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BLOGS

Amendments to Illinois' Franchise Disclosure Act Effective October 1, 2009

On October 1, 2009, amendments to Illinois' Franchise Disclosure Act, signed by Governor Quinn in late August, went into effect. These amendments change several provisions of Illinois franchise law, and bring the Disclosure Act in greater harmony with the amended FTC Franchise Rule. The most notable changes are as follows:

- Franchise registrations in Illinois will now automatically expire 120 days after the franchisor's fiscal year end. This new expiration date will supersede dates previously given to franchisors. As a result, if a franchisor's current expiration date falls more than 120 days after the franchisor's fiscal year end, the franchisor must file within the 120 day time period. But if the franchisor's current expiration date falls before the 120 day deadline, the franchisor must meet that earlier deadline this year and, depending on the timing, may be required to file another renewal application within 120 days after its fiscal year end.
- Independent franchise sellers no longer have to register as franchise brokers in Illinois, but franchisors must file Franchise Seller Disclosure Forms for any franchise seller.
- Franchise sales are automatically exempt and no filing is required in Illinois under any of the following circumstances:
 - The franchisor has a net worth of at least \$15 million.
 - The franchisee has a net worth of at least \$5 million and has been in business five years.
 - Within 60 days of the sale, one or more purchasers of at least 50% ownership interest in the franchise has over 2 years experience as an officer, director, or general partner of the franchisor, or as an individual with management responsibility for the offer or sale of the franchisor's franchises; or was a 25% owner of the franchisor for over 2 years.

Although these franchise sales are exempt from the filing requirements in Illinois, franchisors must still provide pre-sale disclosure to a prospective franchisee.

- The Illinois Franchise Bureau has clarified the process for filing a large franchisor exemption for franchisors with a net worth between \$5 million and \$15 million. Unlike other registration states with large franchisor exemptions, the Illinois Franchise Bureau will initially conduct a cursory review of the application, issue an approval if the application meets basic requirements, and later conduct substantive review of the application.
- The definition of subfranchise has been modified so that the definition of subfranchisor only applies to those individuals who sell or negotiate the sale of franchises, and no longer includes those individuals who only provide services to franchisees. This is a welcome change for development agents/area representatives, who will not be considered subfranchisors under the amended Disclosure Act unless they sell or negotiate the sale of



franchises. Arguably, a development agent/area representative who simply refers leads to a franchisor is not selling or negotiating the sale of a franchise.

- Material change filings now must be made within 30 days after the end of each quarter of the franchisor's fiscal year, rather than within 90 days after the material change occurs.

Franchisors in Illinois should carefully review their compliance with these amendments for all future registrations or renewals in the state. For more information, visit: <http://www.illinoisattorneygeneral.gov/consumers/franchise.html>.