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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
- 47. Obligation to Register
- 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. Scierer
- 64. Reliance
- 65. Parol Evidence
- 66. Integration Clauses
- 67. Injury
- 68. Omissions
- 69. Duty to Speak
- 70. Other

IX. Remedies for Disclosure or Registration Violations

- 71. Generally
- 72. Action by the State

- 73. Private Right of Action
- 74. Standing of Plaintiff
- 75. Damages
- 76. Economic Loss Rule
- 77. Punitive Damages
- 78. Setoff
- 79. Rescission
- 80. Attorney's fees
- 81. Limitations Periods
- 82. Accrual
- 83. Other

X. Criminal Culpability for Disclosure or Registration Violations

- 84. Generally
- 85. Elements of Offense
- 86. Persons Liable
- 87. Sanctions and Penalties
- 88. Other

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
- 108. Change of Product Line or Discontinuance
of Franchise
- 109. Other
- 110. Constructive Termination
- 111. Other

XII. Non-Renewal

- 112. Generally
- 113. What Constitutes Non-Renewal
- 114. Franchisor's Obligations on Non-Renewal
- 115. Notice
- 116. Cause for Non-Renewal
- 117. Other

XIII. Remedies for Wrongful Termination or Non-Renewal

- 118. Generally
- 119. Standing of Plaintiff
- 120. Injunction
- 121. Damages
- 122. Attorney's Fees
- 123. Other

XIV. Transfers

- 124. Generally
- 125. Transfer of Franchise
- 126. Changes in Management
- 127. Succession on Franchisor's Death
- 128. Remedies
- 129. Other

XV. Other Relationship Issues

- 130. Generally
- 131. Changes in Competitive Circumstances
- 132. No-Waiver Clauses
- 133. Right of Free Association
- 134. Standards of Conduct
- 135. Arbitration
- 136. Restrictions on Sources of Supply
- 137. Discrimination
- 138. Kickbacks
- 139. Encroachment
- 140. Restrictive Covenants
- 141. Releases
- 142. Good Faith
- 143. Other