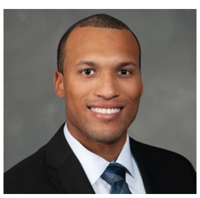
# State Franchise Exemptions

**A Practical Guidance® Practice Note by**
**Marc Lieberstein, Rupert Barkoff, Sam Kilb, and Savannah Ashby, and updated by Chris Williams-Lopez, Kilpatrick Townsend & Stockton LLP**

Marc Lieberstein
Kilpatrick Townsend & Stockton LLP



Chris Williams-Lopez
Kilpatrick Townsend & Stockton LLP

This chart presents the most common registration and disclosure exemptions for the 14 states that require registration of franchise offerings.

While there is no federal registration of franchise offerings, California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin require registration of franchise offerings. In the 14 states that require registration of franchise offerings, registration can be difficult and often a lengthy task that requires advanced planning by the franchisor and its legal counsel. The franchisor or its counsel must submit the Franchise Disclosure Document and various other forms to the appropriate state officials, typically the state's Department of Corporations or Attorney General's office. For more information, see Franchising: An Updated Look at the Basics and Franchising under State Franchise Laws.

## State Franchise Registration and Disclosure Exemptions

### Common Exemptions

| | CA | HI | IL | IN | MD | MI | MN | NY | ND | RI | SD | VA | WA | WI | FTC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Bank Credit Card Plans** | RD | | | | | | | RD | | | | | | | |
| **Cooperative Organizations** | R | | | | | RD | | | R | | | | | RD | |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Discretionary State Regulator Exemptions** | RD | RD | RD | RD | R | | R | RD | R | R | RD | | | R | |
| **Fractional Franchise** | RD | | RD | RD | | RD | R | R | | RD | RD | RD | | RD | D |
| **Insider Sale** | RD | | R | | | | | | | R | RD | | RD | | D |
| **Institutional Franchisee** | | RD | RD | | R | RD | R | R | | | R | R | RD | R | |
| **Internet Offers** | R | | | R | R | | R | R | R | R | | | R | | |
| **Isolated Sale / Single Franchise** | | | R | RD | | | R | R | | | | | R | | |
| **Judicial Officer Sale** | | RD | | | R | RD | R | | | R | RD | | RD | | |
| **Large/ Sophisticated Franchisee** | RD | | R | | | | | | | R | RD | | RD | | D |
| **Leased Department** | | RD | RD | | | RD | RD | RD | | R | RD | RD | RD | RD | D |
| **Minimum Payment** | RD | | RD | | RD | RD | RD | RD | | RD | RD | RD | R | R | D |
| **Offer While Renewal or Amendment Application Is Pending** | R | | | | | | | | | R | | | | | |
| **Offer/Sale to Existing Franchisees** | RD | RD | | | R | RD | RD | R | | R | R | R | RD | R | |
| **Out-of-State Sales** | RD | RD | | | RD | RD | R | | | RD | | RD | | R | |
| **Petroleum Marketers and Resellers** | RD | RD | | | | | | RD | | | RD | | | | D |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Renewal, Extension, Amendment, or Modification of Existing Franchise** | RD | RD | RD | RD | RD | RD | RD | RD | RD | R | RD | R | | R | D |
| **Sale by Existing Franchisee** | R | RD | RD | RD | R | RD | R | R | R | R | RD | R | RD | R | D |
| **Seasoned Franchisor** | RD | | R | RD | R | | | RD | R | R | | R | R | | |
| **Substantial Investment** | | | R | | R | | D | | | | RD | R | | R | D |

**Key:**

**R = Exempt from registration**

**D = Exempt from disclosure**

**D* = Limited disclosure required**

## Definitions

### *Bank Credit Card Plans*

Some states exempt bank credit card plans from registration and disclosure.

### *Cooperative Organizations*

The cooperative organization exemption varies by state. It normally applies to organizations where members own equal shares in the organization and directly benefit from the goods/services the organization provides.

### *Discretionary State Regulator Exemptions*

The discretionary state regulator exemption is granted by the state agency responsible for enforcing the state's franchise laws if certain conditions are met.

### *Fractional Franchise*

The requirements for the fractional franchise exemption vary by state, but it normally applies when the profits from the new franchise will not make up over 20% of the franchisee's total dollar volume in sales and the franchisee has a few years of experience.

### *Insider Sale*

The insider sale exemption is for individuals who, through their role in the franchisor's business, have knowledge about the franchise and are able to evaluate their investment without governmental oversight.

### *Institutional Franchisee*

The institutional franchisee exemption applies when a franchisee is an organization like a bank, trust company, insurance company, or broker-dealer and is purchasing the franchise for itself or in a fiduciary capacity.

### *Internet Offers*

Some states exempt offers through the internet from registration if the offers are not targeted to a person in that state.

### *Isolated Sale / Single Franchise*

Each state varies, but the isolated sale / single franchise exemption usually covers the sale of only a few franchises in a set period of time.

### *Judicial Officer Sale*

The judicial officer sale exemption applies to sales by marshals, sheriffs, receivers, guardians, conservators, trustees in bankruptcy, executors or administrators of an estate, or other judicial officers.

### *Large/Sophisticated Franchisee*

The large/sophisticated franchisee exemption is based on the franchisee's net worth, size, or a combination of the two. However, California also offers an exemption based on the amount of experience a franchisee has.

### *Leased Department*

The leased department exemption varies by state, but it normally applies when a franchisee leases space in a large retailer and only pays the large retailer rent.

### *Minimum Payment*

Each state statute varies, but a franchise will most likely be exempt if the nominal fee is between $100 and $500 during the course of the entire first year.

### *Offer While Renewal or Amendment Application Is Pending*

Franchisors are exempt from registration if they make an offer while their renewal or amendment application is pending. They must also comply with the additional requirements each state sets out.

### *Offer/Sale to Existing Franchisees*

The offer/sale to existing franchisees exemption usually applies to the sale of an additional franchise to an existing franchisee who owns the same type of franchise.

### *Out-of-State Sales*

Some states have explicit exemptions about out-of-state sales. Most of these exemptions apply when an offer or sale is not made in the state, the business will not be located in the state, and the franchisee is not residing in the state.

### *Petroleum Marketers and Resellers*

The petroleum marketers and resellers exemption applies to franchisors that sell petroleum products.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

This exemption applies to the renewal, extension, amendment, or modification of an existing franchise. States have different qualifications for using this exemption.

### *Sale by Existing Franchisee*

The sale by existing franchisee exemption covers the franchisee's sale of a franchise to a third party.

### *Seasoned/Large Franchisor*

The seasoned/large franchisor exemption applies when a franchisor meets minimum net worth and experience requirements.

### *Substantial Investment*

The substantial investment exemption requires a minimum investment of $1,000,000 (or $750,000 in Maryland).

# Federal Trade Commission (FTC) Disclosure Exemptions

## Summary of FTC Relationships Excluded by Definition

### *Renewal, Extension, Amendment, or Modification of Existing Franchise, 16 C.F.R. § 436.1(t)*

The renewal or extension of an existing franchise agreement is excluded from the FTC requirements unless there has been a material alteration of the terms or conditions.

### *Sale or Transfer by Existing Franchisee, 16 C.F.R. § 436.1(j), (t)*

The sale or transfer of a franchise by an existing franchisee for his or her own benefit is excluded.

For the text of FTC Relationships Excluded by Definition, see 16 C.F.R. § 436.1 Definitions.

## Summary of FTC Exemptions

### *Fractional Franchise, 16 C.F.R. § 436.8(a)(2)*

The sale of a franchise to a franchisee is exempt when the profits from it will not make up over 20% of the franchisee's total dollar volume in sales during the first year. The franchisee must have more than two years of experience in the same type of business as the franchise.

### *Insider Sale, 16 C.F.R. § 436.8(a)(6)*

Franchise sales to owners, officers, directors, general partners, or managers are exempt. At least 60 days before the sale, an owner must have owned at least 25% of the franchisor for at least two years. Further, they must be purchasing at least a 50% ownership interest in the franchise. Within 60 days of the proposed franchise sale, officers, directors, general partners, or managers must have at least two years of experience and seek to purchase at least 50% ownership interest of the franchise.

### *Large Investment, 16 C.F.R. § 436.8(a)(5)(i)*

The large investment exemption applies when the franchisee makes an initial investment of at least $1,143,100. The initial investment cannot include the funds from franchisor financing and the cost of unimproved land.

### *Large/Sophisticated Franchisee, 16 C.F.R. § 436.8(a)(5)(ii)*

The large/sophisticated franchisee exemption applies if the sale is to a franchisee that has a net worth of at least $5,715,500 and has been in business for at least five years.

