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SENATE BILL 6719

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State of Washington

54th Legislature

1996 Regular Session

By Senators Prentice and Fraser

Read first time 01/26/96. Referred to Committee on Financial Institutions & Housing.

1 AN ACT Relating to business opportunity fraud; amending RCW  
2 19.110.010, 19.110.020, 19.110.050, 19.110.070, 19.110.100, and  
3 19.110.150; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.110.010 and 1981 c 155 s 1 are each amended to read  
6 as follows:

7 (1) The legislature finds and declares that the widespread and  
8 unregulated sale of business opportunities has become a common area of  
9 investment problems and deceptive practices in the state of Washington.  
10 As a result, the provisions of this chapter are necessary to counteract  
11 the potential negative impact of the sale of business opportunities  
12 upon the economy of the state.

13 (2) The legislature intends that prospective purchasers receive  
14 meaningful written disclosure prior to purchasing a business  
15 opportunity. The legislature also intends to promote uniformity in  
16 state and federal disclosure requirements.

17 **Sec. 2.** RCW 19.110.020 and 1994 c 92 s 4 are each amended to read  
18 as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Business opportunity" means the sale or lease of any product,  
4 equipment, supply, or service which is sold or leased to enable the  
5 purchaser to start a business; and:

6 (a) The seller represents that the seller will provide locations or  
7 assist the purchaser in finding locations, on premises neither owned  
8 nor leased by the purchaser or seller, for the use or operation of  
9 vending machines, display racks, cases, or similar devices or (~~coin-~~  
10 ~~operated~~) amusement machines or similar devices. "Assist the  
11 purchaser in finding locations" includes representations as to third  
12 party locators; or

13 (b) The seller represents that the seller will purchase any product  
14 made, produced, fabricated, assembled, modified, grown, or bred by the  
15 purchaser using, in whole or part, any product, equipment, supply, or  
16 service sold or leased to the purchaser by the seller; or

17 (c) The seller (~~(guarantees)~~) makes an express or implied  
18 representation that the purchaser will earn an income greater than or  
19 equal to the price paid for the business opportunity; or

20 (d) The (~~(seller represents that if the)~~) purchaser (~~(pays)~~) is  
21 required to or agrees to pay a fee exceeding three hundred dollars  
22 directly or indirectly for the purpose of the seller providing a sales  
23 or marketing program(~~(, the seller will provide such a program which~~  
24 ~~will enable the purchaser to derive income from the business~~  
25 ~~opportunity which exceeds the price paid for the business~~  
26 ~~opportunity))~~).

27 (2) "Person" includes an individual, corporation, partnership,  
28 joint venture, or any business entity.

29 (3) "Seller" means a person who sells or leases a business  
30 opportunity.

31 (4) "Purchaser" means a person who buys or leases a business  
32 opportunity.

33 (5) "Director" means the director of financial institutions.

34 (6) (~~("Guarantee" means an undertaking by the seller to refund all~~  
35 ~~or a portion of the purchase price paid for the business opportunity)~~)

36 "Third party locator" means any person, who is not employed by a  
37 seller, who will provide locations or assist the purchaser in finding  
38 locations.

1       **Sec. 3.** RCW 19.110.050 and 1981 c 155 s 5 are each amended to read  
2 as follows:

3       (1) Any person who proposes to sell or lease a business opportunity  
4 must register prior to advertising, soliciting, or making any offer,  
5 sale, or lease in this state.

6       (2) Any person proposing to sell or lease a business opportunity  
7 must apply for registration by filing with the director:

8       (a) A copy of the disclosure document required by RCW 19.110.070;

9       (b) An irrevocable consent to service of process;

10       (c) The prescribed registration fee; and

11       (d) Copies of all advertisements intended to be used in connection  
12 with the offer and sale of the business opportunity.

13       (3) If the application meets the requirements for registration, the  
14 director shall issue a registration number to the applicant. The  
15 applicant must include the number in every advertisement in this state.

16       (4) Registration is effective for one year. An applicant must  
17 renew registration annually unless the director extends the duration of  
18 registration in order to stagger renewal periods. The renewal  
19 application must contain:

20       (a) Any new information necessary to comply with the disclosure  
21 requirements of RCW 19.110.070;

22       (b) The prescribed renewal fee; and

23       (c) Copies of any and all advertisements intended to be used in  
24 connection with the offer and sale of the business opportunity.

25       (5) The applicant must amend the registration whenever there is any  
26 material change in the required information.

27       (6) The applicant must file copies of all advertisements offering  
28 business opportunities seven days before their intended use.

