

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: SB 1262  
 INTRODUCER: Senator Ring  
 SUBJECT: The sale or lease of business opportunities  
 DATE: March 16, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill deletes the provision of law that excludes the sale or lease of laundry and dry-cleaning equipment from the definition of "business opportunity." Consequently, this bill would change the law to bring the sale or lease of laundry and dry-cleaning equipment within the definition of a "business opportunity," meaning such transactions will be regulated under the Sale of Business Opportunities Act.

This bill substantially amends section 559.801 of the Florida Statutes.

**II. Present Situation:**

The Sale of Business Opportunities Act (act), codified in ch. 559, part VIII, F.S., authorizes the Department of Agriculture and Consumer Services (department) to regulate the sale of business opportunities.

Section 559.801, F.S., defines "business opportunity" as "the sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller." In addition, a seller must represent at least one of the following to constitute a business opportunity:

- The seller or the seller's affiliate will provide, or help the purchaser find, a location to operate certain business equipment.
- The seller will purchase the purchaser's products using the supplies, services, or chattels sold to the purchaser.

- The seller guarantees that the purchaser will profit from the business opportunity or the seller will provide certain remedies.
- The seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity (excluding programs made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States if the seller requires use of the trademark or service mark in the sales agreement).

The definition of “business opportunity” excludes transactions where a seller sells five or less businesses as an ongoing business, a seller sells demonstration equipment, or a sales training course that does not exceed \$500 and does not make a profit for such sales, or a seller sells or leases laundry or dry-cleaning equipment.<sup>1</sup> Therefore, these transactions are not regulated under the act.

Under the act, sellers of business opportunities are required to make certain disclosures to purchasers and file a disclosure statement annually with the department.<sup>2</sup> Additionally, sellers are prohibited from committing any of the following acts:<sup>3</sup>

- Violating any of the act’s provisions or department’s rules adopted or orders issued under the act;<sup>4</sup>
- Making a material false statement in any application, document, or record required to be submitted or retained under the act;
- Refusing or failing, after notice, to produce any document or record or disclose any information required to be produced or disclosed under the act or the rules of the department;
- Making a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or
- Intentionally defrauding the public through dishonest or deceptive means.

If a seller violates any of the disclosure requirements or commits one of the above-listed prohibited acts, the department may enter an order doing one or more of the following:

- Issue a notice of noncompliance.<sup>5</sup>
- Impose an administrative fine not to exceed \$5,000 per violation.
- Direct that the seller or its principal officers or agents cease and desist specified activities.
- Refuse to issue or revoke or suspend an advertisement identification number.
- Place the registrant on probation for a period of time, subject to such conditions as the department may specify.

If a seller uses untrue or misleading statements in the sale, fails to give proper disclosures required under the act, or fails to deliver the equipment or products necessary for the business to begin operation within 45 days of the delivery date in the contract, the purchaser may within 1

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<sup>1</sup> Section 589.802, F.S., exempts franchises, under certain circumstances, from the application of the act.

<sup>2</sup> See ss. 559.803 and 559.805, F.S.

<sup>3</sup> See s. 559.813, F.S.

<sup>4</sup> See s. 559.809, F.S., for a list of prohibited acts.

<sup>5</sup> See s. 120.695, F.S.

year of the execution of the contract, rescind the contract. In addition, the purchaser is entitled to be reimbursed for all funds paid to the seller for the business opportunity. However, the purchaser must first provide written notice to the seller of his or her intent to rescind the contract.

The act allows a purchaser injured by a seller who violates the requirements of the act to bring an action for recovery of damages, including reasonable attorney's fees.<sup>6</sup> The act explicitly gives the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the state attorney, the authority to bring civil actions in circuit court for temporary or permanent injunctive relief. In addition, the department, Attorney General, or a state attorney may seek other appropriate civil relief, including, but not limited to, a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured purchasers of business opportunities, and court costs and reasonable attorney's fees.<sup>7</sup> Furthermore, criminal acts committed under this act are punishable as a third-degree felony.<sup>8</sup>

The Federal Trade Commission (FTC) also regulates the sale of business opportunities under 16 C.F.R. Part 437. Similar to Florida's law, the FTC law requires a disclosure statement must be provided to the consumer. The failure of a seller of business opportunities to disclose the required disclosures under 16 C.F.R. Part 437, constitutes an "unfair or deceptive act or practice" within the meaning of Section 5 of the Federal Trade Commission Act.<sup>9</sup> For any violations under that section, the FTC may issue a cease and desist order, file a civil action, and seek civil penalties up to \$10,000 per violation.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 559.801, F.S., to delete the sale or lease of laundry and dry-cleaning equipment from exclusions to the definition of "business opportunity." To the extent that the sale of laundry and dry-cleaning equipment meets the other qualifying criteria, such businesses will be required to register with the department as a "business opportunity," and be subject to the same disclosure and rule requirements provided for in the act.

**Section 2** provides an effective date of July 1, 2009.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>6</sup> See s. 559.813(3), F.S.

<sup>7</sup> See s. 559.813(5), F.S.

<sup>8</sup> See s. 559.815, F.S.

<sup>9</sup> See 16 C.F.R. at 437.1 and 15 U.S.C. § 45.

<sup>10</sup> See 15 U.S.C. § 45.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent sellers of laundry and dry-cleaning equipment will have to provide disclosure statements to the department and to purchasers, they may incur costs associated with preparing these documents. Additionally, sellers will have to pay a \$300 fee annually to the department.<sup>11</sup> Sellers of laundry and dry-cleaning equipment may also have to have a bond, certificate of deposit, or guaranteed letter of credit of at least \$50,000 if the seller makes certain representations to a purchaser.<sup>12</sup>

Redefining “business opportunity” to include the sale or lease of laundry and dry-cleaning equipment will provide purchasers who have been defrauded by sellers of business opportunities legal recourse under the act.

C. Government Sector Impact:

To the extent that state attorneys, the Attorney General, or the department enforce the act, expenses associated with investigating and prosecuting violations of the act may be incurred.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>11</sup> See s. 559.805, F.S.

<sup>12</sup> See ss. 559.807 and 559.801(1)(a)3., F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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