioner may define by rule false, fraudulent or deceptive practices in the offer and sale of franchises. The commissioner may also adopt rules with regard to advertising utilized in connection with exempt sales under s. 553.22, 553.23 or 553.235 and which need not be filed under s. 553.53. For the purpose of rules and forms, the commissioner may classify franchises, persons and matters within the commissioner's jurisdiction, and 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 commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors. In adopting rules and forms the commissioner may cooperate with official administrators of other states.

(3) The commissioner may by rule or order prescribe the form and content of financial statements required under this chapter, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices unless otherwise permitted by rule or order.

(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 commissioner, 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 commissioner prescribes, and the commissioner 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 office of the commissioner and that delivery shall constitute notice thereof.

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

553.59 Scope of chapter. (1) The provisions of this chapter concerning sales and offers to sell apply when a sale or offer to sell is made in this state or when an offer to purchase is made and accepted in this state. The provisions concerning purchases and offers to purchase apply when a purchase or offer to purchase is made in this state or an offer to sell is made and accepted in this state.

(2) For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state, but for the purpose of s. 553.21, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(3) For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

(4) An offer to sell or to purchase is not made in this state when 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 which is not published in this state, or a radio or television program originating outside this state is received in this state.

History: 1971 c. 241; 1981 c. 54.

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.

History: 1981 c. 54.

553.605 Administrative assessments; investor education. (1) IMPOSING ADMINISTRATIVE ASSESSMENT WITH CERTAIN ORDERS.

(a) The commissioner or any officer designated by the commissioner 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, 553.53, 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 commissioner'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 commissioner 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 commissioner, 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. 20.185 (1) (h). Subject to s. 20.185 (1) (h), the commissioner shall use moneys credited to that appropriation to provide information to residents of this state about franchise investments 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.

SUBCHAPTER V ADMINISTRATION

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

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not generally available to the public. Nothing in this chapter authorizes the commissioner or any of the commissioner'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 commissioner or any of the commissioner's officers or employees.

History: 1971 c. 241; 1981 c. 54 s. 32.

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

(1) The fee for filing an application for registration of the offer of franchises under s. 553.26 is \$400.

(2) The commissioner may by rule require the payment of prescribed fees for delinquent or materially deficient filings of information or documents required to be filed with the commissioner under this chapter.

(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 commissioner by rule prescribes.

History: 1971 c. 241; 1973 c. 333; 1977 c. 418

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 commissioner or the commissioner's successor in office 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, executor or administrator which grows out of that conduct and which 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 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 the commissioner, forthwith sends notice of the service and a copy of the process by regis-

tered 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.

History: 1971 c. 241; 1981 c. 54.

553.74 Public records. (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 adopted by the commissioner. The commissioner may publish any information filed with or obtained by 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 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 the commissioner's assistants, clerks or deputies.

(2) It is unlawful for the commissioner or any of the commissioner's assistants, clerks or deputies or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.

History: 1971 c. 241; 1981 c. 54 ss. 30, 32.

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

(2) The commissioner 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 registration statement, application or report shall be made available to the public in accordance with rules adopted by the commissioner.

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

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

History: 1971 c. 241; 1981 c. 54 ss. 31, 32.

553.76 Waivers void. (1) Except as provided in sub. (2), 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 hereunder is void.

(2) This section does not apply to an agreement entered into between a franchisee and franchisor, or a general release executed by a franchisee, pursuant to settlement negotiations in connection with a bona fide dispute between the franchisee and franchisor.

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

Contractual choice-of-forum clause was invalid where choice-of-law clauses were 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 commissioner 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.