

By the Fiscal Responsibility Council and Representative Dockery

1 A bill to be entitled
 2 An act relating to sale of business
 3 opportunities; removing the Department of
 4 Agriculture and Consumer Services from any
 5 duties and responsibilities relating to sales
 6 of business opportunities; amending ss.
 7 559.802, 559.803, 559.807, 559.813, and
 8 559.815, F.S., to conform; repealing s.
 9 559.801(2), F.S., defining department;
 10 repealing s. 559.805, F.S., relating to
 11 required filings and disclosure of certain
 12 information; repealing s. 559.813(2) and (8),
 13 F.S., relating to department authority to enter
 14 orders imposing certain penalties and
 15 department rulemaking authority; providing an
 16 effective date.

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 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Section 559.802, Florida Statutes, is
 21 amended to read:

22 559.802 Franchises; exemption.--

23 ~~(1)~~ The sale of a franchise is exempt from this part
 24 if+

25 ~~(a)~~ the franchise meets the definition of that term as
 26 defined by the Federal Trade Commission regulations entitled,
 27 "Disclosure Requirements and Prohibitions Concerning
 28 Franchising and Business Opportunity Ventures," as set forth
 29 in 16 C.F.R. ss. 436.1 et seq. ~~and~~

30 ~~(b) Before offering for sale or selling a franchise to~~
 31 ~~be located in this state or to a resident of this state, the~~

1 ~~franchisor files a notice with the department stating that the~~
2 ~~franchisor is in substantial compliance with the requirements~~
3 ~~of the Federal Trade Commission rule, and pays a fee in an~~
4 ~~amount set by the department, not exceeding \$100.~~

5 ~~(2) The initial exemption granted under this section~~
6 ~~is for a period of 1 year after the date of filing the notice,~~
7 ~~and it may be renewed each year for an additional 1-year~~
8 ~~period upon filing a notice for renewal and paying a renewal~~
9 ~~fee in an amount set by the department, not exceeding \$100.~~

10 ~~(3) The department may require only the name of the~~
11 ~~applicant, the name of the franchise and the name under which~~
12 ~~the applicant intends to, or does, transact business, if~~
13 ~~different, the applicant's principal business address, and the~~
14 ~~applicant's federal employer identification number.~~

15 ~~(4) The department may adopt rules to implement the~~
16 ~~provisions of this section.~~

17 Section 2. Section 559.803, Florida Statutes, is
18 amended to read:

19 559.803 Disclosure statement.--At least 3 working days
20 prior to the time the purchaser signs a business opportunity
21 contract, or at least 3 working days prior to the receipt of
22 any consideration by the seller, whichever occurs first, the
23 seller must provide the prospective purchaser a written
24 document, the cover sheet of which is entitled in at least
25 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY
26 FLORIDA LAW." Under this title shall appear the following
27 statement in at least 10-point type: "The State of Florida
28 has not reviewed and does not approve, recommend, endorse, or
29 sponsor any business opportunity. The information contained
30 in this disclosure has not been verified by the state. If you
31 have any questions about this investment, see an attorney

1 before you sign a contract or agreement." Nothing except the
2 title and required statement shall appear on the cover sheet.
3 Immediately following the cover sheet, the seller must provide
4 an index page that briefly lists the contents of the
5 disclosure document as required in this section and any pages
6 on which the prospective purchaser can find each required
7 disclosure. At the top of the index page, the following
8 statement must appear in at least 10-point type: "The State of
9 Florida requires sellers of business opportunities to disclose
10 certain information to prospective purchasers. This index is
11 provided to help you locate this information." If the index
12 contains other information not required by this section, the
13 seller shall place a designation beside each of the
14 disclosures required by this section and provide an
15 explanation of the designation at the end of the statement at
16 the top of the index page. The disclosure document shall
17 contain the following information:

18 (1) The name of the seller; whether the seller is
19 doing business as an individual, partnership, corporation, or
20 other business entity; the names under which the seller has
21 done business; and the name of any parent or affiliated
22 company that will engage in business transactions with the
23 purchasers or who takes responsibility for statements made by
24 the seller.

25 (2) The names, addresses, and titles of the seller's
26 officers, directors, trustees, general partners, general
27 managers, and principal executives and of any other persons
28 charged with the responsibility for the seller's business
29 activities relating to the sale of business opportunities.

