

IC 23-2-2.5

Chapter 2.5. Franchises

IC 23-2-2.5-1

Definitions

Sec. 1. As used in this chapter:

(a) "Franchise" means a contract by which:

(1) a franchisee is granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by a franchisor;

(2) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(3) the person granted the right to engage in this business is required to pay a franchise fee.

"Franchise" includes a contract whereby the franchisee is granted the right to sell franchises on behalf of the franchisor. The term as defined in subdivisions (1), (2), and (3) does not include a contract where the franchisee, or any of its officers or directors at the time the contract is signed, has been in the type of business represented by the franchise or a similar business for at least two (2) years, and the parties to the contract anticipated, or should have anticipated, at the time the contract was entered into that the franchisee's gross sales derived from the franchised business during the first year of operations would not exceed twenty percent (20%) of the gross sales of all the franchisee's business operations.

(b) "Franchisee" means a person to whom a franchise is granted.

(c) "Franchisor" means a person who grants a franchise.

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

(e) "State" includes a territory or possession of the United States, the District of Columbia, and Puerto Rico.

(f) "Fraud" and "deceit" includes any misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

(g) "Offer" or "offer to sell" does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

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

(i) "Franchise fee" means any fee that a franchisee is required to pay directly or indirectly for the right to conduct a business to sell,

resell, or distribute goods, services, or franchises under a contract agreement, including, but not limited to, any such payment for goods or services. "Franchise fee" does not include:

- (1) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card;
- (2) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services; or
- (3) the purchase or agreement to purchase goods at a bona fide wholesale price.

(j) "Disclosure statement" means the document provided for in section 13 of this chapter and all amendments to such document.

(k) "Write" or "written" includes printed, lithographed, or produced by any other means of graphic communication.

(l) "Advertisement" means any published communication which offers any franchise for sale.

(m) "Affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, the person to whom affiliation is attributed.

(n) "Commissioner" means the Indiana securities commissioner under IC 23-19-6-1(a).

(o) "Service station franchisee" means a person who is granted by an oil company, refiner, jobber, or other franchisor a supply franchise agreement or a lease franchise agreement, or both, to sell gasoline at retail by a metered pump in Indiana.

(p) "Designated family member" means any person named in a franchise agreement by a service station franchisee as the person entitled to fulfill the terms of the agreement on behalf of the franchisee if the franchisee dies before the term of the franchise has ended. Only the following are eligible to be named as designated family members:

- (1) The spouse of the franchisee.
- (2) A natural or adopted child of the franchisee.
- (3) A stepchild of the franchisee.
- (4) The guardian of the franchisee's child or stepchild.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.241-1983, SEC.1; P.L.206-1993, SEC.1; P.L.27-2007, SEC.10.

IC 23-2-2.5-2

Application of chapter

Sec. 2. This chapter applies to an offer or franchise if:

- (a) the offeree or franchisee is an Indiana resident; or
- (b) the franchised business contemplated by the offer or franchise will be or is operated in Indiana.

An offer to sell is not made in this state because the franchisor circulates or there is circulated on his behalf in Indiana an advertisement in: (1) a bona fide newspaper or other publication of

general, regular and paid circulation which has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or (2) a radio or television program originating outside this state which is received in Indiana.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-3

Exempt franchisors

Sec. 3. Sections 9 through 25 of this chapter do not apply to the offer or sale of a franchise if the franchisor either sells no more than one (1) franchise in any twenty-four (24) month period or the franchisor:

(a) has a net worth:

(1) on a consolidated basis according to current financial statements certified by independent certified public accountants, of not less than five million dollars (\$5,000,000); or

(2) according to current financial statements certified by independent certified public accountants of not less than one million dollars (\$1,000,000) and is at least eighty percent (80%) owned by a corporation which has a net worth on a consolidated basis, according to current financial statements certified by independent certified public accountants, of not less than five million dollars (\$5,000,000);

(b) has:

(1) had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale; or

(2) conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale;

or if any corporation which owns at least eighty percent (80%) of the franchisor has had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale, or such corporation has conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale; and

(c) discloses in writing to each prospective franchisee, at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or other agreement, or at least ten (10) days prior to the receipt of any consideration, whichever first occurs, the following information:

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

(2) The franchisor's principal business address and the name and address of its agent in Indiana authorized to receive

service of process.

(3) The business form of the franchisor and the jurisdiction under which it was organized.

