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Commentary Topics

I. Introduction: Scope of the Law
   A. What is the scope of the law?
   B. What are the purpose and legislative intent of the law?
   C. Are there any particular aspects of the law that are worthy of note?

II. What Is a Franchise?
   A. What are the elements of the definition of a franchise?
   B. What is the trademark element?
   C. What is the “marketing plan or system” element?
   D. What is the “significant degree of control” or “significant assistance” element?
   E. What is the “community of interest” element?
   F. What is the franchise fee element?
      1. Are there dollar limits?
   G. What other elements are required?

III. What Is the Geographic Scope of the Law?
   A. When is a franchise relationship subject to the law?
   B. When is it not subject to the law?

IV. What Exemptions Are Available from Registration or Disclosure?
   A. Exemptions based on the franchisor
   B. Exemptions based on the franchisee

V. What Are the Obligations to Register?
   A. Who is responsible for registration?
   B. What are the provisions for amendment of registrations?
   C. What is the state’s position on negotiated changes?
   D. What are the consequences of not registering?
   E. What are the remedies for a franchisee?

VI. What Are the Obligations to Make Disclosure?
   A. Who is obligated to make disclosure?
   B. Who is intended to get disclosure?
   C. What are the timing requirements for disclosure?
   D. What are the consequences of not making proper disclosure?
      1. What are the elements of a claim for violation of disclosure provisions?
         a. What is the limitations period?
      2. What are the remedies available for wrongful disclosure?
         a. Private rights of action
         b. Government action
   E. What is the effect of a “no-waiver” clause?
VII. What Criminal Culpability Exists for Registration or Disclosure Violations?

VIII. If the Statute Includes Relationship Dimensions, Then What Does It Cover?
   A. Termination:
      1. What are the requirements for a franchisor to terminate the franchise agreement?
         a. What is good cause?
         b. What is required for effective notice of termination?
         c. What other requirements exist (e.g., buyback of inventory)?
         d. What is the limitations period?
      2. Remedies for wrongful termination
         a. Injunctive relief
         b. Damages
      3. Is there a cause of action for constructive termination?
      4. May a franchisor terminate for its own business reasons (e.g., market withdrawal)?
   B. Non-Renewal
   C. Transfers
      1. What are the restrictions on a franchisor’s right to object to transfer?
      2. What are the restrictions on a franchisor’s right to object to transfers on death?

IX. What Other Relationship Issues Are Addressed?
   A. Changes in competitive circumstances
   B. Right of free association
   C. Standards of conduct
   D. Restrictions on sources of supply
   E. Discrimination
   F. Restrictive covenants
   G. Releases
   H. Other
Annotation Topics

I. In General
   1. Purpose
   2. Legislative Intent
   3. Statutory Language
   4. Scope
   5. Effect of Other Laws

II. Constitutionality
   6. Impairment of Contracts
   7. Preemption of Federal Law
   8. Other

III. Choice of Law and Forum
   9. Choice of Law
   10. Choice of Forum

IV. Definition of Franchise
   11. Generally
   12. Elements of Statute
   13. Agreement, Oral or Written
   14. Right to Sell, Offer, or Distribute
   15. Franchise Fee
   16. Trademark License or Usage
   17. Marketing Plan or System
   18. Prescribed by Franchisor
   19. Substantial Assistance
   20. Community of Interest or Community Interest
   21. Dollar Limits
   22. Location Limits
   23. Other

V. Exemptions
   24. Generally
   25. Fractional Franchises
   26. Oral Agreements
   27. Employer-Employee Relationships
   28. Partnerships
   29. Cooperative Associations
   30. Large Company (Blue Chip) Exemption
   31. Sale by Franchisee
   32. Limited Offer
   33. Transactions with Existing Franchisees
34. Specified Businesses
35. Exemptions by Administrators
36. Sales by Executors, Administrators, Trustees, etc.
37. Sales to Banks and Investment Companies
38. Registered Securities
39. Part of Franchisee’s Existing Business
40. Other

VI. Application
41. Generally
42. Territorial Application
43. Time or Date Effective
44. Offer or Sale
45. Other

VII. Registration
46. Generally
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48. Persons Responsible
49. Amendment
50. Procedures for Registration
51. Authority of State Registration Officials
52. Negotiated Changes
53. Other

VIII. Disclosure
54. Generally
55. Obligation to Make Disclosure
56. Changes from Common Law
57. Materiality
58. Persons Responsible for Disclosure
59. Persons to Whom Disclosure Should Be Made
60. Timing of Disclosure
61. Intentional Misrepresentation
62. Facts Misrepresented
63. Scienter
64. Reliance
65. Parol Evidence
66. Integration Clauses
67. Injury
68. Omissions
69. Duty to Speak
70. Other

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76. Economic Loss Rule
77. Punitive Damages
78. Setoff
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80. Attorney’s fees
81. Limitations Periods
82. Accrual
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87. Sanctions and Penalties
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XI. Termination of Franchise Agreement
89. Generally
90. What Constitutes Termination
91. Franchisor’s Obligations on Termination
92. Notice
93. Period of Notice
94. Contents of Notice
95. Statutory Cause
96. Abandonment
97. Impairment of Trademarks
98. Conviction of Crime
99. Insolvency
100. Loss of Premises
101. Conduct that Reflects Unfavorably on Franchisor
102. Failure to Comply with Law
103. Seizure of Premises
104. Imminent Danger to Public Health or Safety
105. Franchisee’s Material Breach
106. Franchisor’s Business Reasons
107. Market Withdrawal
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110. Constructive Termination
111. Other
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114. Franchisor’s Obligations on Non-Renewal
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116. Cause for Non-Renewal
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133. Right of Free Association
134. Standards of Conduct
135. Arbitration
136. Restrictions on Sources of Supply
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138. Kickbacks
139. Encroachment
140. Restrictive Covenants
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142. Good Faith
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