

Franchise Registration States Make Accommodations to Filing Deadlines Because of the COVID-19 Pandemic

Most franchise registration states (including the exemption notice states of Florida and Utah) have adopted, formally or informally, COVID-19 accommodations relating to franchise and exemption filings, and the offer and sale of franchises. Lathrop GPM's Franchise and Distribution Group has prepared the chart below to summarize the various accommodations. In preparing this chart, our group reached out to the franchise registration states for input and reviewed all of the notices, orders, and releases the states have issued to date. States continue to update and add to their franchise-related accommodations, and our group will monitor these changing accommodations and update our chart accordingly.

The accommodations described in our chart only relate to the franchise registration states and, at their core, allow franchisors to submit franchise and exemption renewal filings at a later date without penalty. In a few of the franchise registration states, including Illinois, Maryland, and New York, a franchisor is allowed under limited circumstances to offer (but not sell) franchises during the extension period. However, as a general rule, once a franchisor's original expiration date has occurred, the franchisor should cease offering and selling franchises in that state until it obtains an effective registration of its updated FDD in the state. As for the "non-registration states," unless the FTC decides to modify its requirement that franchisors update their FDDs within 120 days of their fiscal year end, franchisors will not be able to offer and sell franchises in those states after the 120-day period without an updated FDD.

Coronavirus Accommodations by Franchise Registration States (as of April 20, 2020)

State	COVID-19 Notice, Order or Release (if any)	Filing Type (Electronic or Hard Copy)	Comments
California	Notice to Securities and Franchise Filers (3/22/2020) <u>CA Notice</u>	Electronic or Hard Copy	The state did not extend the deadline for submitting renewals nor did it grant an extension for existing registrations. However, the state is waiving the additional \$225 filing fee for franchise renewals filed after the renewal deadline but by June 30, 2020, strongly urging franchisors to submit electronic renewal filings, and allowing the use of documents signed electronically using DocuSign (or some other e-signature software), without notarization, if submitted as part of an electronic filing. Following the April 19, 2020 renewal deadline, a franchisor may not offer or sell

			franchises in the state until it has submitted and received approval of its renewal filing.
Florida	Emergency Order 2020-02 (3/26/2020) <u>FL Order</u>	Electronic (but initial filings must be Hard Copy)	<p>The state tolled renewal deadlines that occur in the months of March or April, 2020 for a period of 45 days from the original renewal deadline, and no late fees will be assessed during any tolled period.</p> <p>The state extended the deadline for submitting franchise renewal filings to April 30, 2020. Franchisors are encouraged to file online using the state's new portal to facilitate timely review. In fact, we have learned that hard copy filings sent via overnight delivery service may be delayed or returned and, even if delivered, may not be opened for some time. Franchisors that have already submitted a hard copy filing, may want to follow up with an electronic filing. While the state initially took the position that the extended deadline does not alter the requirement that a franchisor must include in its FDD financial statements that are current within 90 days of the date of filing, we recently learned from a state examiner that the state has changed its mind on this issue. As a result, a franchisor that submits a filing prior to April 30, 2020 with audited financial statements in its FDD dated December 31, 2019, will not be required to include interim, unaudited financial statements in its FDD. We also recently learned from the state that as a result of the extension in the release, franchisors may continue to use their current FDDs to offer and sell franchises in the state until the earlier of April 30, 2020, or the date they submit a renewal filing to the state.</p> <p>The state granted to franchisors, with franchise or exemption registrations that expire between April 1 and June 1, 2020, an automatic 60-day extension from their anniversary date to submit their renewal filing without penalty. Provided a franchisor submits a renewal filing by the extended deadline, the franchisor will not be required to pay more than the standard renewal fee, may submit the standard renewal documents and will be shown by the state as being continuously registered. Notwithstanding the state's extension, after its anniversary date, a franchisor may not enter into a franchise agreement with a prospect until the state receives the franchisor's complete franchise or exemption renewal filing, and the prospect has received the franchisor's updated FDD.</p>
Hawaii	Release: Franchise Filings Deadline Extended (3/29/2020) <u>HI Release</u>	Electronic or Hard Copy	
Illinois	Notice to franchisors regarding franchise renewal applications (4/06/2020) <u>IL Notice</u>	Hard Copy	
Indiana	Administrative Order: Temporary Extension of Franchise Renewal	Electronic	The state automatically extended to June 30, 2020, the effective period of any existing franchise registration that was set to expire between March 16 and May 31,