(4) The business experience of the franchisor, including the length of time the franchisor:

(i) has conducted a business of the type to be operated by the franchisee;

(ii) has granted franchises for that business; and

(iii) has granted franchises in other lines of business.

(5) A copy of the franchise contract proposed for use or in use in Indiana.

(6) 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.

(7) A statement describing any payments other than franchise fees that the franchisee is required to pay to the franchisor or affiliated persons, including royalties or payments which the franchisor or affiliated persons collect in whole or in part on behalf of a third party or parties.

(8) A statement of the conditions under which the franchise may be terminated, renewal refused, or repurchased.

(9) A statement as to whether the franchisee is required to purchase from the franchisor or affiliates or their designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchised business, together with a description thereof.

(10) A statement as to whether the franchisee is limited in the goods or services offered by him to his customers.

(11) A statement of the terms and conditions of any financing agreements.

(12) A statement of any past or present practice or of any intent of the franchisor to transfer to a third party any note, contract, or other obligation of the franchisee in whole or in part.

(13) If any financial statement concerning estimated profits or earnings is used, the data upon which the estimate is based.

(14) A statement as to whether the franchisee will receive an exclusive area or territory.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.1.

IC 23-2-2.5-4

Exempt franchisees

Sec. 4. The offer of sale of a franchise by a franchisee who is not an affiliate of the franchisor for his own account is exempt from section 9 if the offer or sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor if a franchisor is

entitled to approve or disapprove a different franchisee.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-5

Sales exempted by commissioner

Sec. 5. Section 9 does not apply to an offer or sale which the commissioner, by rule or order, exempts as not being comprehended within the purposes of this law and the registration of which he finds is not necessary or appropriate in the public interest or for the protection of investors.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-6

Denial or revocation of exemptions; grounds

Sec. 6. The commissioner may, without a hearing, issue a stop order denying or revoking any exemption specified in sections 3, 4, or 5 with respect to an offer or sale if he finds that it is in the public interest and either:

(a) that there has been a failure to comply with any of the provisions of this chapter; or

(b) that the offer or sale would constitute misrepresentation to, or deceit or fraud on, the purchaser or offeree.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-7

Notice of denial or revocation of exemptions; hearing

Sec. 7. (a) Upon the entry of a stop order under section 6 of this chapter, the commissioner shall notify the franchisor:

(1) of the entry of the stop order;

(2) of the reasons for the stop order; and

(3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.1.

IC 23-2-2.5-8

Determination of exemption; request; fee; notice; hearing; order

Sec. 8. The commissioner may determine whether any proposed offer or sale is entitled to an exemption. However, the commissioner may decline to exercise that authority as to any such offer or sale. Any interested party desiring the commissioner to exercise that authority shall submit to the commissioner a verified statement of all

material facts relating to the proposed offer or sale, which verified statement shall be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of fifty dollars (\$50.00). After such notice to interested parties as the commissioner deems proper and after a hearing, if any, the commissioner may enter an order finding the proposed offer or sale entitled or not entitled to the exemption claimed. Any order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter is binding upon the commissioner and upon all interested parties if the proposed offer or sale of a franchise when consummated or issued conforms in every relevant and material particular with the facts set forth in the verified statement submitted. (Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-9

Offer or sale of franchise; requisites; disclosure statement

Sec. 9. No person may offer or sell any franchise:

- (1) unless the franchise is registered under this chapter or is exempt from such registration under sections 3 through 5 of this chapter; and
- (2) without first providing to the prospective franchisee at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or at least ten (10) days prior to the receipt by the franchisor of any consideration, whichever first occurs, a disclosure statement together with a copy of all proposed contracts relating to the sale of a franchise.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.2.

IC 23-2-2.5-10

Repealed

(Formerly: Acts 1975, P.L.262, SEC.1. As amended by P.L.8-1993, SEC.310. Repealed by P.L.168-2001, SEC.16.)

IC 23-2-2.5-10.5

Registration of franchise; notification form

Sec. 10.5. (a) A person who wants to offer for sale a franchise in Indiana and who is not exempt under sections 3 through 5 of this chapter shall register the franchise by notification to the commissioner on a notification form prescribed by the commissioner. The notification shall include the following:

- (1) The name of the franchisor.
 - (2) The name or names under which the franchisor intends to do business.
 - (3) The franchisor's principal business address.
- (b) The following items shall be filed with the notification:
- (1) One (1) copy of the disclosure statement required under section 13 of this chapter.
 - (2) The consent to service of process required under section 24

of this chapter, unless consent has previously been filed by the person.

