

FRANCHISE INVESTMENT LAW
Act 269 of 1974

AN ACT to regulate the offer, sale, and purchase of franchises; to prohibit fraudulent practices in relation thereto; to prohibit pyramid and chain promotions; to impose regulatory duties upon certain state departments and agencies; and to provide penalties.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

The People of the State of Michigan enact:

445.1501 Short title; construction.

Sec. 1. This act shall be known and may be cited as the “franchise investment law”. This act shall be broadly construed to effectuate its purpose of providing protection to the public.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1502 Definitions.

Sec. 2. (1) “Advertisement” means a written or printed communication or a communication by means of recorded telephone message or spoken on radio, television, or similar communications media, published in connection with an offer or sale of a franchise.

(2) “Department” means the department of attorney general.

(3) “Franchise” means a contract or agreement, either express or implied, whether oral or written, between 2 or more persons to which all of the following apply:

(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.

(b) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

(c) The franchisee is required to pay, directly or indirectly, a franchise fee.

(4) “Franchisee” means a person to whom a franchise is granted.

(5) “Franchisor” is a person who grants a franchise and includes a subfranchisor.

(6) “Area franchise” means a 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; unless specifically stated otherwise, franchise includes area franchise.

(7) “Subfranchisor” is a person to whom an area franchise is granted.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1503 Additional definitions; burden of proof.

Sec. 3. (1) “Franchise fee” means a 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 payments for goods and services. The following are not the payment of a franchise fee:

(a) The purchase or agreement to purchase goods, equipment, or fixtures directly or on consignment at a bona fide wholesale price.

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

(c) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or service.

(d) Payments made in connection with the lease or agreement to lease of a franchised business operated by a franchisee on the premises of a franchisor as long as the franchised business is incidental to the business conducted by the franchisor at such premises.

(2) “Fraud” and “deceit” are not limited to common law fraud or deceit.

(3) “Offer” or “offer to sell” includes an attempt to offer to dispose of or solicitation of an offer to buy, a franchise or interest in a franchise for value. The terms defined in this act do 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.

(4) “Order” means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the department.

(5) “Person” means an individual, corporation, a partnership, a joint venture, an association, a joint stock

company, a trust, or an unincorporated organization.

(6) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(7) "Rule" means a rule promulgated by the department.

(8) "Sale" or "sell" includes a contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(9) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

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

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1504 Arrangements between franchisor and franchisee to which act applicable; making offer or sale of franchise in state; accepting offer to sell in state; communication of acceptance.

Sec. 4. (1) This act applies to all written or oral arrangements between a franchisor and franchisee in connection with the offer or sale of a franchise, including, though not limited to, the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interests, pledges, insurance, advertising, construction or installation contracts, servicing contracts, and all other arrangements in which the franchisor or subfranchisor has an interest.

(2) An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(3) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. An acceptance is communicated to the offeror 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 at the place to which it is directed.

(4) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation which has had more than 2/3 of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1504a Applicability of act.

Sec. 4a. This act shall not apply to a nonprofit organization operated on a cooperative basis by and for independent retailers to which all of the following apply:

(a) Control and ownership of each member is substantially equal.

(b) Membership is limited to those who use the services furnished by the organization.

(c) Transfer of ownership is prohibited or limited.

(d) Members receive no return on capital investment.

(e) Substantially equal economic benefits pass to the members on the basis of patronage in the organization.

(f) Members are not personally liable for obligations of the organization in the absence of a direct undertaking or authorization by the members.

(g) The wholesale goods and services of the organization are furnished primarily to the members.

(h) No part of the receipts, income, or profit of the organization are paid to any profit-making entity except for arms-length payments for necessary goods and services.

(i) Members are not required to purchase goods or services through any profit-making entity.

History: Add. 1989, Act 212, Imd. Eff. Nov. 13, 1989.