### *Leased Department, 16 C.F.R. § 436.8(a)(3)*

Leased departments are franchise agreements where the franchisee only pays rent to the larger retailer it is leasing space in. The franchisee must not be required to directly or indirectly purchase goods or services from the franchisor or approved suppliers.

### *Minimum Payment, 16 C.F.R. § 436.8(a)(1)*

If a franchisee is only required to pay the franchisor or an affiliate of the franchisor less than $570 in the first six months of operation, the franchisor is exempt from the FTC disclosure requirements.

### *Oral Contracts, 16 C.F.R. § 436.8(a)(7)*

Relationships where there is no written evidence of a material term of the franchise relationship or agreement are exempt.

### *Petroleum Marketers and Resellers, 16 C.F.R. § 436.8(a)(4)*

Petroleum marketers and resellers who are protected by the Petroleum Marketing Practices Act are exempt from disclosure requirements for the specific franchise agreement that includes the franchising of the gasoline station.

For the text of FTC Exemptions, see 16 C.F.R. § 436.8 Exemptions.

# California

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Cooperative Organizations | Cal Corp Code 31005 | 2 | X | | |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | Cal Corp Code 31018 | 2 | X | X | X |
| Discretionary State Regulator Exemptions | Cal Corp Code 31100 | 3 | X | X | |
| Seasoned Franchisor | Cal Corp Code 31101(a) | 3 | X | X* | |
| Sale by Existing Franchisee | Cal Corp Code 31102 | 5 | X | | X |
| Bank Credit Card Plans | Cal Corp Code 31103 | 5 | X | X | |
| Petroleum Marketers and Resellers | Cal Corp Code 31104 | 5–6 | X | X | X |
| Out-of-State Sales | Cal Corp Code 31105 | 6 | X | X | |
| Large/Sophisticated Franchisee | Cal Corp Code 31106(a)(1); Cal Corp Code 31109 | 6, 8–9 | X | X | X |
| Insider Sale | Cal Corp Code 31106(a)(2) | 6–7 | X | X | X |

| | | | | | |
|---|---|---|---|---|---|
| Offer/Sale to Existing Franchisees | Cal Corp Code 31106(a)(3) | 7 | X | X | |
| Offer While Renewal or Amendment Application Is Pending | Cal Corp Code 31107 | 7 | X | | |
| Fractional Franchise | Cal Corp Code 31108 | 7–8 | X | X | X |
| Minimum Payment | 10 CCR 310.011 | 10 | X | X | X |
| Negotiated Sales | Cal Corp Code 31109.1; 10 CCR 310.100.2 | 9-10; 10–11 | X | | |
| Internet Offers | 10 CCR 310.100.3 | 11 | X | | |

*Limited disclosure required

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in California.

### *Cooperative Organizations*

Nonprofit organizations operated on a cooperative basis are not included in the term franchise if they wholesale goods and services primarily to their member retailers. Their members must have substantially equal control and nontransferable ownership. See the statute for additional requirements.

### *Renewal, Extension, Amendment, or Modification of an Existing Franchise*

Sale, sell, offer, and offer to sell do not include the renewal or extension of an existing franchise where there is no material modification or interruption in the operation of the business.

### *Discretionary State Regulator Exemption*

The commissioner can exempt a franchise by rule or order from registration or disclosure.

### *Seasoned Franchisor*

To be exempt from registration, the franchisor or a corporation owning at least 80% of the franchisor must meet one of the following requirements:

- The franchisor has a net worth greater than $5,000,000 and the franchise must have been in business for at least five years.
- The franchisor has a net worth greater than $1,000,000 and the parent has a net worth of over $5,000,000.
- The franchisor has a net worth of $1,000,000 and the parent has a consolidated net worth greater than or equal to $5,000,000. The parent must guarantee to assume the duties and obligations of the franchisor under the franchise agreement if the franchisor is unable to perform.

For the five year period immediately preceding the offer and sale of the franchise, the franchisor or parent must also have at least 25 franchisees conducting the same business as the franchise, and/or the franchisor or parent must have itself conducted business that is the subject of the franchise.

Under this exemption, limited disclosure is required consisting of information that is similar to that required by the FTC.

### *Sale by Existing Franchisee*

A franchisee's sale of a franchise for its own benefit is exempt from registration if the sale is not effected by or through a franchisor.

### *Bank Credit Card Plans*

This section does not apply to bank credit card plans, so they are exempt from registration and disclosure.

### *Petroleum Marketers and Resellers*

A franchisor is exempt from registration and disclosure if the franchisor is a petroleum corporation or a wholesale distributer of petroleum products, has done business continuously for the past five years, does not require an advance of funds, and is not engaged in the production or the refining of petroleum.

### *Out-of-State Sales*

An offer, sale, or transfer of a franchise to a resident of another state is exempt from registration and disclosure if all of the locations where the franchised business conducts sales, leases, or other transactions are located outside of California. An offer, sale, or transfer of a franchise is also exempt from registration if the goods or services are not distributed in California.

### *Large/Sophisticated Franchisee*

An offer or sale of a franchise is exempt from registration and disclosure if one or more of the prospective franchise owners who will own at least 50% interest in the franchisee is not controlled by the franchisor and has, within the last seven years, at least 24 months' experience running a business that is substantially similar to those offered by the franchised business.

Further, there is a second exemption from registration and disclosure if:

1. The franchisee is purchasing the franchise for their own account and is:

- A partner, executive officer, or director of the franchisor
- An entity with over $5,000,000 assets
- A natural person who has a net worth of $1,000,000 –or–
- A natural person whose gross income is greater than $300,000 per year in the two most recent years or whose joint gross income with their spouse is greater than $500,000 and who reasonably expects to reach the same income level in the currently year

2. The franchisor reasonably believes that the purchasers have the capacity to evaluate the franchise investment because they have enough knowledge and experience in financial matters. The cash payment from the franchisee cannot exceed 10% of the franchisee's net worth or joint net worth.

### *Insider Sale*

An offer or sale of a franchise is exempt from registration and disclosure if one or more of the prospective franchise owners who will own at least 50% interest in the franchisee is not controlled by the franchisor. He or she must have been, within 60 days prior to the sale, offer, or transfer of the franchise, an officer, director, or managing agent of the franchisor. They also qualify if they were an owner of at least a 25% interest in the franchisor for at least 24 months.

### *Offer/Sale to Existing Franchisees*

An offer or sale of a franchise is exempt from registration and disclosure if the offer, sale, or transfer is to an existing franchisee of the franchisor. The franchisee must have been engaged in a business offering substantially similar products or services for 24 months prior to the offer or sale.

### *Offer While Renewal or Amendment Application Is Pending*

An offer or sale is exempt from registration while an application for renewal or amendment is pending if the prospective franchisee receives:

1. The franchise disclosure document filed with the commissioner
2. A written statement saying, among other things, that the franchisor will give the franchisee the franchise disclosure document showing all changes from the previous filing at least 14 days before they sign a binding agreement –and–
3. The franchise disclosure document mentioned in (2)

### *Fractional Franchise*

An offer or sale of a franchise is exempt from registration and disclosure if the franchise involves the addition of a new product or service line to the prospective franchisee's existing business, and the following are true:

- For at least 24 months before the sale of the franchise, the franchisee has been engaged in a substantially similar business to that of the franchised business.
- The new product or service is substantially similar to the product or service being offered by the prospective franchisee's existing business.
- The franchised business is going to be operated from the same business location as the prospective franchisees existing business.
- The parties anticipated that the sales resulting from the franchised business would not be more than 20% of the total sales in dollar volume of the franchisee on an annual basis.
- The franchisor does not control the prospective franchisee.
- The franchisor files notice of exemption and pays the fees.

### *Terms Different from Registered Offer*

The offer and sale of a franchise for different terms than the ones it is registered under is exempt from registration if:

- The initial offer is registered.
- The prospective franchisee receives additional information in the disclosure document.

### *Minimum Payment*

To be exempt from registration and disclosure, the franchise fee must not exceed $500 annually.

### *Negotiated Sales*

The offer or sale of a franchise on terms different from the terms of the offer registered is exempt from registration if all the following factors are satisfied:

- The initial offer is the one registered.
- The prospective franchisee receives all notices of negotiated sale of franchise with the offering circular.
- The franchisor amends its offer with specific disclosure language.
- The franchisor files a notice with the commissioner.
- The franchisor certifies or declares in the appendix to its application for renewal that all notices have been filed with the commissioner.

