

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:

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

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

7 (a) A franchisee is granted the right to engage in the business of
8 offering, selling, or distributing goods or services under a marketing
9 plan or system prescribed in substantial part by a franchisor, and [the
10 franchisee is required to pay, directly or indirectly, a franchise fee,
11 or]

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

18 (C) THE franchisee is required to pay, directly or indirectly, a fran-
19 chise fee.

20 A franchise under this article shall not include any agreement,
21 contract, or franchise subject to the provisions of article eleven-B of
22 this chapter or section one hundred ninety-nine of this chapter, or any
23 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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1 19. "BUSINESS OPPORTUNITY" MEANS A BUSINESS OPPORTUNITY AS THAT TERM
2 IS DEFINED BY THE FEDERAL TRADE COMMISSION IN 16 CFR PART 437, AS
3 AMENDED FROM TIME TO TIME.

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

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

14 (A) THE NAME OF THE SELLER.

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

16 (C) THE SELLER'S PRINCIPAL BUSINESS ADDRESS.

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

19 (E) A REFERENCE TO THIS SECTION.

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

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

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

33 (A) THE NAME OF THE OFFEROR.

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

36 (C) THE OFFEROR'S PRINCIPAL BUSINESS ADDRESS.

37 (D) A REFERENCE TO THIS SECTION.

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

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

48 (A) THE NAME OF THE OFFEROR.

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

51 (C) THE OFFEROR'S PRINCIPAL BUSINESS ADDRESS.

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

54 (E) A REFERENCE TO THIS SECTION.

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

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

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

7 S 5. This act shall take effect immediately.