

BILL

No. 149

An Act respecting Franchises

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(Assented to)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Franchise Disclosure Act*.

Definitions and interpretation

2(1) In this Act:

“**disclosure document**” means the disclosure document required by section 6;

“**franchise**” means a right to engage in a business in which the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make that payment or those payments, to the franchisor or the franchisor's associate in the course of operating the business or as a condition of acquiring the franchise or commencing operations, and:

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- (a) in which:
 - (i) the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor's or the franchisor's associate's trademark, trade name, logo or advertising or other commercial symbol; and
 - (ii) the franchisor or the franchisor's associate exercises significant control over, or provides significant assistance in, the franchisee's method of operation, including building design and furnishings, locations, business organization, marketing techniques or training; or
- (b) in which:
 - (i) the franchisor or the franchisor's associate grants the franchisee the representational or distribution rights, whether or not a trademark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor; and
 - (ii) the franchisor or the franchisor's associate, or a third person designated by the franchisor, provides location assistance, including:
 - (A) securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed; or
 - (B) securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee;

“franchise agreement” means any agreement that relates to a franchise and is entered into between:

- (a) a franchisor or franchisor's associate; and
- (b) a franchisee;

“franchise system” includes the following:

- (a) the marketing, marketing plan or business plan of a franchise;
- (b) the use of or association with a trademark, trade name, logo or advertising or other commercial symbol;
- (c) the obligations of a franchisor and franchisee with respect to the operation of the business operated by the franchisee under the franchise agreement;
- (d) the goodwill associated with the franchise;

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“franchisee” means a person to whom a franchise is granted, including:

- (a) a subfranchisor with respect to that subfranchisor’s relationship with a franchisor; and
- (b) a subfranchisee with respect to that subfranchisee’s relationship with a subfranchisor;

“franchisor” means a person who grants or offers to grant a franchise and includes a subfranchisor with respect to that subfranchisor’s relationship with a subfranchisee;

“franchisor’s associate” means a person:

- (a) who, directly or indirectly:
 - (i) controls the franchisor;
 - (ii) is controlled by the franchisor; or
 - (iii) is controlled by another person who also controls, directly or indirectly, the franchisor; and
- (b) who:
 - (i) is directly involved in the grant of the franchise:
 - (A) by being involved in reviewing or approving the grant of the franchise; or
 - (B) by making representations to a prospective franchisee on behalf of the franchisor for the purpose of granting the franchise, marketing the franchise or otherwise offering to grant the franchise; or
 - (ii) exercises significant operational control over the franchisee and to whom the franchisee has a continuing financial obligation with respect to the franchise;

“franchisor’s broker” means a person, other than a franchisee, franchisor or franchisor’s associate, who, on behalf of the franchisor:

- (a) grants, markets or otherwise offers to grant a franchise; or
- (b) arranges for the grant of a franchise;

“grant”, with respect to a franchise, includes the disposition of the franchise or of an interest in the franchise and, for this purpose, an interest in the franchise includes the ownership of shares in the corporation that owns the franchise;

“master franchise” means a franchise that is a right granted by a franchisor to a subfranchisor to grant or offer to grant franchises for the subfranchisor’s own account;

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“material change” means a change in the business, operations, capital or control of the franchisor or franchisor’s associate, or in the franchise or the franchise system, that would reasonably be expected to have a significant adverse effect on the value or price of the franchise to be granted or on the decision to acquire the franchise, and includes a decision to implement such a change made by:

- (a) the board of directors of the franchisor or franchisor’s associate; or
- (b) by senior management of the franchisor or franchisor’s associate who believe that confirmation of the decision by the board of directors is probable;

“material fact” means any information about the business, operations, capital or control of the franchisor or franchisor’s associate, or about the franchise or the franchise system, that would reasonably be expected to have a significant effect on:

- (a) the value or price of the franchise to be granted; or
- (b) the decision to acquire the franchise;

“misrepresentation” includes:

- (a) an untrue statement of a material fact; or
- (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made;

“prescribed” means prescribed in the regulations;

“prospective franchisee” means a person:

- (a) who has indicated, directly or indirectly, to a franchisor, franchisor’s associate or franchisor’s broker an interest in entering into a franchise agreement; and
- (b) whom a franchisor, franchisor’s associate or franchisor’s broker invites, directly or indirectly, to enter into a franchise agreement;

“subfranchise” means a franchise granted by a subfranchisor to a subfranchisee.

