



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2104

Introduced 2/22/2011, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

805 ILCS 180/1-25
815 ILCS 602/5-35

Amends the Business Opportunity Sales Law of 1995. Provides that a business opportunity disclosure document shall contain a statement informing the prospective purchaser that he or she will be provided 14 days (rather than 10 business days) to review the disclosure document before signing any contract or agreement or making any payment to the seller or the seller's representative. Also amends the Limited Liability Company Act. Provides that a limited liability company may be formed for the purpose of practicing medicine if, among other conditions, each member is a hospital affiliate as defined in the Hospital Licensing Act. Effective immediately.

LRB097 05288 AEK 45342 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 3. The Limited Liability Company Act is amended by
5 changing Section 1-25 as follows:

6 (805 ILCS 180/1-25)

7 Sec. 1-25. Nature of business. A limited liability company
8 may be formed for any lawful purpose or business except:

9 (1) (blank);

10 (2) insurance unless, for the purpose of carrying on
11 business as a member of a group including incorporated and
12 individual unincorporated underwriters, the Director of
13 Insurance finds that the group meets the requirements of
14 subsection (3) of Section 86 of the Illinois Insurance Code
15 and the limited liability company, if insolvent, is subject
16 to liquidation by the Director of Insurance under Article
17 XIII of the Illinois Insurance Code;

18 (3) the practice of dentistry unless all the members
19 and managers are licensed as dentists under the Illinois
20 Dental Practice Act; or

21 (4) the practice of medicine unless all the managers,
22 if any, are licensed to practice medicine under the Medical
23 Practice Act of 1987 and each member is either:

1 (A) licensed to practice medicine under the
2 Medical Practice Act of 1987; or

3 (B) a registered medical corporation or
4 corporations organized pursuant to the Medical
5 Corporation Act; or

6 (C) a professional corporation organized pursuant
7 to the Professional Service Corporation Act of
8 physicians licensed to practice under the Medical
9 Practice Act of 1987; or

10 (D) a hospital affiliate as defined in Section 10.8
11 of the Hospital Licensing Act; or

12 (E) ~~(D)~~ a limited liability company that satisfies
13 the requirements of subparagraph (A), (B), ~~or~~ (C), or
14 (D).

15 (Source: P.A. 95-331, eff. 8-21-07; 95-738, eff. 1-1-09.)

16 Section 5. The Business Opportunity Sales Law of 1995 is
17 amended by changing Section 5-35 as follows:

18 (815 ILCS 602/5-35)

19 Sec. 5-35. Disclosure requirements.

20 (a) It shall be unlawful for any person to offer or, sell
21 any business opportunity required to be registered under this
22 Law unless a written disclosure document as filed under
23 subsection (a) of Section 5-30 of this Law is delivered to each
24 purchaser at least 14 days prior to the execution by a

1 purchaser of any contract or agreement imposing a binding legal
2 obligation on the purchaser or the payment by a purchaser of
3 any consideration in connection with the offer or sale of the
4 business opportunity.

5 (b) The disclosure document shall have a cover sheet which
6 is entitled, in at least 10-point bold type, "DISCLOSURE
7 REQUIRED BY THE STATE OF ILLINOIS." Under the title shall
8 appear the statement in at least 10-point bold type that "THE
9 REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE
10 APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF
11 ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE
12 DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY
13 QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL
14 ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE
15 TO BE PROVIDED 14 ~~10-BUSINESS~~ DAYS TO REVIEW THIS DOCUMENT
16 BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT
17 TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's
18 name and principal business address, along with the date of the
19 disclosure document shall also be provided on the cover sheet.
20 No other information shall appear on the cover sheet. The
21 disclosure document shall contain the following information
22 unless the seller uses a disclosure document as provided in
23 paragraph (1) or (2) of subsection (a) of Section 5-30 of this
24 Law:

25 (1) The names and residential addresses of those
26 salespersons who will engage in the offer or sale of the

1 business opportunity in this State.

2 (2) The name of the seller, whether the seller is doing
3 business as an individual, partnership or corporation; the
4 names under which the seller has conducted, is conducting
5 or intends to conduct business; and the name of any parent
6 or affiliated company that will engage in business
7 transactions with purchasers or which will take
8 responsibility for statements made by the seller.

9 (3) The names, addresses and titles of the seller's
10 officers, directors, trustees, general managers, principal
11 executives, agents, and any other persons charged with
12 responsibility for the seller's business activities
13 relating to the sale of the business opportunity.

14 (4) Prior business experience of the seller relating to
15 business opportunities including:

16 (A) The name, address, and a description of any
17 business opportunity previously offered by the seller;

18 (B) The length of time the seller has offered each
19 such business opportunity; and

20 (C) The length of time the seller has conducted the
21 business opportunity currently being offered to the
22 purchaser.

23 (5) With respect to persons identified in item (3) of
24 this subsection:

25 (A) A description of the persons' business
26 experience for the 10 year period preceding the filing

1 date of this disclosure document. The description of
2 business experience shall list principal occupations
3 and employers; and

4 (B) A listing of the persons' educational and
5 professional backgrounds including, the names of
6 schools attended and degrees received, and any other
7 information that will demonstrate sufficient knowledge
8 and experience to perform the services proposed.

9 (6) Whether the seller or any person identified in item
10 (3) of this subsection:

11 (A) Has been convicted of any felony, or pleaded
12 nolo contendere to a felony charge, or has been the
13 subject of any criminal, civil or administrative
14 proceedings alleging the violation of any business
15 opportunity law, securities law, commodities law,
16 franchise law, fraud or deceit, embezzlement,
17 fraudulent conversion, restraint of trade, unfair or
18 deceptive practices, misappropriation of property or
19 comparable allegations;

20 (B) Has filed in bankruptcy, been adjudged
21 bankrupt, been reorganized due to insolvency, or was an
22 owner, principal officer or general partner or any
23 other person that has so filed or was so adjudged or
24 reorganized during or within the last 7 years.

25 (7) The name of the person identified in item (6) of
26 this subsection, nature of and parties to the action or

1 proceeding, court or other forum, date of the institution
2 of the action, docket references to the action, current
3 status of the action or proceeding, terms and conditions or
4 any order or decree, the penalties or damages assessed and
5 terms of settlement.

6 (8) The initial payment required, or when the exact
7 amount cannot be determined, a detailed estimate of the
8 amount of the initial payment to be made to the seller.

9 (9) A detailed description of the actual services the
10 seller agrees to perform for the purchaser.

11 (10) A detailed description of any training the seller
12 agrees to provide for the purchaser.

13 (11) A detailed description of services the seller
14 agrees to perform in connection with the placement of
15 equipment, products or supplies at a location, as well as
16 any agreement necessary in order to locate or operate
17 equipment, products or supplies on a premises neither owned
18 nor leased by the purchaser or seller.

19 (12) A detailed description of any license or permit
20 that will be necessary in order for the purchaser to engage
21 in or operate the business opportunity.

22 (13) The business opportunity seller that is required
23 to secure a bond under Section 5-50 of this Law, shall
24 state in the disclosure document "As required by the State
25 of Illinois, the seller has secured a bond issued by
26 (insert name and address of surety company), a surety

1 company, authorized to do business in this State. Before
2 signing a contract or agreement to purchase this business
3 opportunity, you should check with the surety company to
4 determine the bond's current status.".

5 (14) Any representations made by the seller to the
6 purchaser concerning sales or earnings that may be made
7 from this business opportunity, including, but not limited
8 to:

9 (A) The bases or assumptions for any actual,
10 average, projected or forecasted sales, profits,
11 income or earnings;

12 (B) The total number of purchasers who, within a
13 period of 3 years of the date of the disclosure
14 document, purchased a business opportunity involving
15 the product, equipment, supplies or services being
16 offered to the purchaser; and

17 (C) The total number of purchasers who, within 3
18 years of the date of the disclosure document, purchased
19 a business opportunity involving the product,
20 equipment, supplies or services being offered to the
21 purchaser who, to the seller's knowledge, have
22 actually received earnings in the amount or range
23 specified.

24 (15) Any seller who makes a guarantee to a purchaser
25 shall give a detailed description of the elements of the
26 guarantee. Such description shall include, but shall not be

1 limited to, the duration, terms, scope, conditions and
2 limitations of the guarantee.

3 (16) A statement of:

4 (A) The total number of business opportunities
5 that are the same or similar in nature to those that
6 have been sold or organized by the seller;

7 (B) The names and addresses of purchasers who have
8 requested a refund or rescission from the seller within
9 the last 12 months and the number of those who have
10 received the refund or rescission; and

11 (C) The total number of business opportunities the
12 seller intends to sell in this State within the next 12
13 months.

14 (17) A statement describing any contractual
15 restrictions, prohibitions or limitations on the
16 purchaser's conduct. Attach a copy of all business
17 opportunity and other contracts or agreements proposed for
18 use or in use in this State including, without limitation,
19 all lease agreements, option agreements, and purchase
20 agreements.

21 (18) The rights and obligations of the seller and the
22 purchaser regarding termination of the business
23 opportunity contract or agreement.

24 (19) A statement accurately describing the grounds
25 upon which the purchaser may initiate legal action to
26 terminate the business opportunity contract or agreement.

1 (20) A copy of the most recent audited financial
2 statement of the seller, prepared within 13 months of the
3 first offer in this State, together with a statement of any
4 material changes in the financial condition of the seller
5 from that date. The Secretary of State may accept the
6 filing of a reviewed financial statement in lieu of an
7 audited financial statement.

8 (21) A list of the states in which this business
9 opportunity is registered.

10 (22) A list of the states in which this disclosure
11 document is on file.

12 (23) A list of the states which have denied, suspended
13 or revoked the registration of this business opportunity.

14 (24) A section entitled "Risk Factors" containing a
15 series of short concise statements summarizing the
16 principal factors which make this business opportunity a
17 high risk or one of a speculative nature. Each statement
18 shall include a cross-reference to the page on which
19 further information regarding that risk factor can be found
20 in the disclosure document.

21 (25) Any additional information as the Secretary of
22 State may require by rule, regulation, or order.

23 (Source: P.A. 96-648, eff. 10-1-09.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.