

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 303

Sale or Lease of Business Opportunities

SPONSOR(S): Bogdanoff

TIED BILLS:

IDEN./SIM. BILLS: SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	18 Y, 0 N	Thompson	Reese
2) General Government Policy Council		Thompson	Hamby
3) Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Chapter 559, Part VIII, Florida Statutes, "The Sale of Business Opportunities Act"¹ (Act), provides regulations for the sale or lease of products, equipment, supplies or services sold or leased to enable a purchaser to start a business. The law is administered by the Florida Department of Agriculture and Consumer Services (DACs), which is the state's lead agency for consumer issues.

Under current law, the sale or lease of laundry and drycleaning equipment is excluded from the definition of "business opportunities." This exclusion provides an exemption from the regulations of the Act for entities that sell or lease laundry and drycleaning equipment.

HB 303 removes the current exemption for the sale or lease of laundry and drycleaning equipment, subjecting such sales and leases to all applicable regulations and penalties provided for under the Act.

HB 303 may have a limited fiscal impact on state government. However, because it is impossible to forecast how many violations might occur, the fiscal impact is indeterminate (See FISCAL COMMENTS section for details).

This bill's effective date is July 1, 2009.

¹ ss. 559.80 to 559.815, F.S.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to the Florida Department of Agriculture and Consumer Services (DACS), a business opportunity is an offer to assist a person in starting his or her own business by providing (either through sales or lease) products, equipment, supplies or services needed to carry on the business.

The Sale of Business Opportunities Act² (Act) regulates the sale or lease of products, equipment, supplies or services sold or leased. The law requires sellers of business opportunities to pay an annual fee of \$300 for the administration and enforcement of the act and to file a disclosure document, including a copy of the purchase contract, with DACS before soliciting in Florida. Examples of such business opportunities include addressing envelopes, assembling toys at home at a cost of a few dollars, establishing vending machine routes or installing pay telephones, or the sale or lease of laundry and dry cleaning equipment for thousands of dollars.

Under the provisions of the Act, the purchaser may make an informed investment decision based on full and fair information and the ability to recover damages in those cases where the seller is found liable. Failure to provide or deliver the products, equipment, supplies, or services specified under the Act is prohibited and subjects the seller to civil, criminal, and administrative penalties for a violation. A criminal penalty is punishable as a third-degree felony.

In order to protect the purchaser, the Act prohibits the seller from committing the following:

- Failing to disclose the known required total investment;
- Failing to disclose efforts to establish additional franchises or distributorships in the same market and market area as the business opportunity is established;
- Misrepresenting the quality or quantity of the products to be sold or distributed;
- Misrepresenting the training and management assistance available;
- Misrepresenting the amount of profits from the operation of the business opportunity;
- Failing to disclose the termination, transfer, or renewal provision of the business opportunity agreement;
- Falsely claiming that a primary marketer or trademark sponsors or participates directly or indirectly in the business opportunity agreement;

² ss. 559.80 to 559.815, F.S.

- Assigning an “exclusive-territory” encompassing the same area to more than one purchaser;
- Providing vending locations for which written authorizations have not been granted by the property owners or lessees;
- Providing machines or displays substantially different from and inferior to those promised;
- Failing to provide the purchaser a written business opportunity contract;
- Misrepresenting the ability to provide locations or assist in finding locations expected to have a positive impact on the success of the business opportunity;
- Misrepresenting a material fact or creating a false or misleading impression in the sale of a business opportunity; or
- Failing to provide or deliver the products, equipment, supplies, or services as specified in the written contract.

Section 559.813, F.S., provides for remedies and the enforcement of violations of sellers of business opportunities. Within one year of the execution of the contract and upon written notice to the seller, the purchaser is allowed to rescind the business opportunity contract and is entitled to receive from the seller all funds paid for the business opportunity, if the seller commits the following violations:

- Uses untrue or misleading statements in the sale;
- Fails to give proper disclosures required; or
- Fails to deliver the equipment supplies, or products necessary for the business to begin operation within 45 days of the delivery date in the contract.

Currently, for violations of any of the provisions listed above, the Act authorizes DACS to do the following:

- Issue a notice of noncompliance;
- Impose an administrative fine not to exceed \$5,000 per violation;
- Issue a cease and desist order;
- Refuse to issue or revoke or suspend the advertisement identification number; or
- Place the registrant on probation.

Present Situation

The Act defines a “business opportunity” as a transaction exceeding \$500, where the seller represents to the buyer that the seller will provide equipment, inventory, marketing locations or assistance, or that the buyer is guaranteed to derive a specified return over the initial investment in the opportunity. The definition specifically excludes the following transactions:

- The sale of an ongoing business, as long as the seller does not sell more than five of the opportunities or businesses;
- The not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less; or
- The sale or lease of laundry and drycleaning equipment.

The three transactions listed above are not regulated by the Act. Consequently, companies that sell or lease laundry and drycleaning equipment to a purchaser to start a new business, are not prohibited under the act from failing to provide or deliver the products, equipment, supplies, or services that may have been promised a purchaser. This exclusion hampers legal intervention on behalf of such an alleged victim, thus, creating a “loophole” for potential fraudulent economic practices to occur without the threat of legal recourse.

Proposed Changes

The bill removes the exemption of the sale or lease of laundry and drycleaning equipment from the definition of “business opportunity.” As a result, the sales and leases of laundry and drycleaning equipment are subjected to all applicable regulations provided for under the Act. Sellers in violation

may be guilty of a third degree felony punishable by up to a \$5000 fine and up to 5 years in jail plus applicable administrative fees and court costs. Habitual felony offenders may be sentenced to 10 years in jail.³

B. SECTION DIRECTORY:

Section 1. Amends s. 559.801, F.S.; deleting the exemption of certain laundry and drycleaning transactions.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, the Act requires sellers of business opportunities to pay an annual fee of \$300 for administration and enforcement. Also, to protect purchasers who are injured by fraud, the Act requires a seller to obtain a surety bond, or establish a certificate of deposit or a guaranteed letter of credit, each worth no less than \$50,000. The bill includes laundry and drycleaning businesses under this requirement.

D. FISCAL COMMENTS:

The bill provides that effective July 1, 2009, certain sales and leases of laundry and drycleaning equipment will be subjected to all applicable regulations provided for under the Act, including paying the annual fee of \$300.

Administrative and investigative expenses may be incurred by The Department of Legal Affairs, DACS and state attorneys. Enforcement of violations may result in the assessment of penalties and court costs. However, because it is impossible to forecast how many violations might occur, the fiscal impact on the state is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³ ss. 775.082, 775.083, or 775.084, F.S.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES