



PLEASE NOTE

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For more information concerning the history of this Act, please see the [*Table of Public Acts*](#).

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CHAPTER F-14.1

Franchises Act

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) In this Act

Definitions

(a) “disclosure document” means the disclosure document required by section 5;

disclosure document

(b) “franchise” means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or 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,

franchise

(i) in which

(A) 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, trade-mark, trade name, logo or advertising or other commercial symbol, and

(B) the franchisor or the franchisor’s associate exercises significant control over, or offers significant assistance in, the franchisee’s method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or

(ii) in which

(A) the franchisor or the franchisor’s associate grants the franchisee the representational or distribution rights, whether or not a trade-mark, 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

(B) the franchisor or the franchisor’s associate or a third person designated by the franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee;

(c) “franchise agreement” means any agreement that relates to a franchise between,

franchise agreement

(i) a franchisor or franchisor’s associate, and

	(ii) a franchisee;
franchisee	(d) “franchisee” means a person to whom a franchise is granted and includes, <ul style="list-style-type: none"> (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;
franchise system	(e) “franchise system” includes, <ul style="list-style-type: none"> (i) the marketing, marketing plan or business plan of the franchise, (ii) the use of or association with a trade-mark, trade name, logo or advertising or other commercial symbol, (iii) the obligations of the franchisor and franchisee with regard to the operation of the business operated by the franchisee under the franchise agreement, and (iv) the goodwill associated with the franchise;
franchisor	(f) “franchisor” means one or more persons who grant or offer to grant a franchise and includes a subfranchisor with regard to that subfranchisor’s relationship with a subfranchisee;
franchisor’s associate	(g) “franchisor’s associate” means a person <ul style="list-style-type: none"> (i) who, directly or indirectly, <ul style="list-style-type: none"> (A) controls or is controlled by the franchisor, or (B) is controlled by another person who also controls, directly or indirectly, the franchisor, and (ii) who, <ul style="list-style-type: none"> (A) is directly involved in the grant of the franchise, <ul style="list-style-type: none"> (I) by being involved in reviewing or approving the grant of the franchise, or (II) by making representations to the 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 (B) exercises significant operational control over the franchisee and to whom the franchisee has a continuing financial obligation in respect of the franchise;
franchisor’s broker	(h) “franchisor’s broker” means a person, other than the franchisor, franchisor’s associate or franchisee, who grants, markets or otherwise offers to grant a franchise, or who arranges for the grant of a franchise;
grant	(i) “grant”, in respect of a franchise, includes the sale or disposition of the franchise or of an interest in the franchise and, for such

purposes, an interest in the franchise includes the ownership of shares in the corporation that owns the franchise;

(j) “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;

master franchise

(k) “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 the board of directors of the franchisor or franchisor’s associate or 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 change

(l) “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 the value or price of the franchise to be granted or the decision to acquire the franchise;

material fact

(m) “Minister” means the Attorney General;

Minister

(n) “misrepresentation” includes,

misrepresentation

(i) an untrue statement of a material fact, or

(ii) 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;

(o) “prescribed” means prescribed by the regulations;

prescribed

(p) “prospective franchisee” means a person who has indicated, directly or indirectly, to a franchisor or a franchisor’s associate or broker an interest in entering into a franchise agreement, and a person whom a franchisor or a franchisor’s associate or broker, directly or indirectly, invites to enter into a franchise agreement;

prospective franchisee

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

subfranchise

(2) A franchise includes a master franchise and a subfranchise.

Master franchise or subfranchise

(3) A franchisee, franchisor or franchisor’s associate that is a corporation shall be deemed to be controlled by another person or persons if,

Deemed control

- (a) voting securities of the franchisee or franchisor or franchisor's associate carrying more than 50 per cent 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 such securities are entitled, if exercised, to elect a majority of the board of directors of the franchisee or franchisor or franchisor's associate. 2005,c.36,s.1.

Application

2. (1) This Act applies with respect to,
- (a) a franchise agreement entered into on or after the coming into force of this section;
 - (b) a renewal or extension of a franchise agreement described in clause (a) entered into on or after the coming into force of this section; and
 - (c) a business operated under an agreement, renewal or extension described in clause (a) or (b), if the business operated by the franchisee under the franchise agreement or its renewal or extension is to be operated partly or wholly in Prince Edward Island.

Idem

- (2) Sections 3 and 4, clause 5(7)(d) and sections 8, 10, 11, 12 and 13 apply with respect to a franchise agreement entered into before the coming into force of this section and with respect to a business operated under such agreement, if the business operated by the franchisee under the franchise agreement is operated or is to be operated partly or wholly in Prince Edward Island.