- (2) For the purposes of this Act, a reference to a franchise includes a master franchise and a subfranchise.

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(3) For the purposes of this Act, a franchisee, franchisor or franchisor's associate that is a corporation is deemed to be controlled by another person or persons if:

- (a) voting securities of the franchisee, franchisor or franchisor's associate carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or persons; and
- (b) the votes carried by those securities are entitled, if exercised, to elect a majority of the board of directors of the franchisee, franchisor or franchisor's associate.

Application of Act

3(1) This Act applies to the following if the business operated or to be operated by the franchisee under the franchise agreement is wholly or partly in Saskatchewan:

- (a) a franchise agreement entered into on or after the coming into force of this section;
- (b) a renewal or extension, entered into on or after the coming into force of this section, of a franchise agreement entered into before, on or after the coming into force of this section.

(2) Sections 4 and 5, clause 6(8)(d) and sections 11 to 14 apply with respect to a franchise agreement entered into before the coming into force of this section if the business operated or to be operated by the franchisee under the franchise agreement is wholly or partly in Saskatchewan.

(3) This Act does not apply to any of the following:

- (a) an employer-employee relationship;
- (b) a partnership;
- (c) membership in an organization operated on a cooperative basis, as defined in the regulations;
- (d) an arrangement arising from an agreement to use a trademark, trade name, logo or advertising or other commercial symbol designating a person who offers on a general basis, for consideration, a service for the evaluation, testing or certification of goods, commodities or services;
- (e) an arrangement arising from an agreement between a licensor and a single licensee to license a specific trademark, trade name, logo or advertising or other commercial symbol if the licence is the only one of its general nature and type to be granted in Canada by the licensor with respect to that trademark, trade name, logo or advertising or other commercial symbol;
- (f) a relationship or arrangement arising from an oral agreement, if there is no written evidence of any material term or aspect of the relationship or arrangement;

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- (g) an arrangement arising out of an agreement:
 - (i) for the purchase and sale of a reasonable amount of goods at a reasonable wholesale price; or
 - (ii) for the purchase of a reasonable amount of services at a reasonable price;
- (h) any prescribed person, organization, relationship or arrangement or any prescribed category of persons, organizations, relationships or arrangements.

Fair dealing

- 4(1) Every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the franchise agreement, including in the exercise of a right under the franchise agreement.
- (2) A party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing.
- (3) For the purpose of this section, the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards.

Franchisee's right to associate

- 5(1) A franchisee may associate with other franchisees and may form or join an organization of franchisees.
- (2) A franchisor and a franchisor's associate shall not interfere with, prohibit or restrict, by contract or otherwise, a franchisee from forming or joining an organization of franchisees or from associating with other franchisees.
- (3) A franchisor and a franchisor's associate shall not, directly or indirectly, penalize, attempt to penalize or threaten to penalize a franchisee for exercising any right pursuant to this section.
- (4) Any provision in a franchise agreement or other agreement relating to a franchisee that purports to interfere with, prohibit or restrict a franchisee from exercising any right pursuant to this section is void.
- (5) If a franchisor or franchisor's associate contravenes this section, the franchisee has a right of action for damages against the franchisor or franchisor's associate, as the case may be.

Franchisor's obligation to disclose

- 6(1) A franchisor shall provide a prospective franchisee with a disclosure document.
- (2) The disclosure document must be received by the prospective franchisee at least 14 days before the earlier of:
- (a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise; and
 - (b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or franchisor's associate relating to the franchise.
- (3) A disclosure document may be delivered personally or by any other prescribed method.