Deadlines (4/07/2020) **IN**
Order

2020. Any renewal must be filed prior to the renewal deadline.

Maryland	Order: Extension of Franchise Registration Effective Dates Because of Exigent Circumstances Created by COVID-19 (3/17/2020) <u>MD Order</u>	Hard Copy	The state granted an automatic extension of the effective dates of franchise registrations and exemptions of effective franchise offerings in the state for a time period equal to 30 days after the date the state's Governor declares the end of the "Coronavirus State of Emergency." During the Coronavirus State of Emergency, a franchisor may offer (but not sell) franchises using an FDD that has not been registered in or deemed exempt by the state, provided (i) the FDD has been updated to comply with the FTC Franchise Rule, and (ii) the franchisor does not enter into a franchise agreement with a prospect until the franchisor submits and receives notice of the effectiveness of its renewal or exemption renewal filing and updated FDD, and properly discloses its effective FDD to the prospect, together with a copy of any changed pages showing all revisions to the FDD the prospect previously received.
Michigan	None	Hard Copy	Because renewal filings consist of the submission of an unsigned notice of intent and filing fee and no FDD, there is no need for the state to make an accommodation.
Minnesota	Regulatory Guidance 20-10 (3/30/2020) <u>MN</u> <u>Guidance</u>	Electronic or Hard Copy	The state extended to June 30, 2020, the deadline for franchisors to submit renewal filings that were due by April 30, 2020. Franchisors are strongly encouraged to file online. The renewal fee and a hard copy of the online submission confirmation page must still be mailed to the Minnesota Department of Commerce.
New York	Notice of Coronavirus Conditional Relief – Franchise Filings (3/24/2020) <u>NY Notice</u>	Hard Copy	The state granted an extension to existing franchise registrations and exemptions that would have expired between March 1 and April 30, 2020 (the "Relief Period"). The extension is to a date 90 days from the end of the Relief Period. Although not clear under the notice, the state has confirmed that a franchisor may continue to use its old FDD to offer (but not sell) franchises during the Relief Period. However, once a franchisor submits a renewal or amendment filing, the franchisor must cease using its old FDD, but may offer (but not sell) franchises under its updated FDD until the state reviews its renewal or amendment application and notifies the franchisor that its updated FDD has been accepted. A franchisor filing an initial franchise registration application, may not offer or sell franchises until the state reviews the application and notifies the franchisor that its FDD has been accepted. All filings are required to be submitted by email in addition to the required paper and/or CD filings. Electronic copies may

			<p>be redacted to include only the last four digits of any person's social security number, or other sensitive personal identification number. Each email submission should include a copy of the check and a signed statement from the applicant (electronic or by hand) stating, in substance, that: "I will cause this filing and payment to be mailed to the Department of Law forthwith." Each paper filing should also include a print out of the cover email to the state.</p>
North Dakota	Emergency Notice No. 2020-02 – Temporary Relief for Franchise Registrants (3/30/2020) <u>ND Notice</u>	Hard Copy or Electronic	<p>The state granted to franchisors registered with the state an extension of up to 30 days to perform any of its registration filing requirements under the state's franchise law and related regulations. Franchisors are allowed to submit renewals via email (one per email), with the file number and franchisor name in the subject line of the email. Franchisors must mail the filing fee to the state along with a copy of the filing cover letter.</p>
Rhode Island	None	Electronic	<p>Based on our discussion with state examiners, if a franchisor anticipates submitting a late filing, the franchisor is encouraged to log-in online and pay the renewal fee as close to the expiration date as possible. The state also recommends that if the franchisor is not ready to file as of its expiration date, that it upload a cover letter explaining the situation, what documents are being submitted (if any) and what documents are missing, and when the franchisor expects to complete the filing. Indications are that late fees will not be charged for registrations due in March and April, 2020.</p>
South Dakota	None	Hard Copy	<p>Business as usual, but the state will not penalize franchisors if renewal filings are submitted late.</p>
Utah	None	Electronic	<p>The state will not penalize franchisors if renewals are filed late.</p>
Virginia	Order Extending Franchise Renewal Deadlines (3/17/2020) <u>VA Order</u> Extension Orders (4/02/2020) <u>VA Orders</u>	Hard Copy	<p>In its March 17, 2020 order, the state granted an automatic extension to franchise and exemption registrations that are due to expire while the "Judicial Emergency Declaration" is in effect. The registrations were extended for a period of 21 days or such other time period as may be subsequently ordered by the State Corporation Commission or the Supreme Court of Virginia through any subsequent emergency order or declaration. In its April 2, 2020 extension orders, the state extended its previous extensions for the pendency of the Judicial Emergency Declaration or such other time period as may be subsequently ordered by the State Corporation Commission or the Supreme Court of Virginia. The state notes in its first order that it functions only as an extension of the applicable renewal deadline,</p>

Washington Notice Concerning
Franchise Filing
Requirements and Renewal
Filing Fees During COVID-
19 Pandemic (4/08/2020) **Electronic**
WA Notice

Wisconsin None **Electronic**

and not a registration or exemption waiver, and that all required fees and documentation necessary for renewal must be paid or submitted on or before any applicable extended renewal deadline. The state has confirmed that a franchisor may not offer or sell franchises past its original expiration date.

The state is allowing applicants to pay the \$100 renewal filing fee (rather than the \$600 initial filing fee) to complete an application for franchise registration for any offering that was previously registered and that expired, or that will expire, between March 1 and June 30, 2020, until further notice. The filing fee for franchise exemption notice filings remains \$100 regardless of whether a new or renewal filing. Franchisors are reminded that all franchise filings are required to be submitted online through the state's electronic filing system. Notary requirements, however, are waived while social distancing directives remain in effect. Importantly, the state's filing fee relief does not permit a franchisor to offer or sell franchises during a period in which its franchise registration has lapsed.

Business as usual. It is worth noting, however, that the state's initial and renewal filing fees are the same.