29       (7) The director may issue an order denying, suspending, or  
30 revoking any applicant's registration if the director finds that the  
31 order is in the public interest and that:

32       (a) The registration application is incomplete or contains any  
33 statement which is false or misleading with respect to any material  
34 fact; or

35       (b) Any provision of this chapter or any rule or order lawfully  
36 imposed under this chapter has been violated; or

37       (c) The business opportunity includes or would include activities  
38 which are illegal; or

1 (d) The business opportunity has worked or tended to work a fraud  
2 on purchasers or would so operate.

3 (8) The director shall promptly notify the applicant of any order  
4 denying, suspending, or revoking registration. The applicant may  
5 request a hearing within ((fifteen)) twenty days of notification. If  
6 the applicant does not request a hearing, the order remains in effect  
7 until the director modifies or vacates it. The applicant shall be  
8 notified of the right to request a hearing within ((fifteen)) twenty  
9 days.

10 **Sec. 4.** RCW 19.110.070 and 1981 c 155 s 7 are each amended to read  
11 as follows:

12 The seller shall provide the purchaser a written disclosure  
13 document at least ((forty-eight hours)) ten business days before the  
14 purchaser signs a business opportunity contract. ((The cover sheet of  
15 the disclosure document shall be entitled:—"DISCLOSURES REQUIRED BY  
16 THE STATE OF WASHINGTON." The following statement shall appear under  
17 the title:—"The state of Washington has not reviewed and does not  
18 approve, recommend, endorse, or sponsor any business opportunity. The  
19 information contained in this disclosure has not been verified by the  
20 state. If you have any questions about this investment, see an  
21 attorney before you sign a contract." The cover sheet shall contain  
22 only the required title and statement, and both shall be in at least  
23 ten point type.)) The disclosure document shall ((include at least the  
24 following information:

25 (1) The official name, address, and principal place of business of  
26 the seller and of any parent or affiliated company, or any  
27 predecessors;

28 (2) The names, addresses, and titles of the seller's officers,  
29 directors, trustees, general partners, general managers, principal  
30 executives, and any other persons responsible for the seller's business  
31 opportunity activities;

32 (3) A statement disclosing which, if any, of the persons listed in  
33 subsections (1) or (2) of this section:

34 (a) Has, at any time during the previous ten years, been convicted  
35 of a felony or pleaded nolo contendere to a felony charge if the felony  
36 involved fraud (including violation of any franchise or business  
37 opportunity law or unfair or deceptive practices law), embezzlement,

1 ~~fraudulent conversion, misappropriation of property, or restraint of~~  
2 ~~trade;~~

3 ~~(b) Has, at any time during the previous ten years, been held~~  
4 ~~liable in a civil action resulting in a final judgment or has settled~~  
5 ~~out of court any civil action or is a party to any civil action~~  
6 ~~involving allegations of fraud (including violation of any franchise or~~  
7 ~~business opportunity law or unfair or deceptive practices law),~~  
8 ~~embezzlement, fraudulent conversion, misappropriation of property, or~~  
9 ~~restraint of trade, or any civil action which was brought by a present~~  
10 ~~or former purchaser or purchasers and which involves or involved the~~  
11 ~~business opportunity;~~

12 ~~(c) Is subject to any currently effective state or federal agency~~  
13 ~~or court injunctive or restrictive order, or is a party to a proceeding~~  
14 ~~currently pending in which such order is sought, relating to or~~  
15 ~~affecting business opportunities activities or the business opportunity~~  
16 ~~seller purchaser relationship, or involving fraud (including violation~~  
17 ~~of any franchise or business opportunity law or unfair or deceptive~~  
18 ~~practices law), embezzlement, fraudulent conversion, misappropriation~~  
19 ~~of property, or restraint of trade.~~

20 ~~The statement shall include the identity and location of the court~~  
21 ~~or agency, the date of conviction, judgment, or decision, the penalty~~  
22 ~~imposed, the damages assessed, the terms of settlement or the terms of~~  
23 ~~the order, and the date, nature, terms, and conditions of each such~~  
24 ~~order or ruling;~~

25 ~~(4) A statement disclosing which, if any, of the persons listed in~~  
26 ~~subsections (1) and (2) of this section has, at any time during the~~  
27 ~~previous ten years:~~

28 ~~(a) Filed in bankruptcy; or~~

29 ~~(b) Been adjudged bankrupt; or~~

30 ~~(c) Been reorganized due to insolvency; or~~

31 ~~(d) Been a principal, director, executive officer, or partner of~~  
32 ~~any other person who has filed in bankruptcy, been adjudged bankrupt,~~  
33 ~~or been reorganized due to insolvency;~~

34 ~~(5) A statement of when, where, and how long the seller has:~~

35 ~~(a) Offered, sold, or leased business opportunity plans; and~~

36 ~~(b) Offered, sold, or leased the specific business opportunity plan~~  
37 ~~offered to the purchaser; and~~