### *Internet Offers*

A communication made through the internet about an offer to sell a franchise is exempt from registration if the following are true:

- The offer indicates indirectly or directly that it is not being offered to California residents.
- The internet offer is not directed to any person in California by or on behalf of the franchisor or someone acting with the franchisors knowledge.
- No franchises are sold in California until the offering is registered and the offering circular is delivered to the offeree.

## Hawaii

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Leased Department | HRS § 482E-2 | 1 | X | X | X |
| Judicial Officer Sale | HRS § 482E-4(a)(1) | 2 | X | X | |
| Institutional Franchisee | HRS § 482E-4(a)(2) | 2 | X | X | |
| Motor Vehicle Franchise | HRS § 482E-4(a)(3) | 2 | X | X | |
| Out-of-State Sales | HRS § 482E-4(a)(4) | 2 | X | X | |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | HRS § 482E-4(a)(5) | 2 | X | X | X |
| Offer/Sale to Existing Franchisees | HRS § 482E-4(a)(6) | 2 | X | X | |
| Sale by Existing Franchisee | HRS § 482E-4(a)(7) | 2 | X | X | X |
| Discretionary State Regulator Exemptions | HRS § 482E-4(b) | 2 | X | X | |

### Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Hawaii.

#### *Leased Department*

Leased departments are outside the definition of a franchise agreement because the lease of a property is not included in the definition of a franchise fee.

#### *Judicial Officer Sale*

A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator is exempt from registration and disclosure.

#### *Institutional Franchisee*

An offer or sale to an institutional buyer acting for itself or in a fiduciary capacity is exempt from registration and disclosure. An institutional buyer is a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or some other financial institution or institutional buyer.

#### *Motor Vehicle Franchise*

A motor vehicle franchise is exempt from registration and disclosure.

#### *Out-of-State Sales*

The offer or sale of a franchise is exempt from registration and disclosure when the franchisee is not domiciled in Hawaii and the franchise business will not be located in Hawaii.

#### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

If there is no material change or interruption in the operation of a franchise business, the following are exempt from registration and disclosure:

- The extension or renewal of an existing franchise
- The exchange or substitution of a modified franchise agreement –and–
- The transfer of the location of a franchise

#### *Offer/Sale to Existing Franchisees*

The offer or sale of an additional franchise to an existing franchisee of the same franchisor is exempt from registration and disclosure.

#### *Offer/Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee for the franchisee's own account, or the issuance of a new franchise agreement pursuant to a sale by a franchisee for the franchisee's own account, if the sale is an isolated sale and not part of a plan of distribution of franchises, is exempt from registration and disclosure.

#### *Discretionary State Regulator Exemption*

The director may exempt a franchise from registration or disclosure by rule or order.

## Illinois

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Minimum Payment | 815 ILCS 705/3 | 1 | X | X | X |
| Leased Department | 815 ILCS 705/3(1)(c)(i) | 1 | X | X | X |
| Fractional Franchise | 815 ILCS 705/3(1)(c)(ii) | 1 | X | X | X |
| Petroleum Marketers and Resellers | 815 ILCS 705/3(1)(c)(iv) | 1 | X | X | X |
| Sale by Existing Franchisee | 815 ILCS 705/7 | 4 | X | X | X |

| | | | | | |
|---|---|---|---|---|---|
| Renewal, Extension, Amendment, or Modification of Existing Franchise | 815 ILCS 705/7 | 4 | X | X | X |
| Seasoned Franchisor | 815 ILCS 705/8(a)(1); 14 Ill. Adm. Code 200.202 | 4, 7–8 | X | | |
| Large/Sophisticated Franchisee | 815 ILCS 705/8(a)(2) | 4 | X | | X |
| Insider Sale | 815 ILCS 705/8(a)(3) | 4–5 | X | | X |
| Institutional Franchisee | 815 ILCS 705/8(b);<br>14 Ill. Adm. Code 200.202(a) | 5, 6 | X | X | |
| Discretionary State Regulator Exemptions | 815 ILCS 705/9 | 5 | X | X | |
| Isolated Sale / Single Franchise | 14 Ill. Adm. Code 200.201(b) | 6 | X | | |
| Substantial Investment | 14 Ill. Adm. Code 200.201(c) | 6 | X | | X |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises from Illinois or in/to prospects within Illinois.

### *Minimum Payment*

An agreement with a franchise fee of less than $500 is not a franchise.

### *Leased Department*

A franchised business on the franchisor's property that is incidental to the business conducted by the franchisor is excluded from the statute.

### *Fractional Franchise*

A relationship is excluded from Illinois' statute when the franchisee has been in the same type of business as the franchise for more than two years and the parties anticipate that the new franchise will not account for more than 20% of the franchisee's sales in dollar volume for at least one year after the franchisee begins operating the franchise.

### *Petroleum Marketers and Resellers*

A franchise relationship covered by the Petroleum Marketing Practices Act is excluded from the statute.

### *Sale by Existing Franchisee*

A franchisee's sale of a franchise for his or her own benefit is exempt from registration and disclosure if the sale is not effected by or through a franchisor.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The extension or renewal of an existing franchise where there is no interruption in the operation of the franchise business by the franchisee is exempt from registration and disclosure.

### *Seasoned Franchisor*

First, a sale or offer of a franchise is exempt from registration, but not disclosure, if the franchisor has a net worth greater than $15,000,000, or $1,000,000 and is 80% owned by an entity that has a consolidated net worth of $15,000,000.

A second exemption is available if:

- The franchisor has a net worth greater than $5,000,000, or $1,000,000 and the parent has a consolidated net worth greater than or equal to $5,000,000. The parent must also guarantee to assume the duties and obligations of the franchisor under the franchise agreement if the franchisor is unable to perform, and
- The franchisor or the parent corporation that owns at least 80% of the franchisor has had, in the five-year

period before the offer and sale of the franchise, at least 25 franchisees conducting business in its franchise system.

Note that, unlike the first seasoned franchisor exemption, under the second exemption, a filing is required.

### *Large/Sophisticated Franchisee*

A sale or offer of a franchise is exempt from registration, but not disclosure, if the franchisee is an entity that has been in business for at least five years and has a net worth of at least $5,000,000.

### *Insider Sale*

A sale or offer of a franchise is exempt from registration, but not disclosure, if one or more purchasers of at least 50% ownership in the franchise has been for at least two years an officer, director, general partner, individual with management responsibility for the offer and sale of the franchisor's franchises, or the administrator of the franchised network. A purchaser may also have been, for at least two years, an owner of at least a 25% interest in the franchisor. The purchaser must have this relationship with the franchisor within 60 days of the sale.

### *Institutional Franchisee*

The offer or sale of a franchise is exempt from registration and disclosure if it is to a bank, savings institution, trust company, interstate carrier, or insurance company.

### *Discretionary State Regulator Exemptions*

The attorney general (Administrator) may grant exemptions by rule or order.

### *Isolated Sale / Single Franchise*

An offer or sale is exempt from registration if the franchisor only sells two franchises in a year, provides the prospective franchisee with a disclosure document and franchisee provides a letter from his or her attorney stating that he or she explained applicable Illinois franchise laws to the franchisee.

### *Substantial Investment*

A franchise can be exempt from registration if the franchisee's actual minimum initial investment is over $1,000,000.

## Indiana

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Fractional Franchise | Burns Ind. Code Ann. § 23-2-2.5-1 | 1 | X | X | X |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | Burns Ind. Code Ann. § 23-2-2.5-1 | 1 | X | X | X |
| Isolated Sale / Single Franchise | Burns Ind. Code Ann. § 23-2-2.5-3 | 2 | X | X | |
| Seasoned Franchisor | Burns Ind. Code Ann. § 23-2-2.5-3 | 2–3 | X | X* | |
| Sale by Existing Franchisee | Burns Ind. Code Ann. § 23-2-2.5-4 | 4 | X | X | X |
| Discretionary State Regulator Exemptions | Burns Ind. Code Ann. § 23-2-2.5-5 | 4 | X | X | |
| Internet Offers | Order No. 97-0378 AO, December 24, 1997 | 4–5 | X | | |

*Limited disclosure required

### Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Indiana.

#### *Fractional Franchise*

The definition of the term franchise does not include an agreement where the franchisee has been in a similar type of business as the franchise for at least two years and the parties anticipate that the franchise will not account for more than 20% of the franchisee's total gross sales during the first year of operations.

#### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

When there is no interruption in the operation of a franchised business, a renewal or extension of the franchise does not fall under the definition of the terms offer or offer to sell.

#### *Isolated Sale / Single Franchise*

An offer or sale is exempt from registration and disclosure if the franchisor sells no more than one franchise in any 24-month period.

