

BLOGS

Legislation and Rulemaking

Indiana Legislature Adopts Franchise Registration Amendment Requirements

On March 21, 2020, Indiana's governor signed into law HB 1049, which amends Indiana's franchise disclosure law to define changes requiring an amendment to franchise registrations and FDDs. Effective July 1, 2020, franchisors must file amendments to their FDD no later than 30 days after the occurrence of a material change in the information contained in the FDD. The statute enumerates various events that constitute a material change, including: (i) the termination, closing, failure to renew, or reacquisition of 10% of all franchises in a franchisor's system, or 10% of the franchisor's franchises located in Indiana; (ii) a change in control or other legal changes to the franchisor's entity; (iii) the introduction or discontinuance of a product or service that exceeds a specific threshold; (iv) a change in fees charged by the franchisor, or a significant change in the parties' obligations or rights; or (v) any other change designated as material by the State's commissioner. The statute does not specify whether franchisors must pay a fee to file a post-effective amendment.

The statute fails to sufficiently define or clarify various terms and phrases that it uses to describe a material change. For example, it does not explain what constitutes a "change in control," and how a franchisor should amend its FDD if there is no disclosure regarding control of the franchisor entity in the first place. Additionally, it is not clear if a franchisor needs to amend its FDD if the introduction or discontinuance of certain products or services only applies systemwide, or even if the changes impacts a limited number of franchisees. These are just a few of the many questions that will arise out of this statute, and without additional guidance, franchisors may unknowingly violate Indiana's franchise disclosure law. Regardless, in light of COVID-19 and the significant number of franchises that are required to close by government orders or the economic downturn, starting in July franchisors should be mindful of whether they have experienced a certain number of terminations or closures inside and outside of Indiana, which would trigger the franchisor's obligations under this statute.

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