

## 2008 Minnesota Statutes

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### 80C.03 EXEMPTIONS.

The registration requirement imposed by section 80C.02 shall not apply to the following provided that the method of offer or sale is not used for the purpose of evading sections 80C.01 to 80C.22:

(a) the offer or sale of a franchise owned by that franchisee, or the offer or sale of the entire area franchise owned by the subfranchisor making the offer or sale if the sale is not effected by or through a franchisor; provided, however, that no person shall make more than one sale during any period of 12 consecutive months of a franchise or area franchise granted by a single franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee;

(b) any transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian or conservator;

(c) any offer or sale to a banking organization, financial organization or life insurance corporation within the meanings given these terms by section 345.31;

(d) securities currently registered in this state pursuant to chapter 80A;

(e) the offer or sale of a franchise, not including an area franchise, provided that:

(1) the franchisor shall make no more than one sale of a franchise pursuant to this exemption during any period of 12 consecutive months;

(2) the franchisor has not advertised the franchise for sale to the general public in newspapers or other publications of general circulation or otherwise by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone;

(3) the franchisor deposits all franchisee fees within two days of receipt in an escrow account until all obligations of the franchisor to the franchisee which are, pursuant to the terms of the franchise agreement, to be performed prior to the opening of the franchise, have been performed. The franchisor shall provide the franchisee with a purchase receipt for the franchise fees paid, a copy of the escrow agreement and the name, address and telephone number of the escrow agent. The escrow agent shall be a bank located in Minnesota. Upon a showing of good cause the commissioner may waive the escrow of franchise fees; and

(4) the franchisor has provided to the commissioner, no later than ten business days prior to the sale, a written notice of its intention to offer or sell a franchise pursuant to this exemption;

(f) the offer or sale of a fractional franchise;

(g) any transaction which the commissioner by rule or order exempts as not being within the purposes of this chapter and the registration of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of investors; and

(h) the offer or sale of a franchise to a resident of a foreign state, territory, or country who is neither domiciled in this state nor actually present in this state, if the franchise business is not to be operated wholly or partly in this state, and if the sale of this franchise is not in violation of any law of the foreign state, territory, or county concerned.

**History:** 1973 c 612 s 3; 1976 c 2 s 36; 1981 c 165 s 4; 1985 c 251 s 5; 1986 c 444

## FRANCHISE EXEMPTIONS

There are 8 exemptions from franchise registration in MinnStat 80C.03. Two of the 8 require that a written notice be submitted to the Department before the sale is made. The others are self-executing.

### 1. Isolated sale or single-sale exemption

MinnStat 80C.03(e)

To claim this exemption, which is the most common exemption used, the applicant must submit a written request or notice stating that it intends to make an offer and sale pursuant to this exemption and provide the following information.

- a. Name and address of the franchisor
- b. Name and address of the prospective franchisee (this exemption can only be used if the franchisor has a specific interested party that wants to buy the franchise; it is not intended to be used for the franchisor to search for a prospective franchisee.)
- c. A statement from the franchisor or attorney that all of the four conditions (80C.03(e)(1-4)) have been or will be met. This should be presented pretty much verbatim from the law. Specifically, the franchisor can use this exemption only once in 12 months, cannot have advertized for the sale of this franchise in Minnesota, must escrow the initial franchise fee in a Minnesota bank and must provide this notice to the Department 10 business days before making the sale. The Commerce Department is not a party to the Escrow Agreement nor do we receive a copy of it or release the funds. They swear that they will do it and we take their word. The only exception to the escrow requirement is that the franchisor state that the initial franchise fee will not be paid to the franchisor until the franchised business is open.

No fee is required. No disclosure documents, franchise agreements or financial statements are required to be filed with the notice. Once all the information has been provided to meet the conditions above, attach a slip of paper to the notice and any other correspondence with the date it was received, the month it was reviewed, if it was deficient, and the effective date. Diane will assign it a Fe---- number, enter it in the database and file it away in the basement. The effective date is 10 business days from the date it was received.

Franchisors may use this exemption to sell one franchise in Minnesota and then submit a full registration application shortly thereafter to sell additional franchises. Although in most cases, the franchisor never does do a full registration. A franchisor may use this exemption once every 12 months if a sale was actually made. If the exempted transaction did not result in a sale, the franchisor may use it sooner. The franchisor claiming any exemption is exempt from registration and from providing disclosure to the franchisee. However, the termination provisions etc do apply.

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