#### *Seasoned Franchisor*

An offer or sale of a franchise is exempt from registration if the franchisor has a net worth at or above $5,000,000 or the franchisor has a net worth at or above $1,000,000 and is at least 80% owned by a corporation that has a net worth of not less than $5,000,000. In addition, in the five-year period immediately before the offer or sale, the franchisor or the parent must have had at least 25 franchisees conducting business at all times. The franchisor or parent also satisfies this part of the exemption if they conducted the business that is the subject of the franchise continuously for not less than five years preceding the offer or sale.

Under this exemption, limited disclosure is required consisting of information that is similar to that required by the FTC.

#### *Sale by Existing Franchisee*

A franchisee's offer or sale of a franchise for its own benefit is exempt from registration and disclosure if the sale is not effected by or through a franchisor.

#### *Discretionary State Regulator Exemptions*

Registration and disclosure requirements do not apply to an offer or sale that the commissioner exempts.

#### *Internet Offers*

A communication made through the internet about an offer to sell a franchise is exempt from registration if all of the following are true:

- The offer indicates, indirectly or directly, that it is not being offered to people in Indiana.
- The internet offer is not directed to any person in Indiana by or on behalf of the franchisor
- No franchises are sold in Indiana as a result of the offer.

# Maryland

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Renewal, Extension, Amendment, or Modification of Existing Franchise | Md. BUSINESS REGULATION Code Ann. § 14-203 | 1 | X | X | X |
| Judicial Officer Sale | Md. BUSINESS REGULATION Code Ann. § 14-214 | 2 | X | | |
| Offer/Sale to Existing Franchisees | Md. BUSINESS REGULATION Code Ann. § 14-214 | 2 | X | | |
| Discretionary State Regulator Exemptions | Md. BUSINESS REGULATION Code Ann. § 14-214; COMAR 02.02.08.10 | 2, 5 | X | | |

| | | | | | |
|---|---|---|---|---|---|
| Sale by Existing Franchisee | Md. BUSINESS REGULATION Code Ann. § 14-214 | 2 | X | | X |
| Out-of-State Sales | Md. BUSINESS REGULATION Code Ann. § 14-203; COMAR 02.02.08.10 | 3 | X | X | |
| Minimum Payment | Md. BUSINESS REGULATION Code Ann. § 14-203; COMAR 02.02.08.10 | 3 | X | X | X |
| Seasoned Franchisor | COMAR 02.02.08.10 | 3–4 | X | | |
| Substantial Investment | COMAR 02.02.08.10 | 4 | X | | X |
| Institutional Franchisee | COMAR 02.02.08.10 | 4–5 | X | | |
| Internet Offers | COMAR 02.02.08.18 | 6 | X | | |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Maryland.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The renewal or extension of an existing franchise is excluded from the statute if there is no interruption in the operation of the franchised business.

### *Judicial Officer Sale*

A transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator is exempt from registration.

### *Offer/Sale to Existing Franchisees*

An offer or sale of a franchise that is substantially similar to one owned by the offeree or buyer is exempt from registration.

### *Discretionary State Regulator Exemptions*

Any transaction the commissioner exempts by regulation is exempt from registration.

### *Sale by Existing Franchisee*

A franchisee's offer or sale of a franchise for its own benefit is exempt from registration if the sale is not effected by or through a franchisor.

### *Out-of-State Sales*

An offer or sale is exempt from registration and disclosure if it is made to a person who is not resident of Maryland, the franchised business is not going to be operated in Maryland, the offer to sell is not made in Maryland, and the offer to buy is not accepted in Maryland.

### *Minimum Payment*

An offer or sale is exempt from registration and disclosure if the franchise fee is not greater than $100 annually.

### *Seasoned Franchisor*

An offer or sale is exempt from registration if the franchisor has a net equity of $10,000,000 or has a net equity of $1,000,000 and is at least 80% owned by a corporation that has a net equity of $10,000,000. The corporation must guarantee the performance of the franchisor's obligations. Either the franchisor or the parent must have had at least 25 franchisees conducting the same franchised business at all times in the five-year period immediately preceding the offer or sale.

### *Substantial Investment*

An offer or sale is exempt from registration if the franchisor requires an initial investment by the franchisee of more than $750,000.

### *Institutional Franchisee*

An offer or sale of a franchise is exempt from registration if it is to a bank, savings bank, savings and loan association, trust company, insurance company, investment company or any other financial institution, or a broker-dealer. The purchaser must be acting either for itself or in a fiduciary capacity and cannot purchase the franchise to resell it.

### *Internet Offers*

Internet offers are exempt from registration if all the following are true:

- The offer indicates, indirectly or directly, that it is not being offered to people in Maryland.
- The internet offer is not directed to any person in Maryland by or on behalf of the franchisor.
- No franchises are sold in Maryland as a result of the offer.

# Michigan

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Leased Departments | MCLS § 445.1503 | 1 | X | X | X |
| Cooperative Organizations | MCLS § 445.1504a | 2 | X | X | |
| Judicial Officer Sale | MCLS § 445.1506 | 2 | X | X | |
| Institutional Franchisee | MCLS § 445.1506 | 2 | X | X | |
| Minimum Payment | MCLS § 445.1506 | 2 | X | X | X |
| Out-of-State Sales | MCLS § 445.1506 | 2 | X | X | |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | MCLS § 445.1503; MCLS § 445.1506 | 2 | X | X | X |
| Sale by Existing Franchisee | MCLS § 445.1506 | 3 | X | X | X |
| Offer/Sale to Existing Franchisees | MCLS § 445.1506 | 3 | X | X | |
| Fractional Franchise | MCLS § 445.1506 | 3 | X | X | X |

### Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Michigan.

#### *Leased Departments*

Payments made in connection with a lease for a franchised business on the franchisor's property that is incidental to the business conducted by the franchisor do not fall within the definition of franchise fee.

#### *Cooperative Organizations*

The act does not apply to a nonprofit cooperative organization.

#### *Judicial Officer Sale*

The offer or sale of a franchise is exempt from registration and disclosure requirements if the transaction is by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

#### *Institutional Franchisee*

An offer or sale to an institutional buyer acting for itself or in a fiduciary capacity is exempt from registration and disclosure. An institutional buyer is a bank, savings institution, trust company, insurance company, investment company; other financial institution, association, or institutional buyer; or a broker-dealer.

#### *Minimum Payment*

A franchise is exempt from registration and disclosure requirements if the franchise fee does not exceed $500.

#### *Out-of-State Sales*

A franchise is exempt from registration and disclosure requirements if the offer or sale is to a prospective franchisee who is not domiciled in Michigan and the franchise business will not be operated in Michigan.

#### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The extension or renewal of an existing franchise where there is no interruption in the operation of the franchise business of the franchisee and no material change in the franchise relationship is exempt from registration and disclosure.

#### *Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee for the franchisee's own account is exempt from registration and disclosure. The offer or sale must be an isolated sale, and the franchisee must provide full access to the books and records related to the franchise.

#### *Offer/Sale to Existing Franchisees*

An offer or sale to an existing franchisee is exempt from registration and disclosure. To qualify for this exemption, the franchisee must have actively operated the franchise for the last 18 months and cannot be purchasing the franchise for resale.

#### *Fractional Franchise*

The offer or sale of a franchise is exempt from registration and disclosure if it is a fractional franchise. To qualify, the new franchise must become a component of the franchisee's established business. In addition, the person directly responsible for the operation of the franchise must have been directly or indirectly engaged in the type of business represented by the franchise relationship for at least two years. Further, the parties must reasonably believe that the franchisee's gross sales from the franchise will not be more than 20% of the franchisee's gross sales from all of their combined business operations.

## Minnesota

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Leased Departments | Minn. Stat. § 80C.01 | 2 | X | X | X |
| Minimum Payment | Minn. Stat. § 80C.01 | 2 | X | X | X |
| Sale by Existing Franchisee | Minn. Stat.§ 80C.03(a) | 5 | X | | X |
| Judicial Officer Sale | Minn. Stat.§ 80C.03(b) | 5 | X | | |

| | | | | | |
|---|---|---|---|---|---|
| Institutional Franchisee | Minn. Stat.§ 80C.03(c) | 5 | X | | |
| Securities | Minn. Stat.§ 80C.03(d) | 5 | X | | |
| Isolated Sale / Single Franchise | Minn. Stat.§ 80C.03(e) | 5 | X | | |
| Fractional Franchise | Minn. Stat.§ 80C.03(f) | 5 | X | | X |
| Discretionary State Regulator Exemptions | Minn. Stat.§ 80C.03(g) | 5 | X | | |
| Out-of-State Sales | Minn. Stat.§ 80C.03(h) | 5 | X | | |
| Offer/Sale to Existing Franchisees | Minn. R. 2860.1100 | 6 | X | X | |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | Minn. R. 2860.1100 | 6 | X | X | X |
| Substantial Investment | Minn. R. 2860.8100–8300 | 7 | | * | X |
| Internet Offers | Business Franchise Guide MN (CCH) P 5230.81 | 7 | X | | |

*Limited disclosure required

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Minnesota.

