Province of Alberta

FRANCHISES ACT

Revised Statutes of Alberta 2000
Chapter F-23

Current as of January 1, 2002

© Published by Alberta Queen's Printer

Alberta Queen's Printer
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Alberta Queen's Printer holds copyright on behalf of the Government of Alberta in right of Her Majesty the Queen for all Government of Alberta legislation. Alberta Queen's Printer permits any person to reproduce Alberta's statutes and regulations without seeking permission and without charge, provided due diligence is exercised to ensure the accuracy of the materials produced, and Crown copyright is acknowledged in the following format:

© Alberta Queen's Printer, 20__.*

*The year of first publication of the legal materials is to be completed.

Note

All persons making use of this document are reminded that it has no legislative sanction. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Franchises Act* that are filed as Alberta Regulations under the Regulations Act.

	Alta. Reg.	*Amendments*
Franchises Act		
Exemption	312/2000	*134/2004, 49/2005, 172/2015*
Franchises	240/95	*317/2000, 54/2005, 146/2015, 147/2015*

FRANCHISES ACT

Chapter F-23

Table of Contents

1 Interpretation

Purpose and Application

2 Purpose statement
3 Application of Act

Disclosure Document

4 Giving of document to franchisee

Exemptions

5 Statutory exemptions
6 Further exemptions

Fair Dealing

7 Fair dealing

Right to Associate

8 Franchisee's right to associate

Damages, Cancellation and Other Rights and Remedies

9 Misrepresentation in disclosure document
10 Defence to liability
11 Contravention of right to associate
12 Joint and several liability
13 Failure to give disclosure document
14 Effect of cancellation
15 Other remedies
16 Alberta law
17 Limit on jurisdictional choice
18 Waiver of rights

19 Burden of proof

General Regulations

20 Regulations

Self-government

21 Self-government

Transitional Provisions

22 Transitional

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "disclosure document" means a disclosure document required to be given under section 4 and includes any changes required to be given under section 4(4);

(b) "former Act" means the *Franchises Act*, RSA 1980 cF-17, as it read immediately before October 31, 1995;

(c) "fractional franchise" means a franchise granted to a person to sell goods or services within a business in which that person has an interest, the sales arising from which, as anticipated by the parties or that should be anticipated by the parties at the time the franchise is entered into, do not exceed, in relation to the total sales of the business, the percentage prescribed by the regulations;

(d) "franchise" means a right to engage in a business

(i) in which goods or services are sold or offered for sale or are distributed under a marketing or business plan prescribed in substantial part by the franchisor or its associate,

(ii) that is substantially associated with a trademark, service mark, trade name, logotype or advertising of the franchisor or its associate or designating the franchisor or its associate, and

(iii) that involves

(A) a continuing financial obligation to the franchisor or its associate by the franchisee and significant continuing operational controls by the franchisor or its associate on the operations of the franchised business, or

(B) the payment of a franchise fee,

and includes a master franchise and a subfranchise;

(e) "franchise agreement" means any agreement that relates to a franchise between

(i) a franchisor or its associate, and

(ii) a franchisee or prospective franchisee;

(f) "franchise fee" means a direct or indirect payment to purchase a franchise or to operate a franchised business, but does not include

(i) a purchase of or an agreement to purchase a reasonable amount of goods at a reasonable bona fide wholesale price,

(ii) a purchase of or an agreement to purchase a reasonable amount of services at a reasonable bona fide price, or

(iii) a payment of a reasonable service charge to the issuer of a credit or debit card by an establishment accepting the credit or debit card, as the case may be;

(g) "franchise system" includes

(i) the marketing or business plan of the franchise,

(ii) the use of or association with a trademark, service mark, trade name, logotype or advertising,

(iii) the obligations of the franchisor and franchisee with regard to the operation of the franchised business, and

(iv) the goodwill associated with the franchise;

(h) "franchised business" means a business operating under a franchise agreement;

(i) "franchisee" means a person to whom a franchise is granted and includes

(i) a subfranchisor with regard to that subfranchisor's relationship with a franchisor, and