445.1505 Prohibited conduct in connection with offer, sale, or purchase of franchise.

Sec. 5. A person shall not, in connection with the filing, offer, sale, or purchase of any franchise, directly or indirectly:

(a) Employ any device, scheme, or artifice to defraud.

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit

upon any person.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1505a Franchise opportunities handbook.

Sec. 5a. The department, in cooperation with the Michigan consumers council, shall prepare and make available to an interested agency or person a franchise opportunities handbook containing information to be used by a potential franchisee in evaluating a franchise offering.

History: Add. 1984, Act 92, Eff. June 20, 1984.

445.1506 Exemption of offer and sale of franchise from MCL 445.1507a and 445.1508; circumstances; compliance with MCL 445.1508.

Sec. 6. (1) Except as provided in subsection (2), the offer and sale of a franchise is exempt from sections 7a and 8 if any of the following circumstances apply:

(a) The transaction is by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(b) The offer or sale is to a bank, savings institution, trust company, insurance company, investment company, or other financial institution, association, or institutional buyer or to a broker-dealer where the purchaser is acting for itself or in some fiduciary capacity.

(c) The prospective franchisee is required to pay, directly or indirectly, a franchisee fee which does not exceed \$500.00.

(d) The offer or sale is to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this state and where the franchise business will not be operated in this state.

(e) There is an extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship.

(f) The offer or sale of a franchise by a franchisee for the franchisee's own account, if all of the following conditions are met:

(i) The sale is an isolated sale, and not part of a plan of distribution of franchises.

(ii) The franchisee provides to the prospective purchaser full access to the books and records related to the franchise in actual or constructive possession of the franchisee.

(g) The offer or sale of a franchise to an existing franchisee if all of the following conditions are met:

(i) The existing franchisee is the person or persons who has actively operated the franchise for the last 18 months.

(ii) The franchisee purchases for investment and not for the purpose of resale.

(h) The transaction complies with all of the following:

(i) The prospective franchisee is presently engaged in an established business of which the franchise will become a component.

(ii) An individual directly responsible for the operation of the franchise, or a person involved in the management of the prospective franchise, including but not limited to a director, executive officer, or partner has been directly or indirectly engaged in the type of business represented by the franchise relationship for at least 2 years.

(iii) The parties have reasonable grounds to believe, at the time the sale is consummated, that the franchisee's gross sales in dollar volume from the franchise will not represent more than 20% of the franchisee's gross sales in dollar volume from all of the franchisee's combined business operations.

(2) If the franchisor has a disclosure statement in compliance with the laws of any state or rule of the federal trade commission, the franchisor shall comply with section 8.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1507 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to conditions to exemption under MCL 445.1506(1).

445.1507a Notice required prior to offering for sale or selling franchise; fee; form and contents of notice; indorsement, return, and duration of notice; effect of compliance; penalty for failure to file notice; duty of franchisor with effective registration or exemption from registration; validity and enforceability of franchise documents; written notice of filing date and penalties; failure to notify franchisor.

Sec. 7a. (1) Prior to offering for sale or selling a franchise in this state, a person annually shall file a notice with the department along with the fee required in section 40. The form of the notice shall be prescribed by

the department and shall require only the name of the franchisor; the name under which the franchisor intends to do business; and the franchisor's principal business address.

(2) Upon receipt of a notice, the department shall indorse upon the notice the word "filed" and the date, and shall return the copy to the person who filed the notice. The notice shall be effective for a period of 1 year from the date of filing.

(3) Upon compliance with this section and the other requirements of this act, a person may lawfully offer and sell a franchise in this state.

(4) Failure to file the notice required in subsection (1) shall be punishable by a civil fine of not more than \$100.00 for the first day a franchise is offered and each following day until the notice is filed.

(5) A franchisor with an effective registration or exemption from registration on June 20, 1984 shall be considered to have filed the notice required under this section and, upon compliance with the other requirements of this act, may lawfully offer and sell a franchise in this state. A franchisor described in this subsection shall file annually the notice required in subsection (1) at the time prior to June 20, 1984 the franchisor was required to file its registration renewal statement.