### *Leased Departments*

A business that is incidental to the franchisor's business and is operated on the franchisor's property under a lease or license agreement is not within the definition of the term franchise.

### *Minimum Payment*

An agreement where the franchisee has to pay less than $100 on an annual basis is not within the definition of a franchise.

### *Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee is exempt from registration if it is not effected by or through a franchisor. In addition, the franchisee cannot make more than one sale during any consecutive 12-month period.

### *Judicial Officer Sale*

Any transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator is exempt from registration.

### *Institutional Franchisee*

Any offer or sale to a banking organization, financial organization, or life insurance corporation is exempt from registration.

### *Securities*

Securities currently registered in Minnesota pursuant to Chapter 80A of the Minnesota Statutes are exempt from registration.

### *Isolated Sale / Single Franchise*

The offer or sale of a franchise is exempt from registration if the franchisor:

- Sells no more than one franchise during any 12-month period
- Has not advertised the franchise for sale to the general public

- Deposits all franchise fees within two days of receiving them into an escrow account until all obligations are performed that must be performed before the franchise is opened –and–
- Provides a written notice to the commissioner of its intention to offer or sell a franchise under this exemption at least 10 business days prior to the sale

### *Fractional Franchise*

The offer or sale of a fractional franchise is exempt from registration. A fractional franchise is a franchise relationship where the franchisee has been in the type of business of the franchise for two years and the parties reasonably expect that the sales from the franchise will not be more than 20% of the dollar sales volume of the franchisee.

### *Discretionary State Regulator Exemptions*

Any transaction that the commissioner exempts by rule or order is exempt from registration.

### *Out-of-State Sales*

The offer or sale of a franchise is exempt from registration if it is to a resident of another state who is not present or domiciled in Minnesota, or the franchise business is not going to be operated wholly or partly in Minnesota.

### *Offer/Sale to Existing Franchisees*

The grant of an additional franchise to an existing franchisee is exempt from registration if it does not substantially vary from the franchise that is presently possessed by the franchisee.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

An extension or renewal of an existing franchise is exempt from registration if it does not vary substantially from the franchisee's current franchise.

### *Substantial Investment*

This is not an exemption from registration. It permits a franchisor to disclose less if the franchisee makes an initial, unfinanced investment over $200,000.

### *Internet Offers*

Internet offers of a franchise are exempt from registration if all the following are true:

- The offer indicates, indirectly or directly, that it is not being offered to Minnesota residents and the franchise is not to be located in Minnesota.
- The internet offer is not directed to any person in Minnesota by or on behalf of the franchisor or someone acting with the franchisors knowledge.
- No franchises are sold in Minnesota on behalf of the franchisor until the offering is registered and declared effective and the Minnesota Offering circular is delivered to the purchaser prior to the sale.

## New York

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Petroleum Marketers and Resellers | NY CLS Gen Bus § 681 | 1 | X | X | X |
| Minimum Payment | NY CLS Gen Bus § 681 | 1 | X | X | X |
| Leased Department | NY CLS Gen Bus § 681 | 1 | X | X | X |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | NY CLS Gen Bus § 681 | 2 | X | X | X |
| Discretionary State Regulator Exemptions | NY CLS Gen Bus § 684 | 3 | X | X | |
| Seasoned Franchisor | NY CLS Gen Bus § 684(2)–(3) | 3–5 | X | X* | |

| | | | | | |
|---|---|---|---|---|---|
| Institutional Franchisee | NY CLS Gen Bus § 684(3)(b) | 5 | X | | |
| Isolated Sale / Single Franchise | NY CLS Gen Bus § 684(3)(c) | 5 | X | | |
| Offer/Sale to Existing Franchisees | NY CLS Gen Bus § 684(3)(d); 13 NYCRR § 200.10(a) | 5, 6 | X | | |
| Sale by Existing Franchisee | NY CLS Gen Bus § 684(5) | 5 | X | | X |
| Bank Credit Card Plan | NY CLS Gen Bus § 684(6) | 5 | X | X | |
| Fractional Franchise | 13 NYCRR § 200.10(b) | 6 | X | | X |
| Internet Offers | 13 NYCRR § 200.13 | 7 | X | | |

*Limited disclosure required

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises from New York or in/to prospects within New York.

### *Petroleum Marketers and Resellers*

If a franchise agreement is for the sale of motor fuel, it is excluded from the statute.

### *Minimum Payment*

A franchise fee that does not exceed $500 annually is not within the definition of a franchise fee.

### *Leased Department*

Leased departments are outside the definition of a franchise agreement because the lease of a property is not included in the definition of a franchise fee.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The renewal or extension of an existing franchise is excluded from the statute if there is no interruption in the franchised business.

### *Discretionary State Regulator Exemptions*

The department may exempt by rule or regulation any person from registration or disclosure.

### *Seasoned Franchisor*

The offer or sale of a franchise is exempt from registration if the franchisor has a net worth greater than $15,000,000, or $3,000,000 and is 80% owned by an entity that has a consolidated net worth of $15,000,000.

A second exemption is available if the franchisor has a net worth of not less than $5,000,000, or $1,000,000 and is at least 80% owned by a corporation that has a net worth of not less than $5,000,000. Note that, unlike the first seasoned franchisor exemption, under the second exemption, a filing is required.

Under this exemption, limited disclosure is required consisting of information that is similar to that required by the FTC.

### *Institutional Franchisee*

The offer or sale of a franchise is exempt from registration if the offer or sale is to a bank, savings institution, trust company, insurance company, investment company, broker-dealer, or other financial institution, association, or institutional buyer. The purchaser must be acting for itself or in some fiduciary capacity.

### *Isolated Sale / Single Franchise*

The offer or sale of a franchise is exempt from registration if the offer is directed to not more than two persons. Further, the franchisor may not grant the franchisee the right to offer franchises to others, no commission is paid for soliciting the franchisee, and the franchisor is domiciled in New York or has consented to service of process in New York.

### *Offer/Sale to Existing Franchisees*

The offer or sale of a franchise is exempt from registration if the offer or sale is to a franchisor's existing franchisee.

The franchisee must have actively operated one of the franchisor's franchises for 18 months and cannot purchase the franchise to resell it.

### *Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee for its own account is exempt from registration when the sale is not part of a plan of distribution of franchises and is not effected by or through the franchisor. The franchisee must also give the prospective purchaser a copy of the offering prospectus of the franchisor currently registered with the department of law.

### *Bank Credit Card Plan*

This article is not applicable to any transaction relating to a bank credit card plan.

### *Fractional Franchise*

Any offer or sale of a fractional franchise is exempt from registration. To qualify as a fractional franchise, the following must be true:

- The franchise must add a new product or service line to the prospective franchisee's existing business.
- The franchisee must have been engaged in a similar business to the franchise for at least the 24 months before the sale or offer.
- The new product or service must be substantially similar to those being offered by the existing business.
- The franchised business must be operated from the same location as the existing business.
- The franchisee must not be controlled by the franchisor.
- The parties must anticipate that the sales from the franchised business will not be more than 20% of the total sales of the franchisee annually.

### *Internet Offers*

Any communication made through the internet of an offer to sell a franchise is exempt from the registration provisions if all the following are true:

- The offer indicates, indirectly or directly, that it is not being offered to New York residents.
- The internet offer is not directed to any person in New York by or on behalf of the franchisor or someone acting with the franchisors knowledge.
- No franchises are sold in New York on behalf of the franchisor until the offering is registered and declared effective and the offering circular is delivered to the purchaser prior to the sale.

## North Dakota

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Renewal, Extension, Amendment, or Modification of Existing Franchise | N.D. Cent. Code, § 51-19-02; N.D. Cent. Code, § 51-19-04(1)(d) | 2 | X | X | X |
| Seasoned Franchisor | N.D. Cent. Code, § 51-19-04 | 3 | X | | |
| Sale by Existing Franchisee | N.D. Cent. Code, § 51-19-04(2) | 5 | X | | X |
| Discretionary State Regulator Exemptions | N.D. Cent. Code, § 51-19-04(3) | 5 | X | | |
| Internet Offers | Administrative Order | 5 | X | | |
| Cooperative Organizations | N.D. Admin. Code 73-03-01-01 | 6 | X | | |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises from North Dakota or in/to prospects within North Dakota.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The renewal or extension of a franchise agreement is excluded from the statute if there is no interruption in the franchisee's business.

