S T A T E O F N E W Y O R K

3774

2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the definition, sale and operation of franchises

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 681 of the general business law, as added by chapter 730 of the laws of 1980 and paragraph (b) as amended by chapter 87 of the laws of 1981, is amended and a new subdivision 19 is added to read as follows:

3. "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

(a) 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 in substantial part by a franchisor, and [the franchisee is required to pay, directly or indirectly, a franchise fee, or]

(b) [A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services] THE OPERATION OF THE FRANCHISEE'S BUSINESS PURSUANT TO SUCH A PLAN OR SYSTEM IS substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate, and [the]

(C) THE franchisee is required to pay, directly or indirectly, a franchise fee.

A franchise under this article shall not include any agreement, contract, or franchise subject to the provisions of article eleven-B of this chapter or section one hundred ninety-nine of this chapter, or any agreement or contract for the sale of motor fuel.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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19. "BUSINESS OPPORTUNITY" MEANS A BUSINESS OPPORTUNITY AS THAT TERM IS DEFINED BY THE FEDERAL TRADE COMMISSION IN 16 CFR PART 437, AS AMENDED FROM TIME TO TIME.

S 2. The general business law is amended by adding a new section 683-a to read as follows:

S 683-A. BUSINESS OPPORTUNITY NOTICE. 1. IT SHALL BE UNLAWFUL AND PROHIBITED FOR ANY PERSON TO SELL OR OFFER TO SELL IN THIS STATE A BUSINESS OPPORTUNITY UNLESS AND UNTIL SUCH PERSON FILES A NOTICE WITH THE DEPARTMENT OF LAW AND COMPLIES WITH THE FEDERAL TRADE COMMISSION DISCLOSURE REQUIREMENTS UNDER 16 CFR PART 437 AS AMENDED FROM TIME TO TIME. THE FORM OF NOTICE SHALL BE PRESCRIBED BY THE DEPARTMENT OF LAW. THE DEPARTMENT OF LAW SHALL NOT REQUIRE THE SELLER TO FILE MORE THAN THE FOLLOWING INFORMATION:

(A) THE NAME OF THE SELLER.

(B) THE NAME UNDER WHICH THE SELLER INTENDS TO DO BUSINESS.

(C) THE SELLER'S PRINCIPAL BUSINESS ADDRESS.

(D) IF THE SELLER IS NOT DOMICILED IN NEW YORK, A CONSENT TO SERVICE OF PROCESS.

(E) A REFERENCE TO THIS SECTION.

2. THE SELLER SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF LAW OF A CHANGE IN THE INFORMATION CONTAINED IN THE NOTICE.

S 3. Section 684 of the general business law is amended by adding two new subdivisions 7 and 8 to read as follows:

7. THE OFFER OR SALE OF A FRANCHISE SHALL BE EXEMPT FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS UNDER SECTION SIX HUNDRED EIGHTY-THREE OF THIS ARTICLE IF THE OFFER OR SALE IS MADE TO A PERSON WHO IS NOT A RESIDENT IN THIS STATE, THE FRANCHISE WILL NOT BE OPERATED IN NEW YORK AND THE OFFEROR FILES A NOTICE WITH THE DEPARTMENT OF LAW BEFORE THE SALE OF THE FRANCHISE OR WITHIN THIRTY DAYS THEREAFTER. THE FORM OF NOTICE SHALL BE PRESCRIBED BY THE DEPARTMENT OF LAW. THE DEPARTMENT OF LAW SHALL NOT REQUIRE THE OFFEROR TO FILE MORE THAN THE FOLLOWING INFORMATION:

(A) THE NAME OF THE OFFEROR.

(B) THE NAME UNDER WHICH THE OFFEROR INTENDS TO DO BUSINESS OR IS DOING BUSINESS.

(C) THE OFFERER'S PRINCIPAL BUSINESS ADDRESS.

(D) A REFERENCE TO THIS SECTION.

THE OFFEROR SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF LAW OF A CHANGE IN THE INFORMATION CONTAINED IN THE NOTICE.

8. THE OFFER OR SALE OF A FRANCHISE SHALL BE EXEMPT FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS UNDER SECTION SIX HUNDRED EIGHTY-THREE OF THIS ARTICLE IF THE OFFER IS FOR THE GRANT OF MASTER FRANCHISE RIGHTS TO A SINGLE SUBFRANCHISOR AND THE OFFEROR FILES A NOTICE WITH THE DEPARTMENT OF LAW BEFORE THE SALE OF THE FRANCHISE OR WITHIN THIRTY DAYS THEREAFTER. THE FORM OF NOTICE SHALL BE PRESCRIBED BY THE DEPARTMENT OF LAW. THE DEPARTMENT OF LAW SHALL NOT REQUIRE THE OFFEROR TO FILE MORE THAN THE FOLLOWING INFORMATION:

(A) THE NAME OF THE OFFEROR.

(B) THE NAME UNDER WHICH THE OFFEROR INTENDS TO DO BUSINESS OR IS DOING BUSINESS.

(C) THE OFFERER'S PRINCIPAL BUSINESS ADDRESS.

(D) IF THE OFFEROR IS NOT DOMICILED IN NEW YORK, A CONSENT TO SERVICE OF PROCESS.

(E) A REFERENCE TO THIS SECTION.

THE OFFEROR SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF LAW OF A CHANGE IN THE INFORMATION CONTAINED IN THE NOTICE.

S 4. Subdivision 1 of section 694 of the general business law is amended by adding a new paragraph (d) to read as follows:

(D) THE FEE FOR FILING A NOTICE UNDER SECTION SIX HUNDRED EIGHTY-THREE-A OF THIS ARTICLE, OR UNDER SUBDIVISION SEVEN OR EIGHT OF SECTION SIX HUNDRED EIGHTY-FOUR OF THIS ARTICLE, IS ONE HUNDRED FIFTY DOLLARS.

S 5. This act shall take effect immediately.