

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 767

By Senator Barrett

[Introduced February 13, 2024; referred to
the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §31-1-1 and §31-1-2, all relating to describing retail franchise agreements;
 3 governing law; and competition restrictions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. RETAIL FRANCHISING ACT.

§31-1-1. Definitions; applicability of chapter.

1 (a) The following definitions shall apply to this article:

2 "Controlling Person" means a natural person who is an officer, director, or partner, or who
 3 occupies a similar status or performs a similar function, of a franchisor organized as a corporation,
 4 partnership, or other entity, or any person who possess, directly or indirectly, the power to direct or
 5 cause the direction of management and policies of a franchisor, whether through ownership of
 6 voting securities, by contract, or otherwise.

7 "Franchise" means a written contract or agreement between two or more persons, by
 8 which:

9 (1) A franchisee is granted the right to engage in the business of offering, selling, or
 10 distributing goods or services at retail under a marketing plan or system prescribed in substantial
 11 part by a franchisor;

12 (2) The operation of the franchisee's business pursuant to such plan or system is
 13 substantially associated with the franchisor's trademark, service mark, trade name, logotype,
 14 advertising, or other commercial symbol designating the franchisor or its affiliate; and

15 (3) The franchisee is required to pay, directly or indirectly, a franchise fee of \$500 or more.

16 "Franchise fee" means a fee or charge for the right to enter into or maintain a business
 17 under a franchise, including a payment or deposit for goods, services, rights, or training, but not
 18 including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of
 19 goods for resale or (ii) the payment at fair market value for the purchase or lease of real property,
 20 fixtures, equipment, or supplies necessary to enter into or maintain the business.

21 "Franchisee" means a person to whom a franchise is granted or sold.

22 "Franchisor" means a person, including a subfranchisor, who grants or sells, or offers to
23 grant or sell, a franchise.

24 "Offer" or "offer to sell" includes every attempt to offer to dispose of or grant, and every
25 solicitation of an offer to buy, a franchise or an interest in a franchise for value.

26 "Place of business" means a building or portion thereof from which the goods or services
27 authorized by the franchise are sold or offered for sale in person by the franchisee or employees or
28 agents of the franchisee, or a truck or van used in the sale of such goods which is of a type
29 designated by the franchisor and is equipped and marked in conformance with requirements of the
30 franchisor.

31 "Preopening obligations" means the franchisor's obligations to provide to the franchisee,
32 prior to the opening of the franchisee's business, real estate, improvements, equipment, inventory,
33 training, or other items to be included in the offering.

34 "Sale" or "sell" includes every contract or agreement of sale or grant of, contract to sell, or
35 disposition of a franchise or interest in a franchise for value.

36 "Subfranchisor" means a person who is authorized by a franchisor to grant a franchise
37 within a particular geographic region.

38 (b) This article shall apply only to a franchise the performance of which contemplates or
39 requires the franchisee to establish or maintain a place of business within the state of West
40 Virginia.

41 (c) A franchise does not include a contract or agreement by which a retailer of goods or
42 services is granted the right either:

43 (A) To utilize a marketing plan or system to promote the sale or distribution of goods or
44 services which are incidental and ancillary to the principal business of the retailer (sales under
45 such a plan or system accounting for less than 20% of the retailer's gross sales being deemed
46 incidental and ancillary); or

47 (B) To sell goods or services within, or appurtenant to, a retail business establishment as a
 48 department or division thereof provided such retailer is not required to purchase such goods or
 49 services from the operator of such establishment.

50 (d) Any franchise contract or agreement offered or entered into pursuant to the terms of
 51 this article shall be governed by the laws of West Virginia.

§31-1-2. Unlawful offers; effective date.

1 (a) It shall be unlawful for any person, in connection with the sale or offer to sell a franchise
 2 in West Virginia, directly or indirectly:

3 (1) To employ any device, scheme, or artifice to defraud;

4 (2) To make any untrue statement of a material fact or to omit to state a material fact
 5 necessary in order to avoid misleading the offeree;

6 (3) To engage in any transaction, practice, or course of business that operates or would
 7 operate as a fraud or deceit upon the franchisee; or

8 (4) To offer or enter into a franchise agreement that:

9 (A) Restricts the right of a franchises to engage in the business of offering, selling, or
 10 distributing goods or services at retail after termination or expiration of the franchise agreement; or

11 (B) Restricts the franchisee's right to do business as part of the settlement of a controversy,
 12 except where such restriction is approved by a court of competent jurisdiction.

13 (5) To fail to provide the franchisee a copy of:

14 (A) The franchise agreement; and

15 (B) Such disclosure document as may be required by rule or order of a court of competent
 16 jurisdiction or state agency.

17 (b) This article shall take effect July 1, 2024.

NOTE: The purpose of this bill is to describe franchise agreements, governing law, and competition restrictions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.