(3) The registration fee required under section 43 of this chapter.

(c) A franchisor may register only one (1) franchise for each notification.

(d) The registration of a franchise under this section is effective upon the commissioner's receipt of the notification. The notification is effective for one (1) year from the date of the commissioner's receipt of the notification.

(e) During the one (1) year registration period, a person is not required to file with the commissioner any supplemental information, including any amendments to the disclosure statement, unless the commissioner, acting under the commissioner's authority to suspend or revoke a registration under section 14 of this chapter, requests the information.

As added by P.L.168-2001, SEC.2.

IC 23-2-2.5-11

Signatures and verifications

Sec. 11. Registration notification forms, registration renewal forms, and amendments thereto, shall be signed and verified by the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.3.

IC 23-2-2.5-12

Escrow or impoundment of franchise fees; inadequate funding

Sec. 12. If the commissioner finds that:

(1) the franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering; and

(2) the escrow or impoundment of franchise fees is necessary and appropriate to protect prospective franchisees;

the commissioner may by order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until no later than the time of opening of the business of the franchisee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.4.

IC 23-2-2.5-13

Disclosure statements

Sec. 13. A registration notification form filed under section 10.5 of this chapter shall be accompanied by the fee prescribed in section 43 of this chapter and by one (1) copy of a disclosure statement. The disclosure statement shall be in a form prescribed by the commissioner or in a form permitted under 16 CFR 436, as amended.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by

IC 23-2-2.5-14

Stop orders; descriptions of charges

Sec. 14. (a) The commissioner may, without a hearing, issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of a registration if the commissioner finds that the issuance of the order is in the public interest and also finds that:

- (1) there has been a failure to comply with this chapter or the rules or orders of the commissioner pertaining to this chapter;
- (2) the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud on, the purchasers or offerees;
- (3) the franchisor has failed to comply with any rule promulgated or order issued pursuant to section 12 of this chapter; or
- (4) the franchisor, or the franchisor's predecessor, or any of the franchisor's directors, trustees, general partners, chief executives, financial officers, accounting officers, franchise sales officers, or other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

- (i) been convicted of a felony;
- (ii) pleaded nolo contendere to a felony charge; or
- (iii) been held liable in a civil action by final judgment; if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of

the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

(c) Before issuing a stop order under subsection (a)(4), such an order must be based on a finding by the commissioner that involvement of a person referred to in subsection (a)(4) creates an unreasonable risk to prospective franchisees.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.6; P.L.30-2002, SEC.1; P.L.1-2003, SEC.73.

IC 23-2-2.5-15

Notice of stop order

Sec. 15. (a) Upon the entry of a stop order under section 14 of this chapter, the commissioner shall notify the franchisor:

- (1) of the entry of the stop order;
- (2) of the reasons for the stop order; and
- (3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.7.

IC 23-2-2.5-16

Stop orders; vacating or modifying

Sec. 16. The commissioner may vacate or modify a stop order if he finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-17

Effectiveness of registration

Sec. 17. If no stop order under section 14 of this chapter is in effect, registration by notification takes effect upon the commissioner's receipt of the notification form. A registration by notification is effective for a period of one (1) year.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.8.

IC 23-2-2.5-18

Renewal of registration; period

Sec. 18. A registration by notification may be renewed by submitting to the commissioner a registration renewal form not later than the date the registration is due to expire. If no stop order or other order under section 14 of this chapter is in effect, registration of the offer is renewed at the time the registration would have expired. A renewal is effective for a period of one (1) year unless the commissioner specified a shorter period.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.9; P.L.48-2006, SEC.6.

IC 23-2-2.5-19

Renewal forms

Sec. 19. A registration renewal form shall be in the form and contain the content prescribed by the commissioner and shall be accompanied by one (1) copy of the proposed disclosure statement. Each such registration renewal form shall be accompanied by the fee prescribed in section 43 of this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.10.

IC 23-2-2.5-20

Repealed

(Formerly: Acts 1975, P.L.262, SEC.1. As amended by P.L.233-1985, SEC.3. Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-21

Records of sales

Sec. 21. Every franchisor offering franchises for sale shall maintain a complete set of books, records, and accounts of those sales.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-22

Experts

Sec. 22. The commissioner may accept and act upon the opinions, appraisals, or reports of any experts which may be presented by a franchisor or any interested party, on any question of fact concerning the franchises proposed to be offered or sold. The commissioner may also have any or all matters concerning those franchises investigated, appraised, passed upon or certified to the commissioner by any experts selected by the commissioner, at the expense of the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.11.