(6) Franchise documents containing provisions that were lawful before June 20, 1984, which documents contain provisions made void and unenforceable under section 27, shall be valid and enforceable until the first annual filing by the franchisor after June 20, 1984.

(7) Within 60 days of the date a franchisor is required to file his or her notice as provided in subsection (1), the department shall notify in writing the franchisor of the date by which the notice must be filed and the penalties for failure to file.

(8) Failure by the department to notify the franchisor as required by subsection (7) shall not relieve the franchisor from the requirement of complying with all of the provisions of this act.

History: Add. 1984, Act 92, Eff. June 20, 1984;—Am. 1989, Act 213, Imd. Eff. Nov. 13, 1989.

445.1508 Prospective franchisee to be provided copy of disclosure statement, notice, and proposed agreements; form and contents of disclosure statement; location and contents of notice.

Sec. 8. (1) A franchise shall not be sold in this state without first providing to the prospective franchisee, at least 10 business days before the execution by the prospective franchisee of any binding franchise or other agreement or at least 10 business days before the receipt of any consideration, whichever occurs first, a copy of the disclosure statement described in subsection (2), the notice described in subsection (3), and a copy of all proposed agreements relating to the sale of the franchise.

(2) The disclosure statement required in subsection (1) may be in the form of a disclosure statement required by a federal or state government agency, or a disclosure statement approved by an association of state regulatory agencies, which the department determines by rule or order to encompass disclosure requirements similar to those in this subsection, or may be a disclosure statement that shall contain all of the following:

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

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

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

(d) The information concerning the identity and business experience of persons affiliated with the franchisor, as the department may prescribe.

(e) A statement whether any person identified in the disclosure statement:

(i) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(ii) Is subject to a currently effective order of the United States securities and exchange commission or the securities administrator of a state denying registration of, or barring or suspending the registration or license of, the person as a securities broker, dealer, securities agent, or registered representative or investment advisor or is subject to a currently effective order of a national securities association or national securities exchange, as defined in the securities exchange act of 1934, suspending or expelling the person from membership in the association or exchange.

(iii) Is subject to a currently effective order or ruling of the federal trade commission.

(iv) Is subject to a currently effective injunctive or restrictive order relating to business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesperson. The statement shall set forth the court, date of conviction or

judgment, the penalty imposed or damages assessed, or the date, nature, and issuer of the order.

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

(g) A recent financial statement of the franchisor, together with a statement of material changes in the financial condition of the franchisor from the date thereof. The department may prescribe the form and content of financial statements required under this act and the circumstances under which consolidated financial statements shall be filed. If a financial statement audited by independent certified public accountants is available, that audited financial statement shall be a part of the disclosure statement.

(h) A copy of the typical current franchise contract or agreement proposed for use or in use in this state, including all amendments thereto.

(i) 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.

(j) A statement describing 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 third party or parties.

(k) A statement of the conditions under which the franchise agreement may be terminated or renewal refused or repurchased at the option of the franchisor.

(l) 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, and the terms and conditions thereof.

(m) 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 customers.

(n) A statement of the terms and conditions of a financing arrangement when offered directly or indirectly by the franchisor or an agent or affiliate of the franchisor.

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

(p) A copy of a statement, if any, 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 the estimation or projection is based.

(q) 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.

(r) A statement of the total number and location of franchises presently operating and the proposed total to be sold in this state.

(s) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.

(t) Other relevant information as the franchisor may desire to present.

(3) The notice required in subsection (1) shall be on a separate sheet immediately following the cover sheet and shall contain all of the following:

(i) In 12-point boldface type: "The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you."

(ii) An exact copy of the items prohibited in section 27.

(iii) In 12-point boldface type: "The fact that there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general."