(ii) a subfranchisee with regard to that subfranchisee's relationship with a subfranchisor;

(j) "franchisor" means one or more persons who grant a franchise and includes a subfranchisor with regard to its relationship with a subfranchisee;

(k) "interest in a franchise" includes the ownership of shares in the corporation that owns the franchise;

(l) "marketing or business plan" means a plan or system that specifies a material aspect of conducting business, including, without limitation, any one or more of the following:

(i) price specification, special pricing systems or discount plans;

(ii) sales or display equipment or merchandising devices;

(iii) equipment to be used to perform services;

(iv) sales techniques;

(v) promotional or advertising materials or co-operative advertising;

(vi) training relating to the promotion, operation or management of the business;

(vii) operational, managerial, technical or financial guidelines or assistance;

(m) "master franchise" means the right granted by a franchisor to a subfranchisor to sell or offer franchises for the subfranchisor's own account;

(n) "material change" means

(i) a change in the business, operations, capital or control of the franchisor or its associate, or

(ii) a change in the franchise system,

that would reasonably be expected to have a significant adverse effect on the value or price of the franchise to be sold or the decision to purchase the franchise and includes a decision to implement the change made by the board of directors of the franchisor or its associate or by senior management of the franchisor or its associate who believe that confirmation of the decision by the board of directors is probable;

(o) "material fact" means any information about the business, operations, capital or control of the franchisor or its associate, or about the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be sold or the decision to purchase the franchise;

(p) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(q) "misrepresentation" includes

(i) an untrue statement of a material fact,

(ii) an omission to state a material fact that is required to be stated, or

(iii) an omission to state a material fact that needs to be stated in order for a statement not to be misleading;

(r) "officer" means

(i) the chair or vice-chair of the board of directors or the president, vice-president, secretary, assistant secretary, comptroller, assistant comptroller, treasurer, assistant treasurer or general manager of a corporation,

(ii) any individual who performs functions or acts in a capacity similar to the functions or capacities referred to in subclause (i), or

(iii) any individual designated as an officer of a corporation by bylaw or similar authority of the corporation;

(s) "person" means an individual, partnership, corporation, unincorporated association, unincorporated organization, trustee, executor, administrator or other legal representative;

(t) "sell" means a sale or a disposition of a franchise or an interest in a franchise;

(u) "subfranchise" means a franchise granted by a subfranchisor to a subfranchisee;

(v) "subfranchisee" means a person to whom a subfranchise is granted by a subfranchisor;

(w) "subfranchisor" means one or more persons who grant a subfranchise and includes a person to whom a master franchise is granted.

(2) A person is an associate of a franchisor if the person is directly involved in the granting of the franchise or if there are continuing financial obligations by the franchisee to that person and significant operational controls by that person on the franchisee and

(a) the person controls the franchisor,

(b) the person is controlled by the franchisor, or

(c) the person and the franchisor are under the common control of another person.

(3) A corporation is controlled by another person if

(a) the voting securities of the corporation carrying more than 50% of the votes that may be cast to elect directors are held, other than for the purpose of collateral for a debt, by or for the benefit of the other person, and

(b) the votes carried by the securities referred to in clause (a) are sufficient, if exercised, to elect a majority of the board of directors of the corporation.

1995 cF-17.1 s1

Purpose and Application

Purpose statement

2 The purpose of this Act is

(a) to assist prospective franchisees in making informed investment decisions by requiring the timely disclosure of necessary information,

(b) to provide civil remedies to deal with breaches of this Act, and

(c) to provide a means by which franchisors and franchisees will be able to govern themselves and promote fair dealing among themselves.

1995 cF-17.1 s2

Application of Act

3(1) This Act applies to the sale of a franchise made on or after November 1, 1995

(a) if the franchised business is to be operated either partly or wholly in Alberta, and

(b) if the purchaser of the franchise is an Alberta resident or has a permanent establishment in Alberta for the purposes of the *Alberta Corporate Tax Act*.