### *Seasoned Franchisor*

An offer or sale is exempt from registration if the franchisor has a net worth of not less than $10,000,000 or has a net worth of not less than $1,000,000 and is at least 80% owned by a corporation that has a net worth of not less than $10,000,000. The franchisor or the parent corporation must have had at least 25 franchisees conducting business at all times during the five-year period immediately preceding the offer or sale. However, the franchisor or parent can also qualify if they have conducted business that is the subject of the franchise continuously for not less than five years preceding the offer or sale.

### *Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee for the franchisee's account is exempt from registration if the sale is not effected by or through the franchisor.

### *Discretionary State Regulator Exemptions*

The commissioner may exempt any other transaction from registration.

### *Internet Offers*

Internet offers to sell a franchise are not offers of franchises if all the following are true:

1. The offer indicates, indirectly or directly, that it is not being offered to North Dakota residents.
2. The internet offer is not directed to any person in North Dakota by or on behalf of the franchisor or someone acting with the franchisors knowledge.
3. No franchises are sold in North Dakota on behalf of the franchisor until the offering is registered and declared effective. The North Dakota offering circular must be delivered to the purchaser prior to the sale.

### *Cooperative Organizations*

Nonprofit corporations are exempt from registration if they satisfy certain requirements, such as limiting membership to only people who use the services provided by the organization and prohibiting or limiting transfer of ownership. See the statute for all the factors.

# Rhode Island

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Minimum Payment | R.I. Gen. Laws § 19-28.1-3 | 1 | X | X | X |
| Seasoned Franchisor | R.I. Gen. Laws § 19-28.1-6(1) | 3 | X | | |
| Sale by Existing Franchisee | R.I. Gen. Laws § 19-28.1-6(2) | 3 | X | | X |
| Insider Sale | R.I. Gen. Laws § 19-28.1-6 (3) | 3 | X | | X |
| Large/Sophisticated Franchisee | R.I. Gen. Laws § 19-28.1-6(4) | 3 | X | | X |
| Offer/Sale to Existing Franchisees | R.I. Gen. Laws § 19-28.1-6(5) | 3 | X | | |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | R.I. Gen. Laws § 19-28.1-6 (6) | 4 | X | | X |

| | | | | | |
|---|---|---|---|---|---|
| Judicial Officer Sale | R.I. Gen. Laws § 19-28.1-6 (7) | 4 | X | | |
| Offer While Renewal or Amendment Application Is Pending | R.I. Gen. Laws § 19-28.1-6 (8) | 4 | X | | |
| Leased Department | R.I. Gen. Laws § 19-28.1-6 (9) | 4 | X | | X |
| Discretionary State Regulator Exemptions | R.I. Gen. Laws § 19-28.1-6(10) | 4 | X | | |
| Out-of-State Sales | R.I. Gen. Laws § 19-28.1-7 | 5 | X | X | |
| Fractional Franchise | 230 RICR 050-10-1 | 5 | X | X | X |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Rhode Island.

### *Minimum Payment*

A franchise's franchise fee must be above $500 to qualify as a franchise.

### *Seasoned Franchisor*

The offer or sale of a franchise is exempt from registration if the franchisor or a company that owns at least 80% of the franchisor has a net worth of at least $10,000,000. The parent must also guarantee to assume the duties and obligations of the franchisor under the franchise agreement if the franchisor is unable to perform. The franchisor or the parent must have conducted substantially the same business to be offered or sold at no fewer than 25 locations for the entire five-year period immediately preceding the offer or sale of the franchise.

### *Sale by Existing Franchisee*

The offer or sale of a franchise by a franchisee for its own account is exempt from registration when the sale is not effected by or through the franchisor.

### *Insider Sale*

The offer or sale of a franchise to a person who has been, for at least two years, an officer, director, partner, or affiliate of the franchisor for that person's own account is exempt from registration.

### *Large/Sophisticated Franchisee*

The offer or sale of a franchise for the purchaser's own account is exempt from registration if it is to a purchaser who has a net worth of at least $1,000,000. The purchaser also qualifies if he or she had an individual or joint income over $200,000 in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year. The purchaser must also have enough knowledge and experience in financial and business matters to be capable of evaluating the franchise.

### *Offer/Sale to Existing Franchisees*

There is an exemption from registration for the offer or sale to an existing franchisee of an additional franchise that is substantially the same as one that the franchisee has operated for at least two years.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The offer or sale of a franchise that involves a renewal, extension, modification, or amendment of an existing franchise agreement is exempt from registration when there is no interruption in the operation of the franchised business and no material change in the franchise relationship.

### *Judicial Officer Sale*

The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee, trustee in bankruptcy, guardian, or conservator on behalf of a person other than the franchisor or the estate of the franchisor is exempt from registration.

*Offer While Renewal or Amendment Application Is Pending*

The offer of a franchise by a franchisor when registration is pending renewal is exempt from registration if the offeree receives the new disclosure document at least 14 days before the execution of any binding agreement or the franchisor's receipt of a franchise fee, whichever occurs first.

*Leased Department*

The offer or sale of rights to a person to sell goods or services within a retail establishment as a department or division is exempt from registration. However, the person cannot be required to purchase goods or services from the operator of the retail establishment.

*Discretionary State Regulator Exemptions*

The offer or sale of a franchise that the director exempts by rule or order is exempt from registration.

*Out-of-State Sales*

The offer or sale of a franchise is exempt from registration and disclosure if it is offered or sold to a nonresident of Rhode Island, the business will not be operated in Rhode Island, the transaction does not violate any law, and the franchisee is not present in Rhode Island.

*Fractional Franchise*

A fractional franchise is exempt from registration requirements and disclosure requirements. A fractional franchise is a business that has executed a licensing agreement on the premises of the franchisee. The following conditions must be met:

- The franchisee has two or more years of experience in an established business of which the franchise will become a component.
- The franchised business will be operated from the same business location as the franchisee's existing business.
- The products or services offered by the franchised business will be substantially similar to the existing products or services offered by the franchise.
- The franchisee is not controlled by the franchisor.
- The parties anticipate that the revenue from the franchise will not exceed 20% of the franchisee's primary business operation in the first year.

# South Dakota

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Renewal, Extension, Amendment, or Modification of Existing Franchise | S.D. Codified Laws § 37-5B-1(16); S.D. Codified Laws § 37-5B-1(28) | 2, 3 | X | X | X |
| Sale by Existing Franchisee | S.D. Codified Laws § 37-5B-1(16);<br><br>S.D. Codified Laws § 37-5B-1(28) | 2, 3 | X | X | X |
| Petroleum Marketers and Resellers | S.D. Codified Laws § 37-5B-12(1) | 3 | X | X | X |
| Oral Contracts | S.D. Codified Laws § 37-5B-12(2) | 3 | X | X | X |
| Fractional Franchise | S.D. Codified Laws § 37-5B-12(3) | 3 | X | X | X |
| Leased Department | S.D. Codified Laws § 37-5B-12(4) | 3 | X | X | X |
| Minimum Payment | S.D. Codified Laws § 37-5B-12(5) | 3 | X | X | X |

| | | | | | |
|---|---|---|---|---|---|
| Certain Types of Vehicles and Equipment | S.D. Codified Laws § 37-5B-12(6) | 4 | X | X | |
| Substantial Investment | S.D. Codified Laws § 37-5B-13(1) | 4 | X | X | X |
| Large/Sophisticated Franchisee | S.D. Codified Laws § 37-5B-13(2) | 4 | X | X | X |
| Judicial Officer Sale | S.D. Codified Laws § 37-5B-13(3) | 4 | X | X | |
| Insider Sale | S.D. Codified Laws § 37-5B-13(4) | 4 | X | X | X |
| Offer/Sale to Existing Franchisees | S.D. Codified Laws § 37-5B-14(1) | 4 | X | | |
| Institutional Franchisee | S.D. Codified Laws § 37-5B-14(2) | 4 | X | | |
| Discretionary State Regulator Exemptions | S.D. Codified Laws § 37-5B-15 | 4 | X | X | |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in South Dakota.

### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The statute does not apply to an extension or renewal of an existing franchise if there is no interruption in the franchisee's operation of the business. However, this does not apply if there is a material difference from the original agreement.

### *Sale by Existing Franchisee*

If the franchisor has had no significant involvement with the prospective buyer, a sale or offer of a franchise by an existing franchisee is excluded from the statute.

### *Petroleum Marketers and Resellers*

Any franchise relationship covered by the Petroleum Marketing Practices Act is exempt from registration and disclosure.