(iv) If the franchisor is subject to the escrow provisions of section 12, a statement describing the right of the franchisee to request an escrow arrangement.

(v) A statement that any questions regarding the notice should be directed to the department along with the address and phone number of the department.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1509-445.1511 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to disclosure statement, exemption from registration requirements, and proposed offering prospectus.

445.1512 Escrow of initial investment and other funds; time; surety bond; financial institution as escrow agent; release of escrowed funds; affidavit.

Sec. 12. (1) A franchisor whose most recent financial statements are unaudited and which show a net worth

of less than \$100,000.00 shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee or subfranchisor until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

(2) The escrow agent shall be a financial institution authorized to do business in this state. The escrow agent may release to the franchisor those amounts of the escrowed funds applicable to a specific franchisee or subfranchisor upon presentation of an affidavit executed by the franchisee and an affidavit executed by the franchisor stating that the franchisor has fulfilled its obligation to provide real estate, improvements, equipment, inventory, training, or other items. This subsection does not prohibit a partial release of escrowed funds upon receipt of affidavits of partial fulfillment of the franchisor's obligation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1513 Conditions prohibiting offering for sale or selling franchise.

Sec. 13. A franchise shall not be offered for sale or sold in this state if any of the following apply:

(a) The franchisor's method of business includes or would include activities which are illegal where performed.

(b) A person identified in the disclosure statement has been convicted of an offense described in section 8(2)(e)(i), is subject to an administrative order, or has had a civil judgment entered against him or her involving the illegal offering of franchises or securities and the department determines that the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

(c) The franchise offering is the subject of a permanent or temporary injunction entered under any federal or state act applicable to the offering.

(d) The franchisor has failed to pay the proper fee.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1514-445.1518 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to effective date of registration, notice of stop order, conditions to sale of franchise, and renewal of registration.

445.1519 Filing change in information contained in notice.

Sec. 19. A franchisor shall file with the department promptly in writing any change in the information contained in the notice as originally submitted or amended.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1520 Accounts of franchise sales; reports; examination of records.

Sec. 20. A franchisor offering franchises for sale in this state shall keep and maintain accounts of franchise sales in accordance with generally accepted accounting principles and shall make and file with the department such reports as the department may by rule or order prescribe, including an annual report setting forth the franchises sold by it, the proceeds derived therefrom, and the names and addresses of all of the franchisor's franchise agents in this state. All these records are subject at any time to a reasonable periodic, special, or other examinations by a representative of the department, within or without this state, as the department deems necessary or appropriate in the public interest or for the protection of franchisees.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1521 Certain facts not to constitute finding or approval; representation inconsistent with section prohibited.

Sec. 21. (1) The fact that documents required under this act are filed does not constitute a finding by the department that a document filed under this act is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the department has passed in any way upon the merits or qualifications of, or recommended or given approval to, any persons, franchise, or transaction.

(2) A person shall not make or cause to be made to a prospective purchaser or offeree a representation inconsistent with this section.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1522 Service of process.

Sec. 22. The notice filed by a nonresident franchisor under section 7a shall be considered an irrevocable consent appointing the corporations and securities bureau of the department of commerce to be its attorney to receive service of lawful process in any noncriminal action or proceeding against it or its successor, executor,

or administrator, which arises under this act or a rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the corporations and securities bureau of the department of commerce but it is not effective unless the plaintiff, who may be the department in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last address on file with the department and the plaintiff's affidavit of compliance is filed in the action, on or before the return day of the process, if any, or within such further time as the court allows.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1523 Untrue statement, omission, or failure to give notice of change.

Sec. 23. A person shall not make an untrue statement of a material fact in a notice or report filed with the department under this act, or omit to state in a notice or report a material fact which is required to be stated therein, or fail to notify the department of a change as required by this act.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1524 Filing of advertisement or sales literature; exemption from liability.

Sec. 24. (1) The department may by rule or order require the filing of any advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective franchisees.