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- (4) Subject to the regulations, a disclosure document must be delivered as one complete document and delivered at one time.
- (5) A disclosure document must contain the following:
- (a) all material facts, including the prescribed material facts;
 - (b) the prescribed financial statements;
 - (c) copies of all proposed franchise agreements, and other agreements relating to the franchise, to be signed by the prospective franchisee;
 - (d) the prescribed statements that have the purpose of assisting a prospective franchisee to make informed investment decisions;
 - (e) all additional prescribed information and documents.
- (6) The franchisor shall provide the prospective franchisee with a written statement of any material change, and the prospective franchisee must receive the statement of material change as soon as is practicable after the change has occurred and before the earlier of:
- (a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise; and
 - (b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or franchisor's associate relating to the franchise.
- (7) All information in a disclosure document and a statement of material change must be accurately, clearly and concisely set out.
- (8) This section does not apply to the following:
- (a) the grant of a franchise by a franchisee if:
 - (i) the franchisee is not the franchisor, the franchisor's associate or a director, officer or employee of the franchisor or of the franchisor's associate;
 - (ii) the grant of the franchise is for the franchisee's own account;
 - (iii) in the case of a master franchise, the entire franchise is granted; and
 - (iv) the grant of the franchise is not effected by or through the franchisor;
 - (b) the grant of a franchise to a person who has been an officer or director of the franchisor or of the franchisor's associate for at least 6 months immediately before the grant of the franchise for that person's own account;
 - (c) the grant of an additional franchise to an existing franchisee if:
 - (i) that additional franchise is substantially the same as the existing franchise that the franchisee is operating; and
 - (ii) there has been no material change since the existing franchise agreement, or latest renewal or extension of the existing franchise agreement, was entered into;

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- (d) the grant of a franchise by an executor, administrator, sheriff, receiver, trustee, trustee in bankruptcy, liquidator or guardian on behalf of a person other than the franchisor or the estate of the franchisor;
 - (e) the grant of a franchise to a person to sell goods or services within a business in which that person has an interest if the sales arising from those goods or services, as anticipated by the parties or that should be anticipated by the parties at the time the franchise agreement is entered into, will not exceed the prescribed percentage of the total sales of the business during the first year of operation of the franchise;
 - (f) the renewal or extension of a franchise agreement if there has been:
 - (i) no interruption in the operation of the business operated by the franchisee under the franchise agreement; and
 - (ii) no material change since the franchise agreement, or latest renewal or extension of the franchise agreement, was entered into;
 - (g) the grant of a franchise if the franchise agreement, including any renewal or extension of the franchise agreement:
 - (i) is or would be valid for one year or less; and
 - (ii) does not involve the payment of a non-refundable initial franchise fee, renewal fee or extension fee;
 - (h) the grant of a franchise if section 55 of the *Competition Act* (Canada) applies to the franchisor;
 - (i) the grant of a franchise if the prospective franchisee is investing an amount greater than the prescribed amount in the acquisition of the franchise.
- (9) For the purposes of clauses (2)(a) and (6)(a), an agreement is not a franchise agreement or any other agreement relating to a franchise if the agreement only contains terms with respect to:
- (a) keeping confidential, or prohibiting the use of, any information or material that may be provided to a prospective franchisee; or
 - (b) designating a location, site or territory for a prospective franchisee.
- (10) Notwithstanding subsection (9), an agreement that only contains terms described in clause (9)(a) or (b) is a franchise agreement or any other agreement relating to a franchise for the purposes of clauses (2)(a) and (6)(a) if the agreement:
- (a) requires keeping confidential, or prohibits the use of, information:
 - (i) that is in or comes into the public domain without breaching the agreement;
 - (ii) that is disclosed to any person without breaching the agreement; or
 - (iii) that is disclosed with the consent of all the parties to the agreement; or
 - (b) prohibits the disclosure of information to an organization of franchisees, to other franchisees of the same franchise system or to a franchisee's professional advisors.

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- (11) For the purposes of clauses (2)(b) and (6)(b), the payment of any consideration relating to a franchise does not include the payment of a deposit that:
- (a) does not exceed the prescribed amount;
 - (b) is refundable without any deductions if a prospective franchisee does not enter into a franchise agreement; and
 - (c) is given under an agreement that in no way binds the prospective franchisee to enter into a franchise agreement.
- (12) For the purposes of subclause (8)(a)(iv), a grant is not effected by or through a franchisor merely because:
- (a) the franchisor has a right, exercisable on reasonable grounds, to approve or disapprove the grant; or
 - (b) a fee must be paid to the franchisor:
 - (i) in an amount set out in the franchise agreement; or
 - (ii) in an amount that does not exceed the reasonable actual costs incurred by the franchisor to process the grant.