### *Oral Contracts*

Any franchise relationship where there is no written document that describes any material term or aspect of the franchise relationship or arrangement is exempt from registration and disclosure.

### *Fractional Franchise*

The offer or sale of a fractional franchise is exempt from registration and disclosure. A fractional franchise is a franchise relationship where the franchisee has been in the type of business of the franchise for two years and the parties reasonably expect that the sales from the franchise will not be more than 20% of the dollar sales volume of the franchisee.

### *Leased Department*

The offer or sale of a leased department is exempt from registration and disclosure. A leased department occurs when the franchisee only pays rent to the larger retailer that it is leasing space in. The franchisee must not be required to directly or indirectly purchase goods or services from the franchisor or approved suppliers.

### *Minimum Payment*

An offer or sale is exempt from registration and disclosure if the total of the required payments to the franchisor are less than $500 in the six months after commencing operation of the franchisee's business.

### *Certain Types of Vehicles and Equipment*

There is an exemption from registration and disclosure for any franchise relationship covering farm machinery, motor vehicles, or recreational vehicles, including snowmobiles, motorcycles, motor homes, mobile homes, and manufactured homes.

### *Substantial Investment*

An offer or sale of a franchise is exempt from registration and disclosure if the franchisee's initial investment is at least $1,000,000.

### *Large/Sophisticated Franchisee*

An offer or sale of a franchise is exempt from registration and disclosure if the franchisee has been in business for at least five years and has a net worth of at least $5,000,000.

### *Judicial Officer Sale*

An offer or sale of a franchise is exempt from registration and disclosure if it is the offer or sale of a franchise by a personal representative, sheriff, marshal, receiver, trustee, trustee in bankruptcy, guardian, or conservator on behalf of a person other than the franchisor or the estate of the franchisor.

### *Insider Sale*

An offer or sale of a franchise is exempt from registration and disclosure if one or more purchasers of at least a 50% ownership interest in the franchise, within 60 days of the sale, has been for at least two years an officer, director, general partner, individual with management responsibility for the offer and sale of the franchisor's franchises, or the administrator of the franchised network. He or she also qualifies for this exemption if, within 60 days of the sale, he or she has been an owner of at least a 25% interest in the franchise for at least two years.

### *Offer/Sale to Existing Franchisees*

An offer or sale of a franchise is exempt from registration if it is an offer or sale of a franchise to an existing franchisee. The new franchise must be substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale.

### *Institutional Franchisee*

An offer or sale of a franchise is exempt from registration if the offer or sale is to a bank, saving and loan association, financial organization, or life insurance corporation.

### *Discretionary State Regulator Exemptions*

The director may exclude the offer and sale of a franchise from registration or disclosure requirements by rule or order.

# Virginia

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Minimum Payment | Va. Code Ann. § 13.1-559 | 1 | X | X | X |
| Leased Department | Va. Code Ann. § 13.1-559 | 1 | X | X | X |
| Out-of-State Sales | Va. Code Ann. § 13.1-559 | 1 | X | X | |
| Fractional Franchise | Va. Code Ann. § 13.1-559 | 2 | X | X | X |
| Sale by Existing Franchisee | 21 VAC 5-110-75(1) | 2 | X | | X |
| Renewal, Extension, Amendment, or Modification of Existing Franchise | 21 VAC 5-110-75(2) | 2 | X | | X |
| Offer/Sale to Existing Franchisees | 21 VAC 5-110-75(3) | 2 | X | | |
| Seasoned Franchisor | 21 VAC 5-110-75(4) | 2–3 | X | | |
| Institutional Franchisee | 21 VAC 5-110-75(5) | 3 | X | | |
| Substantial Investment | 21 VAC 5-110-75(6) | 3 | X | | X |

### Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Virginia.

#### *Minimum Payment*

The statute does not apply if the franchise fee does not exceed $500.

#### *Leased Department*

A franchise does not include a contract where a franchisee only pays rent to the larger retailer it is leasing space in and is not required to directly or indirectly purchase goods or services from the retailer.

#### *Out-of-State Sales*

Virginia's statute only applies to a franchise that establishes or maintains a place of business within the state of Virginia.

#### *Fractional Franchise*

A franchise is exempt from the statute if it is just a marketing plan to promote the principal business of the franchisee through the sale or distribution of goods or services that account for less than 20% of the franchisee's gross sales. A franchise also qualifies if it is a leased department.

#### *Sale by Existing Franchisee*

The sale or transfer of a franchise by a franchisee for the franchisee's own account is exempt from registration when the sale or transfer is not effected by or through the franchisor. The franchisee must not be an affiliate of the franchisor.

#### *Renewal, Extension, Amendment, or Modification of Existing Franchise*

The offer or sale of a franchise involving a renewal or extension of an existing franchise is exempt from registration when there is no material change in the franchise relationship and there is no interruption in the operation of the franchised business.

#### *Offer/Sale to Existing Franchisees*

The offer or sale of an additional franchise to an existing franchisee for the franchisee's own account is exempt from registration if it is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale of the franchise.

#### *Seasoned Franchisor*

The offer or sale of a franchisor is exempt from registration if the franchisor has a net equity of not less than $15,000,000 or if the franchisor has a net equity of $1,000,000 and is at least 80% owned by a corporation that has a net equity of not less than $15,000,000. The franchisor or the owner of the franchisor must have had at least 25 franchisees conducting the same franchise business for the entire five-year period preceding the offer or sale.

#### *Institutional Franchisee*

The offer or sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt from registration when the purchaser is acting for itself or in a fiduciary capacity. The purchaser may not purchase the franchise to resell it.

#### *Substantial Investment*

An offer or sale of a franchise is exempt from registration if the franchisee's initial investment is at least $3,000,000. The franchisor must reasonably believe that the prospective franchisee has sufficient knowledge and experience to evaluate the merits and risks of the prospective franchise investment.

## Washington

| Exemption | Statute | Page | Registration? | Disclosure? | FTC? |
|---|---|---|---|---|---|
| Leased Department | Rev. Code Wash. (ARCW) § 19.100.010(8) | 1 | X | X | X |
| Sale by Existing Franchisee | Rev. Code Wash. (ARCW) § 19.100.030(1) | 1 | X | X | X |
| Judicial Officer Sale | Rev. Code Wash. (ARCW) § 19.100.030(2) | 1 | X | X | |

| | | | | | |
|---|---|---|---|---|---|
| Institutional Franchisee | Rev. Code Wash. (ARCW) § 19.100.030(3) | 1 | X | X | |
| Seasoned Franchisor | Rev. Code Wash. (ARCW) § 19.100.030(4)(b)(i) | 1 | X | | |
| Isolated Sale / Single Franchise | Rev. Code Wash. (ARCW) § 19.100.030(4)(b)(ii) | 2 | X | | |
| Minimum Payment | Rev. Code Wash. (ARCW) § 19.100.030(4)(b)(iii) | 2 | X | | X |
| Large/Sophisticated Franchisee | Rev. Code Wash. (ARCW) § 19.100.030(5); WAC § 460-80-108 | 2, 3 | X | X | X |
| Insider Sale | Rev. Code Wash. (ARCW) § 19.100.030(5); WAC § 460-80-108 | 2, 3 | X | X | X |
| Offer/Sale to Existing Franchisees | Rev. Code Wash. (ARCW) § 19.100.030 | 2 | X | X | |
| Internet Offers | WAC § 460-80-540 | 5 | X | | |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Washington. Under Rev. Code Wash. (ARCW) § 19.100.070, disclosure is only required when a franchisor is registered or is required to register.

### *Leased Department*

Leased departments are outside the definition of a franchise because the lease of a property is not included in the definition of a franchise fee.

### *Sale by Existing Franchisee*

The offer, sale, or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt from registration and disclosure. The sale must not be effected by or through the franchisor.

### *Judicial Officer Sale*

The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or pursuant to a court-approved offer or sale, on behalf of a person other than the franchisor or the estate of the franchisor, is exempt from registration and disclosure.

### *Institutional Franchisee*

The offer or sale of a franchise is exempt from registration and disclosure if it is to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

### *Seasoned Franchisor*

The offer or sale of a franchise by a franchisor is exempt from registration if the franchisor has a net worth on a consolidated basis of not less than $5,000,000, or not less than $1,000,000 and are at least 80% owned by a corporation that has a net worth of not less than $5,000,000. The franchisor or the parent company must have had at least 25 franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or have conducted business that is the subject of the franchise continuously for not less than five years preceding the offer or sale. They must require an initial investment by the franchisee of more than $100,000.