30 (3) The length of time the seller has:

31 (a) Sold business opportunities; or

1 (b) Sold business opportunities involving the
2 products, equipment, supplies, or services currently being
3 offered to the purchaser.

4 (4) A full and detailed description of the actual
5 services that the business opportunity seller undertakes to
6 perform for the purchaser.

7 (5) A copy of a current (not older than 13 months)
8 financial statement of the seller, updated to reflect material
9 changes in the seller's financial condition.

10 (6) If training is promised by the seller, a complete
11 description of the training, the length of the training, and
12 the cost or incidental expenses of that training, which cost
13 or expense the purchaser will be required to incur.

14 (7) If the seller promises services to be performed in
15 connection with the placement of the equipment, product, or
16 supplies at a location, the full nature of those services as
17 well as the nature of the agreements to be made with the
18 owners or managers of the location where the purchaser's
19 equipment, product, or supplies will be placed.

20 (8) If the business opportunity seller is required to
21 secure a bond or establish a trust deposit pursuant to s.
22 559.807, either of the following statements:

23 (a) "As required by Florida law, the seller has
24 secured a bond issued by, a surety company authorized to
25 do business in this state. Before signing a contract to
26 purchase this business opportunity, you should confirm the
27 bond's status with the surety company."; or

28 (b) "As required by Florida law, the seller has
29 established a trust account or guaranteed letter of credit
30 ...(number of account)... with ...(name and address of bank or
31 savings institution).... Before signing a contract to

1 purchase this business opportunity, you should confirm with
2 the bank or savings institution the current status of the
3 trust account or guaranteed letter of credit."

4 (9) The following statement: "If the seller fails to
5 deliver the product, equipment, or supplies necessary to begin
6 substantial operation of the business within 45 days of the
7 delivery date stated in your contract, you may notify the
8 seller in writing and cancel your contract."

9 (10) If the seller makes any statement concerning
10 sales or earnings or a range of sales or earnings that may be
11 made through this business opportunity, a statement
12 disclosing:

13 (a) The total number of purchasers of business
14 opportunities involving the product, equipment, supplies, or
15 services being offered who have actually achieved sales of or
16 received earnings in the amount or range specified within 3
17 years prior to the date of the disclosure statement.

18 (b) The total number of purchasers of business
19 opportunities involving the product, equipment, supplies, or
20 services being offered within 3 years prior to the date of the
21 disclosure statement.

22 (11) A statement disclosing who, if any, of the
23 persons listed in subsections (1) and (2):

24 (a) Has, at any time during the previous 10 fiscal
25 years, regardless of adjudication, been convicted of, or found
26 guilty of, or pled guilty or nolo contendere to, or has been
27 incarcerated within the last 10 years as a result of having
28 previously been convicted of, or found guilty of, or pled
29 guilty or nolo contendere to, a felony or a crime involving
30 fraud, theft, larceny, violation of any franchise or business
31 opportunity law or unfair or deceptive practices law,

1 embezzlement, fraudulent conversion, misappropriation of
2 property, or restraint of trade.

3 (b) Has, at any time during the previous 7 fiscal
4 years, been held liable in a civil action resulting in a final
5 judgment or has settled out of court any civil action or is a
6 party to any civil action involving allegations of fraud
7 (including violation of any franchise or business opportunity
8 law or unfair or deceptive practices law), embezzlement,
9 fraudulent conversion, misappropriation of property, or
10 restraint of trade or any civil action which was brought by a
11 present or former franchisee or franchisees and which involves
12 or involved the franchise relationship. However, only
13 material individual civil actions need be so listed pursuant
14 to this paragraph, including any group of civil actions which,
15 irrespective of the materiality of any single such action, in
16 the aggregate is material.

17 (c) Is subject to any currently effective state or
18 federal agency or court injunctive or restrictive order, or
19 has been subject to any administrative action in which an
20 order by a governmental agency was rendered, or is a party to
21 a proceeding currently pending in which such order is sought,
22 relating to or affecting business opportunities activities or
23 the business opportunity seller-purchaser relationship or
24 involving fraud (including violation of any franchise or
25 business opportunity law or unfair or deceptive practices
26 law), embezzlement, fraudulent conversion, misappropriation of
27 property, or restraint of trade.