IC 23-2-2.5-23

Registration or filing not considered finding upon merits

Sec. 23. (a) Neither:

(1) the fact that a registration renewal form has been filed or a registration notification form has been submitted to the commissioner under section 10.5 of this chapter; nor
(2) the fact that such registration has become effective;
constitutes a finding by the commissioner that any document filed under this chapter is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise or transaction.

(b) A person may not make or cause to be made to any prospective purchaser or offeree any representation inconsistent with subsection (a).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.12.

IC 23-2-2.5-24

Consent to service of process on secretary of state

Sec. 24. Before a person may offer to sell franchises under this chapter, the person shall file with the commissioner, in the form that the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state or any successor secretary of state to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator that arises under this chapter or any rule or order under this chapter after the consent has been filed with the same force as if served personally on the person filing the consent. A person who has filed a consent with the commissioner for a previous registration or exemption under this chapter is not required to file another consent. The person's previous consent shall remain effective for all subsequent registrations or exemptions filed by the person under this chapter. Service shall be made in accordance with the Indiana Rules of Civil Procedure.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.1-1991, SEC.159; P.L.168-2001, SEC.13.

IC 23-2-2.5-25

Repealed

(Formerly: Acts 1975, P.L.262, SEC.1. Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-26

Advertisements containing false statements; notification; hearing

Sec. 26. No person shall publish or cause to be published any advertisement concerning any franchise in Indiana after the commissioner finds that the advertisement contains any statement that is false, is 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 and so notifies the

person in writing. Such notification may be given without notice of hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such written request, the matter shall be set down for hearing to commence within fifteen (15) days after receipt of the request unless the person making that request consents to a later date.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-27

Fraud or deceit unlawful

Sec. 27. It is unlawful for any person in connection with the offer, sale or purchase of any franchise, or in any filing made with the commissioner, directly or indirectly: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statements of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading; or (3) to engage in any act which operates or would operate as a fraud or deceit upon any person.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-28

Violations; judgment; damages; interest; attorney's fees

Sec. 28. A person who recovers judgment for a violation of this chapter may recover, as part of that judgment: (1) any consequential damages; (2) interest at eight percent (8%) on the judgment; and (3) reasonable attorney's fees; unless the defendant proves that the plaintiff knew the facts concerning the violation, or that the defendant exercised reasonable care and did not know, or, if he had exercised reasonable care, would not have known, of the facts concerning the violation.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-29

Aiders and abettors in violations; joint and several liability

Sec. 29. Every person who materially aids or abets in an act or transaction constituting a violation of this chapter is also liable jointly and severally to the same extent as the person whom he aided and abetted, unless the person who aided and abetted 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.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-30

Limitation of actions

Sec. 30. A person may not maintain an action to enforce any liability created under this chapter unless brought before the expiration of three (3) years after discovery by the plaintiff of the facts constituting the violation.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-31

Survival of actions

Sec. 31. Every civil action under this chapter survives the death of any person who might have been a plaintiff or defendant.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-32

Remedies

Sec. 32. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the appropriate circuit or superior court to enjoin the acts or practices, to enforce compliance with this chapter, or to obtain any other appropriate remedy. Upon proper showing, a permanent or preliminary injunction, restraining order, declaratory judgment or other appropriate remedy shall be granted and, in addition to and independent of any other remedy granted herein, a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-33

Investigations; proceedings; powers; self-incrimination

Sec. 33. (a) The commissioner may in his discretion make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter.

(b) For the purpose of any investigation or proceeding under this chapter, the commissioner or his representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems material to the inquiry.

(c) Upon order of the commissioner or his representative in any hearing, depositions may be taken of any witness, to be taken in the manner prescribed by law for depositions in civil actions, and made returnable to the commissioner or his representative.

(d) In case of failure by any person to obey a subpoena, the circuit or superior court, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or his representative, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation.