38 ~~(c) Operated a business of the type offered to the purchaser;~~

39 ~~(6) A statement disclosing:~~

- 1       ~~(a) The total number of business opportunities which the seller has~~  
2 ~~sold or leased; and~~
- 3       ~~(b) The number of failures of business opportunities which the~~  
4 ~~seller has sold or leased;~~
- 5       ~~(7) The terms and conditions of payment, including the initial~~  
6 ~~payment, downpayment, and any additional or recurring payments;~~
- 7       ~~(8) A copy of any statement concerning estimated or projected sales~~  
8 ~~or earnings, the data on which the estimations or projections are~~  
9 ~~based, and an explanation of the extent to which the data relates to~~  
10 ~~the actual operations of the business opportunity offered to the~~  
11 ~~purchaser;~~
- 12       ~~(9) A copy of the bond or written notice of the depository, the~~  
13 ~~name of the trustee, and account number of the trust account, if the~~  
14 ~~seller is required by RCW 19.110.100 to establish either a bond or~~  
15 ~~trust account;~~
- 16       ~~(10) A copy of the seller's current (not more than three months~~  
17 ~~old) financial statement and any amendments necessary to reflect~~  
18 ~~material changes in the seller's financial condition;~~
- 19       ~~(11) An unexecuted copy of any business opportunity contract or~~  
20 ~~agreement which the purchaser may be required to sign;~~
- 21       ~~(12) Any additional information which the director requires by rule~~  
22 ~~or order)) be prepared in compliance with guidelines adopted by rule or~~  
23 ~~order of the director. The director shall be guided in adopting such~~  
24 ~~rule by the guidelines for the preparation of the federal trade~~  
25 ~~commission franchise rule disclosure requirements and the uniform~~  
26 ~~franchise offering circular adopted by the North American securities~~  
27 ~~administrators association, or its successor, as such guidelines may be~~  
28 ~~revised from time to time.~~

29       **Sec. 5.** RCW 19.110.100 and 1981 c 155 s 10 are each amended to  
30 read as follows:

- 31       (1) ~~((If the seller makes any guarantee described in RCW~~  
32 ~~19.110.020(1)(c), the)) The director may require by rule or order as a~~  
33 ~~condition to the effectiveness of the registration that a seller~~  
34 ~~((shall)) have a surety bond issued by a surety company authorized to~~  
35 ~~do business in Washington or a trust account with a licensed and~~  
36 ~~insured bank or savings institution located in the state of Washington.~~  
37 ~~The trustee shall be acceptable to the director. ((The bond or the~~  
38 ~~trust account shall be at least fifty thousand dollars.)) The director~~

1 may by rule or order determine the amount of the bond to be issued. In  
2 determining the amount of the bond to be issued, the director shall  
3 take into account the amount paid for the business opportunity, the  
4 number of business opportunities expected to be sold in the state, the  
5 financial condition of the seller, and any factors appropriate for the  
6 protection of purchasers. The director may, by rule or order,  
7 establish procedures for the initiation, operation, or termination of  
8 any bond or trust account required under this section.

9 (2) The bond or trust account shall be in the name of the state of  
10 Washington. It shall be for the benefit of the state and any person  
11 injured by any violation of this chapter, or by the seller's breach of  
12 any business opportunity contract or obligation arising from a business  
13 opportunity contract. The state may bring an action against the bond  
14 or trust account to recover penalties. The state or an injured person  
15 may bring an action against the bond or trust account for damages to  
16 the injured person. The liability of the surety or trustee shall be  
17 only for actual damages and shall not exceed the amount of the bond or  
18 trust account.

19 **Sec. 6.** RCW 19.110.150 and 1981 c 155 s 15 are each amended to  
20 read as follows:

21 (1) The director may order any person to cease and desist from an  
22 act or practice if it appears that the person is violating or is about  
23 to violate any provision of this chapter or any rule or order issued  
24 under this chapter or impose a fine, in an amount not to exceed five  
25 thousand dollars per violation, on any person who has violated any  
26 provision of this chapter or any rule or order issued under this  
27 chapter.

28 (2) Reasonable notice of and opportunity for a hearing shall be  
29 given. The director may issue a temporary order to cease and desist  
30 pending the hearing. (~~The temporary order shall remain in effect~~  
31 ~~until ten days after the hearing.~~) If a person does not request a  
32 hearing within (~~fifteen~~) twenty days of receiving an order to cease  
33 and desist, the order becomes final. Any person who is named in the  
34 order to cease and desist shall be notified of the right to request a  
35 hearing within (~~fifteen~~) twenty days.

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