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29 Such statement shall set forth the identity and location of
30 the court or agency; the date of conviction, judgment, or
31 decision; the penalty imposed; the damages assessed; the terms

1 of settlement or the terms of the order; and the date, nature,
2 and issuer of each such order or ruling. A business
3 opportunity seller may include a summary opinion of counsel as
4 to any pending litigation, but only if counsel's consent to
5 the use of such opinion is included in the disclosure
6 statement.

7 (12) A statement disclosing who, if any, of the
8 persons listed in subsections (1) and (2) at any time during
9 the previous 7 fiscal years has:

10 (a) Filed in bankruptcy.

11 (b) Been adjudged bankrupt.

12 (c) Been reorganized due to insolvency.

13 (d) Been a principal, director, executive officer, or
14 partner of any other person that has so filed or was so
15 adjudged or reorganized during or within 1 year after the
16 period that such person held such position in relation to such
17 other person. If so, the name and location of the person
18 having so filed or having been so adjudged or reorganized, the
19 date thereof, and any other material facts relating thereto
20 shall be set forth.

21 (13) A copy of the business opportunity contract which
22 the seller uses as a matter of course and which is to be
23 presented to the purchaser at closing.

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25 Should any seller of business opportunities prepare a
26 disclosure statement pursuant to 16 C.F.R. ss. 436.1 et seq.,
27 a Trade Regulation Rule of the Federal Trade Commission
28 regarding Disclosure Requirements and Prohibitions Concerning
29 Franchising and Business Opportunity Ventures, the seller may
30 file that disclosure statement in lieu of the document
31 required pursuant to this section. ~~Should the seller be~~

1 ~~required pursuant to 16 C.F.R. to prepare any other documents~~
2 ~~to be presented to the prospective purchaser, those documents~~
3 ~~shall also be filed with the department.~~

4 Section 3. Section 559.807, Florida Statutes, is
5 amended to read:

6 559.807 Bond or trust account required.--If the
7 business opportunity seller makes any representations set
8 forth in s. 559.801(1)(a)3., the seller must either have
9 obtained a surety bond issued by a surety company authorized
10 to do business in this state or have established a trust
11 account or a guaranteed letter of credit with a licensed and
12 insured bank or savings institution located in the state. The
13 amount of the bond, trust account, or guaranteed letter of
14 credit shall be an amount not less than \$50,000. ~~The bond or~~
15 ~~trust account shall be in the favor of the department.~~ Any
16 person who is damaged by any violation of ss. 559.80-559.815,
17 or by the seller's breach of the contract for the business
18 opportunity sale or of any obligation arising therefrom, may
19 bring an action against the bond, trust account, or guaranteed
20 letter of credit to recover damages suffered; however, the
21 aggregate liability of the surety or trustee shall be only for
22 actual damages and in no event shall exceed the amount of the
23 bond, trust account, or guaranteed letter of credit.

24 Section 4. Subsection (5) of section 559.813, Florida
25 Statutes, is amended to read:

26 559.813 Remedies; enforcement.--

27 (5) The Department of Legal Affairs, ~~the Department of~~
28 ~~Agriculture and Consumer Services~~, or the state attorney, if a
29 violation of this part occurs in her or his judicial circuit,
30 are the enforcing authorities for purposes of this part, and
31 they may bring civil actions in circuit court for temporary or

1 permanent injunctive relief and may seek other appropriate
2 civil relief, including, but not limited to, a civil penalty
3 not to exceed \$5,000 for each violation, restitution and
4 damages for injured purchasers of business opportunities, and
5 court costs and reasonable attorney's fees.

6 Section 5. Section 559.815, Florida Statutes, is
7 amended to read:

8 559.815 Penalties.--Any person who ~~fails to file with~~
9 ~~the department as required by s. 559.805 or who~~ commits an act
10 described in s. 559.809 is guilty of a felony of the third
11 degree, punishable as provided in s. 775.082, s. 775.083, or
12 s. 775.084.

13 Section 6. Subsection (2) of section 559.801, section
14 559.805, and subsections (2) and (8) of section 559.813,
15 Florida Statutes, are repealed.

16 Section 7. This act shall take effect upon becoming a
17 law.

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19 HOUSE SUMMARY

20
21 Removes the Department of Agriculture and Consumer
22 Services from any duties and responsibilities relating to
23 sales of business opportunities.
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