Non-application

- (3) This Act does not apply to the following continuing commercial relationships or arrangements:
- (a) employer-employee relationship;
 - (b) partnership;
 - (c) membership in,
 - (i) an organization operated on a co-operative basis by and for independent retailers that,
 - (A) purchases or arranges the purchase of, on a non-exclusive basis, wholesale goods or services primarily for resale by its member retailers, and
 - (B) does not grant representational rights to or exercise significant operational control over its member retailers,
 - (ii) a "cooperative corporation" as defined under subsection 136(2) of the *Income Tax Act* (Canada) or as would be defined under that subsection, but for paragraph 136(2)(c),
 - (iii) an organization incorporated under the *Canada Cooperatives Act* (Canada), or
 - (iv) an organization incorporated under the *Co-operative Associations Act* R.S.P.E.I. 1988 Cap. C-23;

- (d) an arrangement arising from an agreement to use a trade-mark, 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 trade-mark, trade name, logo or advertising or other commercial symbol where such license is the only one of its general nature and type to be granted in Canada by the licensor with respect to that trade-mark, trade name, logo or advertising or other commercial symbol;
- (f) a relationship or arrangement arising out of an oral agreement where there is no writing that evidences any material term or aspect of the relationship or arrangement;
- (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) a service contract or franchise-like arrangement with the Crown or an agent of the Crown.

(4) This Act does not bind the Crown. 2005,c.36,s.2.

Not binding on
Crown

3. (1) Every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the agreement, including in the exercise of a right under the agreement.

Fair dealing

(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.

Right of action

(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. 2005,c.36,s.3.

Interpretation

4. (1) A franchisee may associate with other franchisees and may form or join an organization of franchisees.

Right to associate

(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.

Franchisor may not
prohibit association

(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 under this section.

Idem

Provision void	(4) Any provision in a franchise agreement or other agreement relating to a franchise which purports to interfere with, prohibit or restrict a franchisee from exercising any right under this section is void.
Right of action	(5) If a franchisor or a 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. 2005,c.36,s.4.
Franchisor's obligation to disclose	5. Not proclaimed. 2005,c.36,s.5.
Right of rescission	6. Not proclaimed. 2005,c.36,s.6.
Damages for misrepresentation, failure to disclose	7. Not proclaimed. 2005,c.36,s.7.
Minister may order exemption	8. (1) Upon application by a franchisor, and upon payment of the prescribed fee, the Minister may by order, if the Minister is satisfied that to do so would not be prejudicial to the public interest, exempt the franchisor from the requirement to include prescribed financial statements in a disclosure document, subject to the terms and conditions set out in the exempting order.
Effective date of order	(2) An order made under subsection (1) may come into force on a date prior to the date on which the order is made. 2005,c.36,s.8.
Joint and several liability	9. (1) All or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.
<i>Idem</i>	(2) All or any one or more of a franchisor or franchisor's associates who are found to be liable in an action under subsection 4(5) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.
<i>Idem</i>	(3) Not proclaimed. 2005,c.36,s.9.
No derogation of other rights	10. The rights conferred by or under 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. 2005,c.36,s.10.
Attempt to affect jurisdiction void	11. Any provision in a franchise agreement purporting to restrict the application of the law of Prince Edward Island or to restrict jurisdiction or venue to a forum outside Prince Edward Island is void with respect to

a claim otherwise enforceable under this Act in Prince Edward Island. 2005,c.36,s.11.

12. Any purported waiver or release by a franchisee or a prospective franchisee of a right conferred by or under this Act or of an obligation or requirement imposed on a franchisor or franchisor's associate by or under this Act is void. 2005,c.36,s.12. Rights cannot be waived

13. In any proceeding under this Act, the burden of proving an exemption or an exclusion from a requirement or provision is on the person claiming it. 2005,c.36,s.13. Burden of proof

14. (1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing material facts for the purpose of clause 5(4)(a);
- (b) prescribing the financial statements to be included in the disclosure document;
- (c) prescribing statements for the purpose of clause 5(4)(d);
- (d) prescribing other information and copies of documents to be included in the disclosure document;
- (e) prescribing an amount for the purpose of clause 5(7)(g);
- (f) prescribing methods of delivery for the purposes of subsections 5(2), 6(3) and 8(1) and (3), and prescribing rules surrounding the use of such methods, including the day on which a notice of rescission delivered by such methods is effective for the purpose of clause 6(4)(e);
- (g) providing for exemptions from the requirement to include prescribed financial statements in a disclosure document;
- (h) prescribing fees for the purpose of section 8;
- (i) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation made under subsection (1) may be general or specific in its application. 2005,c.36,s.14. General or specific