(2) Nothing in this act shall impose any liability, civil or criminal, upon any person or publisher regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station, and acting solely in his official capacity, who publishes an advertisement in good faith and without knowledge that such advertisement or publication constitutes a violation of this act.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1525 Publication of false or misleading advertisement prohibited.

Sec. 25. A person shall not publish an advertisement concerning the offer or sale of a franchise in this state if the advertisement contains a statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1526 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to violation of order.

445.1527 Void and unenforceable provisions.

Sec. 27. Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a

renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1528 Pyramid or chain promotion or distribution.

Sec. 28. (1) A person may not offer or sell any form of participation in a pyramid or chain promotion. A pyramid or chain promotion is any plan or scheme or device by which (a) a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program or (b) a participant is to receive compensation when a person introduced by the participant introduces one or more additional persons into participation in the plan, each of whom receives the same or similar right, privilege, license, chance, or opportunity.

(2) A pyramid or chain promotion is declared to be illegal and against the public policy of the state. Any contract made in violation of this section is voidable at the sole option of the purchaser.

(3) The department shall not accept for filing a franchise which involves a pyramid or chain distribution contrary to the laws of this state.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1529, 445.1530 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to franchise agent's application and cease and desist order.

445.1531 Liability for damages or rescission; basis of damages.

Sec. 31. (1) A person who offers or sells a franchise in violation of section 5 or 8 is liable to the person purchasing the franchise for damages or rescission, with interest at 6% per year from the date of purchase until June 20, 1984 and 12% per year thereafter and reasonable attorney fees and court costs.

(2) A person may not file or maintain suit under this section if the franchisee received a written offer before suit and at a time when the franchisee owned the franchise to refund the consideration paid together with interest from the date of purchase at 1 percentage point above the rate provided by subsection (1), less the amount of income received on the franchise, conditioned only upon tender by the person of all items received by the franchisee for the consideration and not sold, and failed to accept the offer within 30 days of its receipt, or if the franchisee received the offer before suit and at a time when the franchisee did not own the franchise, unless the franchisee rejected the offer in writing within 30 days of its receipt. The rescission offer shall recite the provisions of this section. If the franchise involves substantial building or substantial equipment and a significant period of time has elapsed since the sale of the franchise to the franchisee, the rescission offer may recognize depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisor.

(3) A person who offers or sells a franchise in violation of section 7a is liable to the person purchasing the franchise for damages caused by the noncompliance.

(4) In a proceeding under this act, damages may be based on reasonable approximations, but not on speculation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984;—Am. 1989, Act 1, Eff. Mar. 29, 1990;—Am. 1989, Act 49, Imd. Eff. June 12, 1989.

445.1532 Joint and several liability.

Sec. 32. A person who directly or indirectly controls a person liable under this act, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person occupying a similar status or performing similar functions, an 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 the person, unless the other person who is so liable 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.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1533 Statute of limitations.

Sec. 33. An action shall not be maintained to enforce a civil or criminal liability created under this act unless brought before the expiration of 4 years after the act or transaction constituting the violation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1534 Civil liability; liability under other statute or common law.

Sec. 34. Except as explicitly provided in this act, civil liability in favor of any private party shall not arise against a person by implication from or as a result of the violation of a provision of this act or a rule or order hereunder. Nothing in this act shall limit a liability which may exist by virtue of any other statute or under common law if this act were not in effect.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1535 Action by department for injunction, restitution, or compliance; restraining order; writ of mandamus; appointment of receiver or conservator; bond not required; costs; notice of action; opportunity to cease and desist or to confer with department; presumption of immediate and irreparable harm.

Sec. 35. (1) Whenever it appears to the department that a person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, after notice as required in subsection (2), the department may bring an action in the name of the people in the circuit court to enjoin the acts or practices, to obtain restitution on behalf of the franchisee, or to enforce compliance with this act or a rule or order hereunder. Upon a proper showing a preliminary or permanent injunction, restraining order, or writ of mandamus 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 to post a bond. The court may award costs, including reasonable costs of investigation, to the prevailing party.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the department shall notify the person of the intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the department in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to the place of business listed in the notice under section 7a.