Rescission

- 7(1) A franchisee may rescind the franchise agreement, without penalty or obligation, within 60 days after receiving the disclosure document if:
- (a) the franchisor failed to provide the disclosure document or a statement of material change within the time required by section 6; or
 - (b) the contents of the disclosure document do not meet the requirements of section 6.
- (2) A franchisee may rescind the franchise agreement, without penalty or obligation, within 2 years after entering into the franchise agreement if the franchisor fails to provide the disclosure document within those 2 years.
- (3) A notice of rescission must be in writing and delivered to the franchisor personally or by any other prescribed method at the franchisor's address for service or to any other person designated for that purpose in the franchise agreement.
- (4) A notice of rescission is effective:
- (a) on the day it is delivered personally; or
 - (b) on the day determined in accordance with the regulations if delivered by any other prescribed method.
- (5) The franchisor or franchisor's associate, as the case may be, must, within 60 days after the effective date of the rescission:
- (a) refund to the franchisee any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
 - (b) purchase from the franchisee any inventory that the franchisee purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;

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- (c) purchase from the franchisee any supplies and equipment that the franchisee purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts mentioned in clauses (a) to (c).

Damages

8(1) If a franchisee suffers a loss because of a misrepresentation contained in the disclosure document or in a statement of a material change, or as a result of the franchisor's failure to comply in any way with section 6, the franchisee has a right of action for damages against the following:

- (a) the franchisor;
 - (b) the franchisor's broker;
 - (c) the franchisor's associate;
 - (d) every person who signed the disclosure document or statement of material change.
- (2) Subject to subsection 9(1), if a disclosure document or statement of material change contains a misrepresentation, a franchisee who acquires a franchise to which the disclosure document or statement of material change relates is deemed to have relied on the misrepresentation.
- (3) Subject to subsection 9(1), if a franchisor fails to comply with section 6 with respect to a statement of material change, a franchisee who acquires a franchise to which the material change relates is deemed to have relied on the information set out in the disclosure document.

Exceptions and defences to liability

9(1) A person is not liable in an action brought pursuant to subsection 8(1) for misrepresentation if the person proves that the franchisee acquired the franchise with knowledge of the misrepresentation or of the material change, as the case may be.

- (2) A person, other than a franchisor, is not liable in an action brought pursuant to subsection 8(1) for misrepresentation if the person proves any of the following:
- (a) that the disclosure document or statement of material change was given to the franchisee without the person's knowledge or consent and that, on becoming aware of the disclosure document or statement of material change having been given, the person promptly gave written notice to the franchisee and the franchisor that the disclosure document or statement of material change was given without the person's knowledge or consent;
 - (b) that, after the disclosure document or statement of material change was given to the franchisee and before the franchise was acquired by the franchisee, on becoming aware of any misrepresentation in the disclosure document or statement of material change, the person withdrew consent to it and gave written notice to the franchisee and the franchisor of the withdrawal and the reasons for it;

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(c) that, with respect to any part of the disclosure document or statement of material change purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe that:

- (i) there had been a misrepresentation;
- (ii) the part of the disclosure document or statement of material change did not fairly represent the report, opinion or statement of the expert; or
- (iii) the part of the disclosure document or statement of material change was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the disclosure document or statement of material change purporting to be made on the authority of a statement in writing by a public official or purporting to be a copy of or an extract from a report, opinion or statement of a public official, the person had no reasonable grounds to believe and did not believe that:

- (i) there had been a misrepresentation;
- (ii) the part of the disclosure document or statement of material change did not fairly represent the report, opinion or statement of the public official; or
- (iii) the part of the disclosure document or statement of material change was not a fair copy of or extract from the report, opinion or statement of the public official;

(e) that, with respect to any part of the disclosure document or statement of material change not purporting to be made on the authority of an expert or of a statement in writing by a public official and not purporting to be a copy of or an extract from a report, opinion or statement of an expert or public official, the person:

- (i) conducted an investigation sufficient to provide reasonable grounds for believing there was no misrepresentation; and
- (ii) believed there was no misrepresentation.