(2) Sections 5(1)(d) and (f), 6, 7, 8, 11, 15, 20 and 21 apply to the sale of a franchise made before November 1, 1995

(a) if the franchised business is operating or is to be operated either partly or wholly in Alberta, and

(b) if, on November 1, 1995, the franchisee is an Alberta resident or has a permanent establishment in Alberta for the purposes of the *Alberta Corporate Tax Act*.

1995 cF-17.1 s3

Disclosure Document

Giving of document to franchisee

4(1) A franchisor must give every prospective franchisee a copy of the franchisor's disclosure document.

(2) The disclosure document must be received by the prospective franchisee at least 14 days before

(a) the signing by the prospective franchisee of any agreement relating to the franchise, or

(b) the payment of any consideration by the prospective franchisee relating to the franchise,

whichever is earlier.

(3) A disclosure document must

(a) comply with the requirements of the regulations,

(b) contain copies of all proposed franchise agreements, and

(c) contain financial statements, reports and other documents in accordance with the regulations.

(4) The franchisor must provide, in writing, to the prospective franchisee a description of any material change.

(5) The prospective franchisee must receive the description of the material change as soon as practicable after the change has occurred and before

(a) the signing by the prospective franchisee of any agreement relating to the franchise, or

(b) the payment of any consideration by the prospective franchisee relating to the franchise,

whichever is earlier.

(6) For the purposes of subsections (2)(b) and (5)(b), the payment of any consideration relating to a franchise does not include the payment of a fully refundable deposit.

(7) For the purposes of subsections (2)(a) and (5)(a), an agreement that contains only terms and conditions relating to any one or more of the following is not a franchise agreement:

(a) a fully refundable deposit;

(b) the keeping confidential or prohibiting the use of any information or material that may be provided to the prospective franchisee;

(c) the designation of a location or territory of the prospective franchised business.

(8) For the purposes of this section, a fully refundable deposit is a deposit that does not exceed the amount prescribed by the regulations, that is refundable without any deductions and that is given under an agreement that in no way binds the prospective franchisee to enter into any franchise agreement.

1995 cF-17.1 s4

Exemptions

Statutory exemptions

5(1) The following are exempt from section 4:

(a) the sale of a franchise by a franchisee if

(i) the franchisee is not the franchisor or an associate of the franchisor or a director, officer or employee of the franchisor or its associate,

(ii) the sale is for the franchisee's own account,

(iii) in the case of a master franchise, the entire franchise is sold, and

(iv) the sale is not effected by or through the franchisor;

(b) the sale of a franchise to a person who has been an officer or director of the franchisor or its associate for at least 6 months for that person's own account;

(c) the sale of an additional franchise to an existing franchisee if that additional franchise is substantially the same as the existing franchise that the franchisee is operating;

(d) a renewal or extension of an existing franchise agreement;

(e) the sale of a franchise if the franchisee is required to make a total annual investment to acquire and operate the franchise in an amount that does not exceed the amount prescribed by the regulations;

(f) the sale of a franchise by an executor, administrator, sheriff, receiver, trustee, trustee in bankruptcy or guardian on behalf of a person other than the franchisor or the estate of the franchisor;

(g) the sale of a right to a person to sell goods or services within or adjacent to a retail establishment as a department or division of the establishment, if the person is not required to purchase goods or services from the operator of the retail establishment;

(h) the sale of a fractional franchise.

(2) For the purpose of subsection (1)(a)(iv), a sale is not effected by or through a franchisor merely because the franchisor

(a) has a reasonable right to approve or disapprove the sale, or

(b) requires payment of a transfer fee

(i) the specific amount of which is established in the franchise agreement, or

(ii) that does not exceed the reasonable actual costs incurred by the franchisor to process the transfer.

