

1 Department of Commerce

2

3 Adopted Permanent Rules Relating to Franchises

4

5 Rules as Adopted

6 2860.0200 EXEMPTIONS.

7 Subpart 1. **Isolated sales.** The provisions of Minnesota
8 Statutes 1973 Supplement, section 80C.03, clause (a), shall be
9 available to franchisees only. The provisions of this part
10 shall not be interpreted as to require registration of the
11 franchise prior to its transfer under these circumstances.
12 However, no person, in connection with such a transfer, may
13 require a substituted franchisee to sign a franchise contract or
14 agreement that violates the "unfair and inequitable" provisions
15 of parts 2860.4500 to 2860.8300, whichever is applicable.

16 Subp. 2. **Securities.** The provisions of Minnesota Statutes
17 1973 Supplement, section 80C.03, clause (d), shall be available
18 only when the franchise is in fact registered as a security in
19 Minnesota. All reference to Minnesota Statutes, chapter 80
20 shall include Minnesota Statutes 1973 Supplement, chapter 80A,
21 and provisions amendatory thereto.

22 2860.2500 ANNUAL REPORT.

23 [For text of subpart 1, see M.R. 1989]

24 Subp. 2. **Public offering statement.** The proposed public
25 offering statement filed in connection with the annual report
26 shall contain all data current as of the anniversary-date end of
27 the franchisor's fiscal year including audited financial
28 statements in accordance with parts 2860.1200 to 2860.1600. All
29 alterations in the text of the public offering statement
30 previously filed as a part of registration shall be indicated by
31 means of underscoring.

32 Subp. 3. **Time.** No later than the 120th day following the
33 end of the franchisor's fiscal year, the franchisor shall file
34 financial statements in accordance with parts 2860.1200 to
35 2860.1600. The newly filed financial statements are to be

1 included in all public offering statements used by the
2 franchisor after such filing date.

3 [For text of subp 4, see M.R. 1989]

4 2860.3800 ALTERNATIVE APPLICATIONS.

5 The commissioner may accept as application for registration
6 under Minnesota Statutes 1973 Supplement, chapter 80C, any
7 currently effective public offering statement prepared for
8 compliance with the registration provisions of the franchise
9 laws of other jurisdictions as the commissioner may, from time
10 to time, designate. The commissioner reserves the right to
11 require alterations in such statements as necessary to fulfill
12 the requirements of Minnesota Statutes 1973 Supplement, chapter
13 80C.

14 The commissioner may accept as application for registration
15 the Uniform Franchise Registration Application adopted by the
16 North American Securities Administrators Association; however,
17 the commissioner reserves the right to require alterations in
18 the Uniform Franchise Offering Circular as necessary.

19 2860.4200 FILING OF ADVERTISEMENTS.

20 One copy of each advertisement intended for use shall be
21 filed with the commissioner at least five business days prior to
22 its first publication.

23 If not disallowed by the commissioner by written notice or
24 otherwise within three business days from the date filed, the
25 advertisement may be published.

26 No formal approval of the advertisement shall be issued by
27 the commissioner.

28 The person placing the advertisement shall be responsible
29 for the accuracy and reliability of the advertisement and its
30 conformity with the act and this part.

31 2860.4400 UNFAIR AND INEQUITABLE PRACTICES.

32 All franchise contracts or agreements and any other device
33 or practice of a franchisor, shall conform to the following
34 provisions. It shall be unfair and inequitable for any person

1 to:

2 [For text of items A to D, see M.R. 1989]

3 E. terminate or cancel a franchise unless:

4 (1) that person has given written notice setting
5 forth all the reasons for termination or cancellation to the
6 franchisee at least 90 days in advance of termination or
7 cancellation; and

8 (2) the recipient of the notice fails to correct
9 the reasons stated for termination or cancellation in the notice
10 within 60 days of receipt of the notice, except that the notice
11 shall be effective immediately upon receipt where the alleged
12 grounds are:

13 (1) voluntary abandonment of the franchise
14 relationship by the franchisee;

15 (2) the conviction of the franchisee in a court
16 of competent jurisdiction of an offense directly related to the
17 business conducted pursuant to the franchise; or

18 (3) failure to cure a default under the franchise
19 agreement that materially impairs the good will associated with
20 the franchisor's tradename, trademark, service mark, logotype,
21 or other commercial symbol after the franchisee has received
22 written notice to cure of at least 24 hours in advance thereof;

23 [For text of items F to I, see M.R. 1989]

24 J. require a franchisee to waive his rights to a jury
25 trial or to waive his rights to any procedure, forum, or
26 remedies provided for by the laws of the jurisdiction, or to
27 consent to liquidated damages, termination penalties, or
28 judgment notes; provided, that the franchise agreement may
29 contain an exclusive arbitration clause if the agreement allows
30 the franchisee to opt out of the requirements of the clause;

31 [For text of items K and L, see M.R. 1989]

32 M. fail to renew a franchise unless the franchisee
33 has been given written notice of the intention not to renew at
34 least 180 days in advance thereof and has been given a
35 opportunity to operate the franchise over a sufficient period of
36 time to enable the franchisee to recover the fair market value

1 of the franchise as a going concern as determined and measured
2 from the date of the failure to renew. This item does not apply
3 if the failure to renew a franchise is for good cause and the
4 franchisee has failed to correct the reasons for termination.

5 2860.4500 FALSE, FRAUDULENT, AND DECEPTIVE PRACTICES.

6 In connection with an offer, grant, or sale of a franchise
7 in this state, any person authorizing, aiding in, or causing
8 such offer, grant, or sale of franchises shall be deemed to be
9 engaging in a "false, fraudulent, or deceptive practice" within
10 the meaning of Minnesota Statutes 1973 Supplement, sections
11 80C.12 and 80C.13, without limiting the authority of the
12 commissioner under Minnesota Statutes 1973 Supplement, section
13 80C.12, if such person:

14 [For text of items A to D, see M.R. 1989]

15 2860.5500 CANCELLATION OF FRANCHISE.

16 Any provisions regarding cancellation of the franchise
17 agreement shall be governed by items A to C.

18 [For text of items A and B, see M.R. 1989]

19 C. No person may cancel a franchise unless:

20 (1) that person has given written notice to the
21 dealer in person or by certified mail setting forth all the
22 reasons for cancellation at least 90 days in advance of the
23 cancellation; and

24 (2) the recipient of the notice fails to correct
25 the reasons for cancellation in the notice within 60 days of
26 receipt, except that the notice shall be effective immediately
27 upon receipt when the cause for termination or cancellation is:

- 28 (1) criminal misconduct;
- 29 (2) fraud;
- 30 (3) abandonment;
- 31 (4) bankruptcy or insolvency of the dealer;
- 32 (5) adulteration of product; or
- 33 (6) the giving of a nonsufficient fund check that
34 remains dishonored for a period of ten days after notice, which
35 notice shall be effective on the fifth day after the date of

1 mailing.

2 2860.5600 RENEWAL OF FRANCHISE.

3 Any provisions regarding the renewal of a franchise
4 agreement shall be governed by items A and B.

5 A. Either party to a franchise agreement may refuse
6 to renew the franchise agreement upon giving the other party
7 written notice of his or her intent not to renew at least 180
8 days prior to the expiration of the franchise agreement.

9 [For text of item B, see M.R. 1989]

10

11 REPEALER. Minnesota Rules, parts 2860.3400, subpart 2;
12 2860.6100; 2860.6200; 2860.6300; 2860.6400; and 2860.6500, are
13 repealed.