Substantial compliance

10 A disclosure document or statement of material change complies with section 6 notwithstanding the presence of a defect in form, a technical irregularity or an error if:

- (a) the defect in form, the technical irregularity or the error does not affect the substance of the disclosure document or the statement of material change; and
- (b) the disclosure document or the statement of material change is substantially in compliance with this Act.

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Joint and several liability

11(1) If 2 or more parties to a franchise agreement are found to be liable in an action brought pursuant to subsection 4(2), or accept liability with respect to an action brought pursuant to that subsection, they are jointly and severally liable.

(2) If 2 or more franchisors or franchisor's associates are found to be liable in an action brought pursuant to subsection 5(5), or accept liability with respect to an action brought pursuant to that subsection, they are jointly and severally liable.

(3) If 2 or more persons specified in subsection 8(1) are found to be liable in an action brought pursuant to that subsection, or accept liability with respect to an action brought pursuant to that section, they are jointly and severally liable.

No derogation of other rights

12(1) Subject to this section, the rights conferred by this Act are in addition to and do not derogate from any other right or remedy any party to a franchise agreement may have at law.

(2) A franchisee is not required to elect between rescission pursuant to section 7 and the statutory rights of action for damages.

(3) A franchisee is not entitled to be indemnified by way of damages with respect to a loss recovered through rescission of a franchise agreement.

Attempt to affect jurisdiction void

13(1) Any provision in a franchise agreement purporting to restrict the application of the law of Saskatchewan or to restrict jurisdiction or venue to a forum outside Saskatchewan is void with respect to a claim otherwise enforceable pursuant to this Act in Saskatchewan.

(2) Without limitation, subsection (1) applies to a provision in a franchise agreement providing for disputes under the franchise agreement to be submitted to arbitration.

(3) Subsection (1) does not apply to a claim if an action based on the claim was commenced before the coming into force of this section.

Rights cannot be waived

14(1) Any purported waiver or release by a franchisee, or by a prospective franchisee, of a right conferred by or pursuant to this Act or of an obligation or requirement imposed on a franchisor or franchisor's associate by or pursuant to this Act is void.

(2) Subsection (1) does not apply to a waiver or release by a franchisee, or by a prospective franchisee, made in accordance with a settlement of an action, claim or dispute.

Burden of proof

15 In any proceeding brought pursuant to this Act, the burden of proving an exemption or an exclusion from a requirement or provision is on the person claiming it.

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Regulations

16 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of clause 3(3)(c), defining an organization operated on a cooperative basis;
- (c) for the purposes of clause 3(3)(h), prescribing any person, organization, relationship or arrangement or any category of persons, organizations, relationships or arrangements;
- (d) for the purposes of subsection 6(3), prescribing:
 - (i) other methods of delivery of a disclosure document; and
 - (ii) rules with respect to the use of those methods of delivery;
- (e) for the purposes of subsection 6(5), prescribing the additional information and documents to be included in a disclosure document, including prescribing:
 - (i) the material facts to be included;
 - (ii) the financial statements to be included; and
 - (iii) the other statements to be included;
- (f) prescribing the percentage of total sales for the purposes of clause 6(8)(e);
- (g) prescribing an amount for the purposes of clause 6(8)(i);
- (h) prescribing a deposit amount for the purposes of clause 6(11)(a);
- (i) for the purposes of subsection 7(3), prescribing:
 - (i) other methods of delivery of a notice of rescission; and
 - (ii) rules with respect to the use of those methods of delivery, including the day on which a notice of rescission delivered by those methods is effective for the purpose of clause 7(4)(b);
- (j) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (k) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Coming into force

17 This Act comes into force by order of the Lieutenant Governor in Council.

FOURTH SESSION

Twenty-ninth Legislature

SASKATCHEWAN

BILL

No. 149

An Act respecting Franchises

Received and read the

First time

Second time

Third time

And passed

Honourable Bronwyn Eyre
