

SB3131



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3131

Introduced 2/8/2010, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

815 ILCS 602/5-35

Amends the Business Opportunity Sales Law of 1995. Provides that a required disclosure document must state that a purchaser is to be provided 14 (instead of 10) business days to review the document before signing a contract or agreement or making any payment. Effective immediately.

LRB096 20299 DRJ 35920 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Opportunity Sales Law of 1995 is
5 amended by changing Section 5-35 as follows:

6 (815 ILCS 602/5-35)

7 Sec. 5-35. Disclosure requirements.

8 (a) It shall be unlawful for any person to offer or, sell
9 any business opportunity required to be registered under this
10 Law unless a written disclosure document as filed under
11 subsection (a) of Section 5-30 of this Law is delivered to each
12 purchaser at least 14 days prior to the execution by a
13 purchaser of any contract or agreement imposing a binding legal
14 obligation on the purchaser or the payment by a purchaser of
15 any consideration in connection with the offer or sale of the
16 business opportunity.

17 (b) The disclosure document shall have a cover sheet which
18 is entitled, in at least 10-point bold type, "DISCLOSURE
19 REQUIRED BY THE STATE OF ILLINOIS." Under the title shall
20 appear the statement in at least 10-point bold type that "THE
21 REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE
22 APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF
23 ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE

1 DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY
2 QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL
3 ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE
4 TO BE PROVIDED 14 ~~10~~ BUSINESS DAYS TO REVIEW THIS DOCUMENT
5 BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT
6 TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's
7 name and principal business address, along with the date of the
8 disclosure document shall also be provided on the cover sheet.
9 No other information shall appear on the cover sheet. The
10 disclosure document shall contain the following information
11 unless the seller uses a disclosure document as provided in
12 paragraph (1) or (2) of subsection (a) of Section 5-30 of this
13 Law:

14 (1) The names and residential addresses of those
15 salespersons who will engage in the offer or sale of the
16 business opportunity in this State.

17 (2) The name of the seller, whether the seller is doing
18 business as an individual, partnership or corporation; the
19 names under which the seller has conducted, is conducting
20 or intends to conduct business; and the name of any parent
21 or affiliated company that will engage in business
22 transactions with purchasers or which will take
23 responsibility for statements made by the seller.

24 (3) The names, addresses and titles of the seller's
25 officers, directors, trustees, general managers, principal
26 executives, agents, and any other persons charged with

1 responsibility for the seller's business activities
2 relating to the sale of the business opportunity.

3 (4) Prior business experience of the seller relating to
4 business opportunities including:

5 (A) The name, address, and a description of any
6 business opportunity previously offered by the seller;

7 (B) The length of time the seller has offered each
8 such business opportunity; and

9 (C) The length of time the seller has conducted the
10 business opportunity currently being offered to the
11 purchaser.

12 (5) With respect to persons identified in item (3) of
13 this subsection:

14 (A) A description of the persons' business
15 experience for the 10 year period preceding the filing
16 date of this disclosure document. The description of
17 business experience shall list principal occupations
18 and employers; and

19 (B) A listing of the persons' educational and
20 professional backgrounds including, the names of
21 schools attended and degrees received, and any other
22 information that will demonstrate sufficient knowledge
23 and experience to perform the services proposed.

24 (6) Whether the seller or any person identified in item
25 (3) of this subsection:

26 (A) Has been convicted of any felony, or pleaded

1 nolo contendere to a felony charge, or has been the
2 subject of any criminal, civil or administrative
3 proceedings alleging the violation of any business
4 opportunity law, securities law, commodities law,
5 franchise law, fraud or deceit, embezzlement,
6 fraudulent conversion, restraint of trade, unfair or
7 deceptive practices, misappropriation of property or
8 comparable allegations;

9 (B) Has filed in bankruptcy, been adjudged
10 bankrupt, been reorganized due to insolvency, or was an
11 owner, principal officer or general partner or any
12 other person that has so filed or was so adjudged or
13 reorganized during or within the last 7 years.

14 (7) The name of the person identified in item (6) of
15 this subsection, nature of and parties to the action or
16 proceeding, court or other forum, date of the institution
17 of the action, docket references to the action, current
18 status of the action or proceeding, terms and conditions or
19 any order or decree, the penalties or damages assessed and
20 terms of settlement.