1995 cF-17.1 s5

Further exemptions

6(1) The Minister may by regulation, if the Minister, after consultation with the body designated under section 21(1), is satisfied that to do so would not be prejudicial to the public interest, exempt

(a) any person or class of persons,

(b) any sale of a franchise or any class of sale of a franchise, or

(c) any franchise or class of franchise

from any or all provisions of this Act or the regulations, subject to any terms and conditions that the Minister considers appropriate.

(2) A regulation under subsection (1) may come into force on a date prior to the date on which the regulation is made.

1995 cF-17.1 s6

Fair Dealing

Fair dealing

7 Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement.

1995 cF-17.1 s7

Right to Associate

Franchisee's right to associate

8(1) A franchisor or its associate must not prohibit or restrict a franchisee from forming an organization of franchisees or from associating with other franchisees in any organization of franchisees.

(2) A franchisor or its associate must not directly or indirectly penalize a franchisee for engaging in the activities described in subsection (1).

1995 cF-17.1 s8

Damages, Cancellation and Other Rights and Remedies

Misrepresentation in disclosure document

9(1) If a franchisee suffers a loss because of a misrepresentation contained in a disclosure document, the franchisee has a right of action for damages against any or all of the following:

(a) the franchisor;

(b) every person who signed the disclosure document.

(2) If a disclosure document contains a misrepresentation, a franchisee who purchases a franchise to which the disclosure document relates is deemed to have relied on the misrepresentation.

1995 cF-17.1 s9

Defence to liability

10(1) A person is not liable in an action under section 9 if the person proves that the franchisee purchased the franchise with knowledge of the misrepresentation.

(2) A person other than the franchisor is not liable in an action under section 9 if the person proves

(a) that the disclosure document was given without the person's knowledge or consent and that on becoming aware of its having been given the person promptly gave notice as prescribed by the regulations that it was given without that person's knowledge and consent,

(b) that, after the giving of the disclosure document and before the purchase of the franchise by the franchisee, on becoming aware of any misrepresentation in the disclosure document the person withdrew consent to it and gave notice as prescribed by the regulations of the withdrawal and the reasons for it,

(c) that, with respect to any part of the disclosure document 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 was a misrepresentation,

(ii) the part of the disclosure document did not fairly represent the report, opinion or statement of the expert, or

(iii) the part of the disclosure document was not a fair copy of or extract from the report, opinion or statement of the expert,

or

(d) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document,

(i) it was a correct and fair representation of the statement or a copy of or extract from the document, and

(ii) the person had reasonable grounds to believe and did believe that the statement was true.

(3) A person other than the franchisor is not liable in an action under section 9 with respect to any part of the disclosure document not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless the person

(a) did not conduct an investigation sufficient to provide reasonable grounds for believing that there was no misrepresentation, or

(b) believed there was a misrepresentation.

1995 cF-17.1 s10

Contravention of right to associate

11 If a franchisor or its associate contravenes section 8, the franchisee has a right of action for damages against the franchisor or its associate, as the case may be.

1995 cF-17.1 s11

Joint and several liability

12 All or any one or more of the persons who are found to be liable in an action under this Act or who accept liability are jointly and severally liable.

1995 cF-17.1 s12

Failure to give disclosure document

13 If a franchisor fails to give a prospective franchisee the disclosure document by the time referred to in section 4, the prospective franchisee may rescind all the franchise agreements by

giving a notice of cancellation to the franchisor or its associate, as the case may be,

(a) no later than 60 days after receiving the disclosure document, or

(b) no later than 2 years after the franchisee is granted the franchise,

whichever occurs first.

1995 cF-17.1 s13

Effect of cancellation

14(1) A notice of cancellation given under section 13 operates

(a) to cancel the franchise agreements, or

(b) in the case of an agreement that is an offer to purchase, to withdraw the offer to purchase.

(2) The franchisor or its associate, as the case may be, must, within 30 days after receiving a notice of cancellation under section 13, compensate the franchisee for any net losses that the franchisee has incurred in acquiring, setting up and operating the franchised business.

1995 cF-17.1 s14

Other remedies

15 The rights of action conferred by this Act are in addition to and do not derogate from any other right the franchisee or franchisor may have at law.