(e) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner, or his representative,

or in any proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person may be prosecuted or subjected to any 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.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-34

Violations; orders and notices; hearing; costs; civil penalties; enforcement action

Sec. 34. (a) If it appears to the commissioner that:

- (1) the offer of any franchise is subject to registration under this chapter and it is being, or it has been, offered for sale without such offer first being registered; or
- (2) a person has engaged in or is about to engage in an act, a practice, or a course of business constituting a violation of this chapter or a rule or an order under this chapter;

the commissioner may investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and an opportunity for hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name of and on behalf of the state against any person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement against a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or a notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent of the following:

- (1) That the order or notice has been issued.
- (2) The reasons the order or notice has been issued.
- (3) That upon the receipt of a written request the matter will be set for a hearing to commence not later than forty-five (45) business days after the commissioner receives the request, unless the respondent consents to a later date.

If the respondent does not request a hearing and the commissioner does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of the

hearing, may modify or vacate the order or extend it until final determination.

(c) In a final order, the commissioner may charge the costs of an investigation or a proceeding conducted in connection with a violation of:

(1) this chapter; or

(2) a rule or an order adopted or issued under this chapter; to be paid as directed by the commissioner in the order.

(d) In a proceeding in a circuit or superior court under this section, the commissioner is entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding, and the court shall include the costs in its final judgment.

(e) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this chapter, the commissioner may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by an aggrieved party under section 44 of this chapter.

(f) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (e).

(g) Penalties collected under this section shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.230-2007, SEC.5; P.L.1-2009, SEC.129.

IC 23-2-2.5-35

Offer of franchise exempt from registration without compliance with IC 23-2-2.5-3 and IC 23-2-2.5-27; cease and desist order; hearing

Sec. 35. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with sections 3 and 27, the commissioner may order the franchisor or offeror of such franchise to cease and desist from the further offer or sale of such franchise unless and until such offer is made in compliance with this chapter. If, after such an order has been made, a request for a hearing is filed in writing by the person affected, a hearing shall be held to commence within fifteen (15) days after the request is made, unless the person affected consents to a later date.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-36

Prosecution of violations

Sec. 36. The commissioner may refer such evidence as is available

concerning any violation of this chapter to the prosecuting attorney of the county in which the violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings under this chapter. If evidence concerning violations of this chapter is referred to a prosecuting attorney, he shall within ninety (90) days file with the commissioner a written statement concerning any action taken or, if no action has been taken, the reasons therefor.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-37

Violations; felony

Sec. 37. A person who knowingly violates this chapter commits a Level 5 felony.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2307; P.L.158-2013, SEC.262.

IC 23-2-2.5-38

Conduct equivalent to appointment of secretary of state for service of process

Sec. 38. When any person engages in conduct prohibited by this chapter, whether or not he has filed a consent to service of process under section 24 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the secretary of state or his successor in office to be his attorney to receive service of any lawful process in any civil action or proceeding against him or his successor or personal representative which grows out of that conduct and which is brought under this chapter, with the same force and validity as if served on him personally. Service shall be made in accordance with the Indiana Rules of Civil Procedure.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-39

Exemption or classification; burden of proof

Sec. 39. The burden of proof of the entitlement to any exemption or classification provided in this chapter, in any civil or criminal proceeding is on the party claiming the exemption or classification.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-40

Certificate of commissioner as evidence

Sec. 40. In any civil or criminal proceeding under this chapter a certificate duly signed by the commissioner showing compliance or noncompliance with this chapter respecting the franchise in question or respecting compliance or noncompliance with this chapter by any person constitutes prima facie evidence of such compliance or such noncompliance and is admissible in evidence in any such proceeding.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-41**Statements and documents filed with secretary of state as evidence**

Sec. 41. Copies of any statements and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner are admissible in any civil or criminal proceeding under this chapter to the same effect as the original of such statement, document or record would be if actually produced.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-42**Administration of chapter**

Sec. 42. This chapter shall be administered by the office of the secretary of state of Indiana through the commissioner.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-43**Fees and funds; accounting; deposit; expenses**

Sec. 43. (a) All fees and funds of whatever character accruing from the administration of this chapter shall be:

- (1) accounted for by the secretary of state;
- (2) paid into the state treasury monthly; and
- (3) placed in the same account of the state general fund as established by IC 23-19-6-1(f), from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing a form for registration by notification of the sale of franchises under section 10.5 of this chapter is five hundred dollars (\$500).

(c) The fee for filing a registration renewal form under section 18 of this chapter is two hundred fifty dollars (\$250).

(d) When a registration notification form or registration renewal form is denied or withdrawn, the commissioner shall retain one hundred fifty dollars (\$150) of the fee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.4; P.L.168-2001, SEC.14; P.L.30-2002, SEC.2; P.L.27-2007, SEC.11.

