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State of Minnesota
HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4801

04/21/2022

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The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to commerce; establishing a large franchise exemption; proposing coding
- 1.3 for new law in Minnesota Statutes, chapter 80C.
- 1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.5 Section 1. **[80C.035] EXPERIENCED FRANCHISOR EXEMPTION.**
- 1.6 Subdivision 1. Exemption provided. (a) The registration provisions under section
- 1.7 80C.02 do not apply to any offer or sale, including transfer, of a franchise if the franchisor
- 1.8 complies with paragraphs (b) to (e).
- 1.9 (b) The franchisor must have shareholder, member, or partner equity of at least:
- 1.10 (1) \$10,000,000 on a consolidated basis, according to the franchisor's audited financial
- 1.11 statements for the immediately preceding fiscal year; or
- 1.12 (2) \$1,000,000 according to the franchisor's financial statements for the immediately
- 1.13 preceding fiscal year which may be audited or unaudited; and
- 1.14 (i) the franchisor must be at least 80 percent directly or indirectly owned by a corporation
- 1.15 or entity that has shareholder, member, or partner equity of at least \$10,000,000 on a
- 1.16 consolidated basis, according to the entity's audited financial statements for the immediately
- 1.17 preceding fiscal year;
- 1.18 (ii) if the franchisor does not prepare audited financial statements because the franchisor's
- 1.19 parent company prepares consolidated audited financial statements, the franchisor must
- 1.20 submit a statement, made by one of the franchisor's officers under penalty of perjury,
- 1.21 confirming that the franchisor has shareholder, member, or partner equity of at least
- 1.22 \$1,000,000 for the immediately preceding fiscal year; and

2.1 (iii) the 80 percent owner must unconditionally guarantee to assume the duties and
2.2 obligations of the franchisor under the franchise agreement.

2.3 (c) The franchisor or the franchisor's 80 percent owner must, at all times during the
2.4 five-year period immediately preceding the offer or sale, have at least 25 operating franchises
2.5 that: (1) are conducting substantially the same business as the franchise being offered; and
2.6 (2) have been in operation for at least 24 months.

2.7 (d) During the ten-year period immediately preceding the offer or sale, all of the following
2.8 must not have been convicted of or pleaded nolo contendere to a felony charge: a franchisor;
2.9 a predecessor; an affiliate that induces franchise sales by promising to back the franchisor
2.10 financially or otherwise guarantees the franchisor's performance; an affiliate who offers
2.11 franchises under the franchisor's principle trademark; and a franchisor's director, trustee,
2.12 general partner, principal officer, or other individual who has management responsibility
2.13 relating to the sale or operation of franchises.

2.14 (e) The franchisor, a predecessor, or an affiliate who induces franchise sales by promising
2.15 to back the franchisor financially or otherwise guarantees the franchisor's performance, an
2.16 affiliate who offers franchises under the franchisor's principal trademark, and a franchisor's
2.17 director, trustee, general partner, principal officer, or other individual who has management
2.18 responsibility relating to the sale or operation of franchises must not be subject to a currently
2.19 effective:

2.20 (1) Securities and Exchange Commission order, or order made by the securities
2.21 administrator of another state, that denies registration to, revokes the registration of, or
2.22 suspends the registration of the person as a securities broker or dealer or investment adviser;

2.23 (2) order made by a national securities association or national securities exchange, as
2.24 defined in the Securities and Exchange Act of 1934, that suspends or expels the person from
2.25 membership in the association or exchange; or

2.26 (3) injunctive order, restrictive order, decree, or judgment, issued during the ten-year
2.27 period immediately preceding the offer or sale, that is the result of a pending or concluded
2.28 action relating to the franchise or to a federal, state, or Canadian franchise, securities,
2.29 antitrust, trade regulation, or trade practice law, provided the action was brought by any
2.30 federal or state public agency or department.

2.31 Subd. 2. **Audited financial statements; requirements.** The audited financial statements
2.32 required under subdivision 1 must be accompanied by an auditor's report that:

(1) contains an unqualified opinion within the meaning of: (i) the Statement on Auditing Standards No. 79, issued by the American Institute of Certified Public Accountants and codified at AU § 508, as amended; or (ii) an equivalent provision from the standards of the applicable governing body for accounting principles, as permitted for use by the Securities and Exchange Commission; and

(2) does not contain a going concern explanatory paragraph.

Subd. 3. Applicability; effect of filing. (a) A franchisor or the 80 percent owner may claim the exemption under subdivision 1 only if the franchisor or the 80 percent owner:

(1) files a notice of exemption in the form prescribed by the commissioner at least 14 calendar days before the offer or sale of any franchise in Minnesota that is subject to this exemption;

(2) files a consent to service of process that names the commissioner as the franchisor's agent to receive process in Minnesota;

(3) pays a \$400 fee to file the exemption;

(4) submits financial statements demonstrating compliance with this section;

(5) submits a written certification that the franchisor meets all of the conditions established under this section; and

(6) files with the commissioner, in a format prescribed by the commissioner, one copy of the franchisor's current franchise disclosure document prepared under the Federal Trade Commission franchise rule, Code of Federal Regulations, title 16, part 436, or under the franchise registration and disclosure law of another state.

(b) By filing a notice of exemption under this subdivision, the franchisor agrees to supply any additional information related to the franchise offering that the commissioner may reasonably request.

(c) A notice of exemption filed under paragraph (a), clause (1), expires one year after the date the notice of exemption is filed. A franchisor may seek to extend a notice of exemption granted under this section. In order to seek an extension under this paragraph, the franchisor must file a notice of exemption, submit all of the documents required under paragraph (a), and pay the fee required for filing an exemption at least 14 calendar days before the current notice of exemption expires.

Subd. 4. Commissioner's authority. The commissioner may by order or written notice: (1) summarily deny, suspend, or revoke an exemption claimed under this section; or (2)

- 4.1 condition the exemption on additional requirements, if in the commissioner's discretion
- 4.2 granting the exemption does not serve the public interest or adequately protect prospective
- 4.3 franchisees. The commissioner's summary denial, suspension, or revocation of an exemption
- 4.4 under this subdivision does not affect a franchisor's registration filed under section 80C.02.
- 4.5 **EFFECTIVE DATE.** This section is effective for offers and sales occurring on or after
- 4.6 January 1, 2023.