1995 cF-17.1 s15

Alberta law

16 The law of Alberta applies to franchise agreements.

1995 cF-17.1 s16

Limit on jurisdictional choice

17 Any provision in a franchise agreement restricting the application of the law of Alberta or restricting jurisdiction or venue to any forum outside Alberta is void with respect to a claim otherwise enforceable under this Act in Alberta.

1995 cF-17.1 s17

Waiver of rights

18 Any waiver or release by a franchisee of a right given by this Act or the regulations or of a requirement of this Act or the regulations is void.

1995 cF-17.1 s18

Burden of proof

19 In any proceeding under this Act, the burden of proving

(a) an exemption, or

(b) an exclusion from a definition

is on the person claiming it.

1995 cF-17.1 s19

General Regulations

Regulations

20 The Lieutenant Governor in Council may make regulations

(a) respecting the form and contents of disclosure documents and other matters relating to disclosure documents;

(b) respecting the form and contents of financial statements, reports and other documents required to be contained in a disclosure document;

(c) respecting the preparation of financial statements and the reporting requirements for the financial statements;

(d) respecting refundable deposits referred to in section 4;

(e) respecting the notices required to be given under section 10(2)(a) and (b);

(f) defining terms used in this Act that are not defined in this Act;

(g) restricting any exemptions made under section 6;

(h) prescribing the percentage for the purposes of section 1(1)(c);

(i) prescribing the amount for the purposes of section 5(1)(e);

(j) respecting any matter necessary or advisable to carry out the intent and purpose of this Act effectively.

1995 cF-17.1 s20

Self-government

Self-government

21(1) The Lieutenant Governor in Council may designate one or more bodies to govern franchising and to promote fair dealing among franchisors and franchisees.

(2) A designated body must be a corporation and must in the opinion of the Lieutenant Governor in Council be capable of governing the persons involved in franchising and promoting fair dealing among franchisors and franchisees.

(3) The Lieutenant Governor in Council may make regulations

(a) providing for the number of directors to be elected and on whose behalf they are to be elected;

(b) respecting the powers, duties and functions of a designated body and the enforcement of any of its powers;

(c) requiring franchisors and franchisees to be members of a designated body in order to sell franchises or operate franchised businesses in Alberta;

(d) respecting bylaws that may be made by a designated body, including bylaws to ensure fair dealing between franchisors and franchisees;

(e) authorizing a designated body to charge and collect fees;

(f) respecting the termination of a designation under subsection (1);

(g) respecting financial, policy or management audits of a designated body;

(h) respecting any matter necessary or advisable to carry out the purposes of this section.

(4) A fee authorized under subsection (3)(e) may be levied only

(a) to reimburse the cost of the designated body's administration and the exercise of the powers and performance of the duties and functions authorized under the regulations, and

(b) in an amount and manner and on persons approved by the Minister.

(5) A body designated under this section is not an agent of the Crown.

(6) If a body is designated under this section, the body may exercise its powers over and perform its duties and functions in regard to all franchisees and franchisors whether the franchise was granted before or after this Act came into force.

1995 cF-17.1 s21

Transitional Provisions

Transitional

22(1) Section 4(1) to (3) of this Act do not apply to the sale of a franchise if

(a) before November 1, 1995 a franchise agreement has been entered into in respect of a franchise to which this Act applies, and one or more further franchise agreements are required to be entered into on or after November 1, 1995 to complete the sale of the franchise, and

(b) a prospectus or statement of material facts has been given in compliance with the former Act with respect to that franchise.

(2) Despite the repeal of the former Act, Part 2 of the former Act, except sections 34 and 35, continues to apply in respect of franchises to which that Act applied.

(3) Any proceeding, application or other matter commenced under the former Act and not completed on November 1, 1995 may be continued and completed under the former Act.

(4) Exemptions under sections 2 and 3 of the former Act continue until they expire as stated in the orders giving the exemptions.

1995 cF-17.1 s22

9780779780594

Printed on Recycled Paper