IC 23-2-2.5-44**Appeal**

Sec. 44. An appeal may be taken by any person from any final order of the commissioner affecting such person in the same manner as prescribed in IC 23-19-6-9.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.27-2007, SEC.12.

IC 23-2-2.5-45**Assistance of attorney general; expenses**

Sec. 45. In connection with the administration and enforcement of the provisions of this chapter, it is hereby made the duty of the

attorney general of Indiana to render all necessary assistance to the commissioner upon the commissioner's request, and to that end the attorney general shall employ such legal and such other professional services as shall be necessary to adequately and fully perform such service under the direction of the commissioner as the demands of the securities division shall require, and any expenses so incurred by the attorney general for the purposes aforesaid shall be chargeable against and paid out of the securities division fund and if such fund is insufficient for the payment of such expenses and any expenses of the securities division incident to the administration of this chapter, then a sufficient sum of money for the payment of any such deficiency is hereby appropriated annually out of any money received by the secretary of state as fees for the incorporation and for the filing of the biennial reports of corporations.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.119-2015, SEC.24.

IC 23-2-2.5-46

Liability for performance of official duties

Sec. 46. Neither the secretary of state nor the commissioner, nor any employee of the securities division shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-47

Construction and purpose of chapter

Sec. 47. All provisions of this chapter delegating and granting power to the secretary of state, the securities division and the commissioner shall be liberally construed to the end that the practice or commission of fraud may be prohibited and prevented, disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured, in connection with the issuance, barter, sale, purchase, transfer or disposition of franchises in this state. It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division and the commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for the effective administration thereof.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-48

Public records; inspection; disclosure or use of information restricted; copies; destruction

Sec. 48. (a) All registration notification forms, registration renewal forms, applications to amend registrations, reports, and other papers and documents filed with the commissioner under this chapter shall

be open to public inspection. The commissioner may publish any information filed with or obtained by the commissioner. No provision of this chapter authorizes the commissioner or any of the commissioner's assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's assistants, clerks, or deputies.

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

(c) Upon request, and at such reasonable charges as the commissioner prescribes by rule, the commissioner shall furnish to any person photostatic or other copies (certified by the commissioner if certification is requested) of any document which is retained as a matter of public record, except that the commissioner shall not charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity.

(d) The commissioner may destroy any registration notification forms, together with the files and folders, as useless or obsolete, four (4) years after the date of registration; provided that a permanent record shall be maintained of any disciplinary action taken by the commissioner and of all orders issued under this chapter.

(e) Copies on microfilm or in other form which may be retained by the commissioner of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.15.

IC 23-2-2.5-49

Construction with other laws

Sec. 49. Nothing in this chapter shall be construed to relieve corporations or other business organizations from making reports now or hereafter required by law to be made to the secretary of state, or any other state officer, or paying the fees now or hereafter to be paid by corporations or other business organizations. This chapter shall not be construed to repeal any law now in force regulating the organization of corporations or other business organizations in Indiana, or the admission of any foreign corporation but the provisions of this chapter shall be construed to be additional to any provisions regulating the organization of a corporation or other business organization under the laws of Indiana, or the admission of a foreign corporation to do business in Indiana.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-50

Administrative orders and procedures

Sec. 50. IC 4-21.5 does not apply to proceedings under this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.7-1987, SEC.103.

IC 23-2-2.5-51

Service stations; succession to ownership by family member of deceased franchisee

Sec. 51. (a) Any designated family member of a deceased service station franchisee may succeed to the ownership of the existing agreement if all of the following conditions are met:

- (1) The designated family member gives the service station franchisor written notice of the intention to succeed to the service station agreement within thirty (30) days of the service station franchisee's death.
- (2) The designated family member agrees to be bound by all terms and conditions of the existing owner's franchise agreement.
- (3) There is no good cause for the service station franchisor to refuse to honor the succession.

For purposes of this subsection, the grounds for termination or nonrenewal of a franchise set out in the federal Petroleum Marketing Practices Act (15 U.S.C. 2801 et seq.) constitute good cause. Notification of the refusal must be submitted to the designated family member in writing within sixty (60) days after the date of the service station franchisee's death, and must specify the reasons for the refusal. The form of the written notice required under this subsection shall be prescribed in the terms of the agreement.

(b) This section does not apply to agreements between franchisors and service station franchisees entered into or renewed before July 1, 1983.

As added by P.L.241-1983, SEC.2.