21 (8) The initial payment required, or when the exact
22 amount cannot be determined, a detailed estimate of the
23 amount of the initial payment to be made to the seller.

24 (9) A detailed description of the actual services the
25 seller agrees to perform for the purchaser.

26 (10) A detailed description of any training the seller

1 agrees to provide for the purchaser.

2 (11) A detailed description of services the seller
3 agrees to perform in connection with the placement of
4 equipment, products or supplies at a location, as well as
5 any agreement necessary in order to locate or operate
6 equipment, products or supplies on a premises neither owned
7 nor leased by the purchaser or seller.

8 (12) A detailed description of any license or permit
9 that will be necessary in order for the purchaser to engage
10 in or operate the business opportunity.

11 (13) The business opportunity seller that is required
12 to secure a bond under Section 5-50 of this Law, shall
13 state in the disclosure document "As required by the State
14 of Illinois, the seller has secured a bond issued by
15 (insert name and address of surety company), a surety
16 company, authorized to do business in this State. Before
17 signing a contract or agreement to purchase this business
18 opportunity, you should check with the surety company to
19 determine the bond's current status."

20 (14) Any representations made by the seller to the
21 purchaser concerning sales or earnings that may be made
22 from this business opportunity, including, but not limited
23 to:

24 (A) The bases or assumptions for any actual,
25 average, projected or forecasted sales, profits,
26 income or earnings;

1 (B) The total number of purchasers who, within a
2 period of 3 years of the date of the disclosure
3 document, purchased a business opportunity involving
4 the product, equipment, supplies or services being
5 offered to the purchaser; and

6 (C) The total number of purchasers who, within 3
7 years of the date of the disclosure document, purchased
8 a business opportunity involving the product,
9 equipment, supplies or services being offered to the
10 purchaser who, to the seller's knowledge, have
11 actually received earnings in the amount or range
12 specified.

13 (15) Any seller who makes a guarantee to a purchaser
14 shall give a detailed description of the elements of the
15 guarantee. Such description shall include, but shall not be
16 limited to, the duration, terms, scope, conditions and
17 limitations of the guarantee.

18 (16) A statement of:

19 (A) The total number of business opportunities
20 that are the same or similar in nature to those that
21 have been sold or organized by the seller;

22 (B) The names and addresses of purchasers who have
23 requested a refund or rescission from the seller within
24 the last 12 months and the number of those who have
25 received the refund or rescission; and

26 (C) The total number of business opportunities the

1 seller intends to sell in this State within the next 12
2 months.

3 (17) A statement describing any contractual
4 restrictions, prohibitions or limitations on the
5 purchaser's conduct. Attach a copy of all business
6 opportunity and other contracts or agreements proposed for
7 use or in use in this State including, without limitation,
8 all lease agreements, option agreements, and purchase
9 agreements.

10 (18) The rights and obligations of the seller and the
11 purchaser regarding termination of the business
12 opportunity contract or agreement.

13 (19) A statement accurately describing the grounds
14 upon which the purchaser may initiate legal action to
15 terminate the business opportunity contract or agreement.

16 (20) A copy of the most recent audited financial
17 statement of the seller, prepared within 13 months of the
18 first offer in this State, together with a statement of any
19 material changes in the financial condition of the seller
20 from that date. The Secretary of State may accept the
21 filing of a reviewed financial statement in lieu of an
22 audited financial statement.

23 (21) A list of the states in which this business
24 opportunity is registered.

25 (22) A list of the states in which this disclosure
26 document is on file.

1 (23) A list of the states which have denied, suspended
2 or revoked the registration of this business opportunity.

3 (24) A section entitled "Risk Factors" containing a
4 series of short concise statements summarizing the
5 principal factors which make this business opportunity a
6 high risk or one of a speculative nature. Each statement
7 shall include a cross-reference to the page on which
8 further information regarding that risk factor can be found
9 in the disclosure document.

10 (25) Any additional information as the Secretary of
11 State may require by rule, regulation, or order.

12 (Source: P.A. 96-648, eff. 10-1-09.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.