(3) In an action under this section to enjoin enforcement of a provision that is void and unenforceable under section 27, if the court finds that such a provision is present, there is a presumption of immediate and irreparable harm to the franchisee. Further showing shall not be required for a grant of a preliminary injunction.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1536 Investigations; statements under oath; administration of oaths and affirmations; subpoena; evidence; order requiring appearance; self-incrimination; perjury; contempt.

Sec. 36. (1) The department in its discretion may:

(a) Make such public or private investigations within or without this state as it deems necessary to determine if a person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, and publish information concerning the violation of this act or any rule or order.

(b) Require or permit any person to file a statement under oath or otherwise subject to the penalties of

perjury as the department requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to reply with all required information to such a departmental letter within 15 days after receipt thereof, shall be the basis for issuance of a cease and desist order.

(2) For the purpose of an investigation or proceeding under this act, the department or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to a person, the circuit court, upon application by the department, may issue to the person an order requiring him to appear before the department, or an officer designated by it, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(4) A person is not excused from attending and testifying or from producing a document or record before the department, or in obedience to the subpoena of the department or an officer designated by it or in a proceeding instituted by the department on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but a person may not be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1537 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to referring information as to violation to attorney general.

445.1538 Violation; penalty; punishing crime under other statute.

Sec. 38. A person who violates a provision of this act shall be fined not more than \$10,000.00, or imprisoned for not more than 7 years, or both. Nothing in this act limits the power of the state to punish a person for any conduct which constitutes a crime under any other statute.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1539 Prohibited conduct equivalent to appointment of corporations and securities bureau as attorney for service of process; procedure for service of process.

Sec. 39. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule or order hereunder, whether or not the person has filed a consent to service of process, and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to an appointment of the the corporations and securities bureau of the department of commerce to be his or her attorney to receive service of a lawful process in any noncriminal action or proceeding against the person or a successor, executor, or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, 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 corporations and securities bureau of the department of commerce, but it is not effective unless the plaintiff, which may be the department in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by 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: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1540 Collection and disposition of fees and fines; detailed statement; fee for filing notice under MCL 445.1507a.

Sec. 40. (1) The department shall charge and collect the fee fixed by this section. Fees and fines collected under this section and section 7a shall be transmitted to the state treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the general fund.

(2) The fee for filing a notice under section 7a is \$250.00.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1541 Rules.

Sec. 41. The department shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to implement this act.

History: 1974, Act 269, Eff. Oct. 15, 1974.

Administrative rules: R 445.101 et seq. of the Michigan Administrative Code.

445.1542 Documents subject to MCL 15.231 to 15.246; publication of information; disclosure of information withheld from public inspection; evidence sought under subpoena.

Sec. 42. Filings, reports, and other papers and documents filed with the department under this act shall be subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The department may publish information filed with it or obtained by it, if the action is in the public interest. The department or its examiners, investigators, assistants, clerks, or deputies shall not disclose information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this act or to other federal or state regulatory agencies. This act shall neither create nor derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the department.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1543-445.1545 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to copies of documents and provided an effective date.

445.1546 Prior acts, offenses, rights, liabilities, penalties, forfeiture, or punishments not impaired or affected; transfer of records, personnel, and funds.

Sec. 46. (1) This act does not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or a liability, penalty, forfeiture, or punishment incurred before this act takes effect, but the same may be enjoyed, asserted, and enforced, as fully and to the same extent as if this act had not been passed.

(2) The department of commerce shall transfer all records related to the administration of this act to the department of attorney general along with personnel and funds sufficient, in the opinion of the attorney general, to carry out this act.

History: Add. 1984, Act 92, Eff. June 20, 1984.