

# SENATE BILL REPORT

## SB 6719

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As Reported By Senate Committee On:  
Financial Institutions & Housing, February 2, 1996

**Title:** An act relating to business opportunity fraud.

**Brief Description:** Regulating business opportunities.

**Sponsors:** Senators Prentice and Fraser.

**Brief History:**

**Committee Activity:** Financial Institutions & Housing: 1/30/96, 2/2/96 [DPS].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & HOUSING

**Majority Report:** That Substitute Senate Bill No. 6719 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair; Hale, Roach, Sellar, Smith and Sutherland.

**Staff:** Catherine Mele (786-7470)

**Background:** The Washington State Business Opportunity Fraud Act requires sellers of defined "business opportunities" to register with the Department of Financial Institutions. In addition to registration requirements, sellers of business opportunities, such as vending machines or display racks, must provide investors with material information regarding a potential investment. This information includes a disclosure statement that the seller must give to the investor at least 48 hours before the investor signs a business opportunity contract.

Among other requirements, the written disclosure statement must include the terms and conditions of payment for the business opportunity; any statement concerning estimated or projected sales or earnings; bond or trust account information; current company financial statements; and an unexecuted copy of any business opportunity contract or agreement that the purchaser may be required to sign.

Current law requires sellers of business opportunities to provide investors with a written business opportunity contract. The contract must clearly state that the investor should receive a disclosure statement 48 hours before signing the contract, and that the investor has seven days to rescind the contract.

Sellers of business opportunities in Washington are subject to the act's anti-fraud provisions. Under the act, a seller may not make an untrue or misleading statement regarding a business opportunity, omit a material fact in connection with an offer, or employ schemes to defraud a potential investor. A violation of the Business Opportunity Fraud Act constitutes a violation of the Consumer Protection Act. The Department of Financial Institutions has

authority to issue administrative cease and desist orders against violators of the act.

**Summary of Substitute Bill:** The definition of business opportunity is modified to include third party locators. A seller of a business opportunity includes a seller who makes express or implied representations that the purchaser will make a profit. Sellers who charge a fee of over \$300 for a marketing program are required to register under the act. The time an investor has to review a disclosure statement is increased from 48 hours to ten business days. Statutory written disclosure requirements are deleted. The Director of the Department of Financial Institutions is authorized to adopt rules regarding disclosure requirements to conform to national standards. The director is authorized to require a surety bond or trust account by rule or order as a condition to the effectiveness of registration. The director may impose a fine which does not exceed \$5,000 per violation of the act.

**Substitute Bill Compared to Original Bill:** The original bill authorized the director to determine the amount of the surety bond. The substitute bill authorizes the director to determine the amount of the surety bond, as well as the conditions of the trust account.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The proposed changes to the Business Opportunities Fraud Act will give Washington uniformity with federal law. Some business opportunity sellers prey on vulnerable people, and they are experts at deception. We lost over \$40,000 to a company with very slick literature showing how much a dealer could make and showing a return on investment in a very plausible way.

**Testimony Against:** The intent of the bill is good, but there should also be stricter enforcement, and more consumer education. The requirements for disclosure should be kept in the statute. The bill needs to go farther to providing more education, and comprehensive information to consumers.

**Testified:** Deborah Bortner, DFI (pro); Nicki Blum (con).