### *Isolated Sale / Single Franchise*

The offer or sale of a franchise by a franchisor is exempt from registration if the franchisor has and will not have any outstanding franchises granted for business outside of Washington. The franchisor must also only grant up to three franchises for businesses to be located in Washington. Additionally, the franchisor cannot publish an advertisement or engage in general solicitation for the franchise offering, and the buyer must be represented by independent legal counsel.

### *Minimum Payment*

The offer or sale of a franchise by a franchisor is exempt from registration if the franchisor does not charge a franchise fee larger than $500. The franchisor must still follow the disclosure requirements.

### *Large/Sophisticated Franchisee*

An offer or sale to a franchisee who meets certain net worth requirements is exempt from registration and disclosure. The franchisee must be one of the following:

- An entity with assets in excess of $5,000,000
- An individual with a net worth, single or joint, in excess of $1,000,000
- An individual whose annual gross income was greater than $200,000 in each of the two prior years and who reasonably expects they will reach the same income level in the current year –or–
- An individual whose annual joint gross income with that person's spouse was greater than $300,000 in each of the two prior years and who reasonably expects they will reach the same income level in the current year

### *Insider Sale*

An offer or sale to a franchisee who is a director, executive officer, or general partner of the franchisor is exempt from registration and disclosure.

### *Offer/Sale to Existing Franchisees*

The offer or sale of an additional franchise to an existing franchisee that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale is exempt from registration and disclosure.

### *Internet Offers*

An offer or sale of a franchise over the internet is not subject to registration when all of the following conditions are satisfied:

- The offer indicates, indirectly or directly, that it is not being offered to Washington residents.
- The internet offer is not directed to any person in Washington by or on behalf of the franchisor or someone acting with the franchisors knowledge.
- No franchises are sold in Washington on behalf of the franchisor until the offering is registered and declared effective and the Washington offering circular is delivered to the purchaser prior to the sale.

# Wisconsin

| **Exemption** | **Statute** | **Page** | **Registration?** | **Disclosure?** | **FTC?** |
|---|---|---|---|---|---|
| Leased Department | Wis. Adm. Code DFI-Sec 31.01(1)(b) | 1 | X | X | X |
| Government Cable Television Franchise | Wis. Adm. Code DFI-Sec 32.05(1)(a) | 1 | X | | |
| Minimum Payment | Wis. Adm. Code DFI-Sec 32.05(1)(b) | 1 | X | | X |
| Institutional Franchisee | Wis. Adm. Code DFI-Sec 32.05(1)(c)(2) | 1 | X | | |
| Out-of-State Sales | Wis. Adm. Code DFI-Sec 32.05(1)(d) | 1 | X | | |
| Offer/Sale to Existing Franchisees | Wis. Adm. Code DFI-Sec 32.05(1)(e) | 1 | X | | |
| Renewal, Extension, Amendment, or Modification of an Existing Franchise | Wis. Adm. Code DFI-Sec 32.05(1)(g) | 1 | X | | |

| | | | | | |
|---|---|---|---|---|---|
| Fractional Franchise | Wis. Stat. § 553.22(1) | 2 | X | X | X |
| Cooperative Organizations | Wis. Stat. § 553.22(3) | 2 | X | X | |
| Sale by Existing Franchisee | Wis. Stat. § 553.23 | 2 | X | X | X |
| Substantial Investment | Wis. Stat. § 553.235 | 2 | X | | X |
| Discretionary State Regulator Exemptions | Wis. Stat. § 553.25 | 3 | X | | |

## Exemptions

Counsel should carefully read each statute. The state statutes apply to offers to sell franchises in/to prospects in Wisconsin.

### *Leased Department*

Leased departments are outside the definition of a franchise agreement because the lease of a property is not included in the definition of a franchise fee.

### *Government Cable Television Franchise*

An offer or sale by a governmental entity of a franchise for cable telecommunications rights is exempt from registration, except where a franchisee of a governmental entity is offering or selling such rights.

### *Minimum Payment*

An offer or sale of a franchise where the annual payment does not exceed $1,000 annually is exempt from registration.

### *Institutional Franchisee*

An offer or sale of a franchise to a bank, trust company, credit union, or savings and loan association that is purchasing a franchise for its own account is exempt from registration.

### *Out-of-State Sales*

The offer or sale of a franchise is exempt from registration if the franchisee is not domiciled in Wisconsin and the franchise business will not be operated in Wisconsin.

### *Offer/Sale to Existing Franchisees*

The offer or sale to an existing franchisee of an additional franchise that is the same as one they are operating at the time of the offer or sale is exempt from registration.

### *Renewal, Extension, Amendment, or Modification of an Existing Franchise*

Any modification or amendment of an existing franchise agreement is exempt from registration when there is no interruption in the operation of the franchise business and there is no material change in the franchise relationship.

### *Fractional Franchise*

Fractional franchises are excluded from the statute. A fractional franchise occurs when the franchisee has been in a similar franchise relationship for more than two years and the parties anticipate that the sales from the new franchise will not be more than 20% of the franchisee's gross sales revenue in the first year that the franchise is operational.

### *Cooperative Organizations*

An organization that is operated on a cooperative basis is excluded from the statute.

### *Sale by Existing Franchisee*

The sale of a franchise by a franchisee for the franchisee's own account is exempt from registration if the sale is not effected by or through a franchisor.

### *Substantial Investment*

An offer or sale is exempt from registration if the following conditions are met:

- The initial cash payment by the franchisee upon purchase of the franchise is at least $100,000 and does not exceed 20% of the franchisee's net worth.
- The franchisor reasonably believes that the franchisee has sufficient knowledge and experience to be capable of evaluating the franchise investment.

### *Discretionary State Regulator Exemptions*

Wisconsin Department of Financial Institutions Division of Securities may exempt an offer or sale from registration by rule or order.

# Related Content

## Practice Notes

- Franchise Law Exemptions (CA)
- Franchise Law Exemptions (HI)
- Franchise Law Exemptions (IN)
- Franchise Law Exemptions (MI)
- Franchise Law Exemptions (MN)
- Franchise Law Exemptions (ND)
- Franchise Law Exemptions (NY)
- Franchise Law Exemptions (RI)
- Franchise Law Exemptions (SD)
- Franchise Law Exemptions (VA)
- Franchise Law Exemptions (WA)
- Franchise Law Exemptions (WI)
- Franchising: An Updated Look at the Basics
- Franchising under State Franchise Laws
- State Franchise Registration Forms & Resources Chart
- Franchising under the Federal Trade Commission Franchise Rule
- Franchisees and Prospective Franchisees Considerations
- State Websites for Franchises and Business Opportunities

## Templates

- Franchise Disclosure Document
- Sale and Transfer of Franchised Business Agreement (Assignment, Assumption, and Consent Terms)
- General Release for Franchise Agreement Transaction
- No Franchise Clauses
- Promissory Note for Franchise Agreement Transaction

## Checklists

- Franchise Agreement Term Sheet

**Marc A. Lieberstein, Partner, Kilpatrick Townsend & Stockton LLP**

Marc is the co-chair of the Franchise Group and Retail & Consumer Goods industry team. His practice focuses on intellectual property licensing and franchising in the retail/consumer goods and services areas, fashion/apparel and accessories, food and beverage, and commercial/industrial design, including the drafting, negotiation, and enforcement of license and franchise documents and agreements, as well as implementation of branding and commercialization objectives for clients via licensing and franchising. In conjunction with the services above, Marc counsels clients on creating effective strategies for procuring, protecting, and enforcing their global intellectual property assets. Marc has also participated in and used alternative dispute resolution forums such as arbitration and mediation to enforce intellectual property rights and resolve license and franchise contractual disputes. Marc frequently lectures and writes on intellectual property and franchise issues for a variety of intellectual property and franchise organizations and publications, including International Trademark Association (INTA), New York State Bar Association Intellectual Property Section, and the American Bar Association Forum on Franchising, *The Franchise Lawyer*, *Franchise Law Journal*, *National Law Journal*, *IP Strategist*, *The New York Law Journal*, *Practical Law*, *The Licensing Journal*.

**Christopher C. Williams-Lopez, Associate, Kilpatrick Townsend & Stockton LLP**

Chris Williams-Lopez focuses his practice on trademark and copyright law.

While attending Tulane University Law School, Chris worked with the firm as a summer associate in 2020 and 2021. He served as a corporate in-house legal extern in the U.S. Department of Housing and Urban Development in New Orleans, Louisiana and a remote legal intern for a premier law agency for professional athletes, entertainers, and business executives in Atlanta, Georgia. Chris also served as a corporate legal intern at a well-known candy and confection manufacturer in its Hershey, Pennsylvania headquarters and a law clerk for the Tulane University Legal Assistance Program.