

Client Alert

FRANCHISE AND DISTRIBUTION PRACTICE GROUP | JUNE 2012

WIGGIN AND DANA

Washington Franchise Investment Protection Act - Amendment

If you have questions about this Client Alert, please contact:

ROBERT S. BURSTEIN
215.988.8313
rburstein@wigin.com

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

Effective June 7, 2012, Washington became the latest state to formally amend its franchise law to conform to the FTC Rule disclosure period of 14 calendar days before signing a binding agreement with, or making a payment to, the franchisor or an affiliate, with no earlier first personal meeting disclosure trigger. Maryland, Oklahoma (a business opportunity state), Oregon, and Wisconsin also amended their laws in recent years to conform to the federal requirement. States that have not amended their laws and differ from the federal requirement are now New York and Rhode Island (earlier of first personal meeting or 10 business days before signing or making a payment) and Michigan (10 business days before signing or making a payment). Iowa, a business opportunity state, also has not yet amended its law. Iowa law, like the FTC Rule, requires disclosure 14 calendar days before signing or making a payment, but also includes the old FTC Rule alternative trigger of the first personal meeting, if earlier. (Iowa is relevant since disclosure in accordance with the required time period is a condition to the exemption from coverage of the business opportunity law because the offering is regulated as a franchise.)

You should update your Receipt page and internal franchise sales compliance procedures to eliminate Washington as a state with a different disclosure time period than that required under the FTC Rule. For transactions involving Michigan, New York, and Rhode Island, you should continue to comply with both the 14 calendar day period and the 10 business day period, whichever is longer, and for transactions involving Iowa, New York, and Rhode Island, you should comply with the earlier first personal meeting disclosure trigger.

Note that Washington has added the FTC Rule requirement that the franchise documents must be provided in final signature form at least seven days before signing if they contain any unilateral, material changes by the franchisor (i.e., changes other than non-substantive fill-in-the blank provisions), and also, like the FTC Rule, expressly exempt changes that arise out of franchisee initiated negotiations. The document disclosure requirement will remain if the transaction is exempt under the FTC Rule but not under Washington law.

ABOUT THE FRANCHISE AND DISTRIBUTION GROUP

Our Franchise and Distribution Group provides a wide range of services to franchisors and product manufacturers – from counseling companies on the initial decision to franchise, to navigating the myriad state and federal registration and disclosure laws; from drafting franchise agreements and disclosure documents, to developing internal policies and best practices for managing a franchise and distribution system; from negotiating with suppliers, distributors and other third parties, to litigating and arbitrating when necessary to enforce contracts with franchisees, area developers, and others, and defeat antitrust, RICO and other high stakes claims.

In certain jurisdictions this may constitute attorney advertising. © 2012 Wiggin and Dana LLP

New Haven Stamford New York Hartford Philadelphia Greenwich www.wiggin.com