

# Get The Facts

What does business opportunity regulation mean to you?

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Business opportunities have roused the interest of would-be entrepreneurs for decades. And it's no wonder why. Promises of untold riches built on relatively small investments have eager future business owners breaking down the doors of many opportunities to grab their share.

Unfortunately, in years past, the all-too-common result was a garage full of vending machines and not much profit to show for it. But the landscape has changed, and though the continuing adjustments make life for business opportunity sellers a little more difficult, entrepreneurs are starting to come into the profits they've been expecting all along--and this time, without getting burned.

## First Things First

What exactly is a business opportunity? Definitions vary among states, but boiled down to the bare essentials, a business opportunity exists when: 1) the buyer purchases goods or services that enable him or her to begin a business, 2) the purchase price is more than a certain amount, usually \$500, and 3) the seller makes one of several defined representations about the opportunity, such as guaranteeing the program will be profitable; offering to provide assistance in locating accounts, vending machines or other display devices; promising to buy back products that have been assembled or produced by the buyer; or providing a sales program or marketing plan.

The definitions cover a dizzying array of product and service programs designed to make it easy for buyers to start a wide variety of businesses. But buying such an opportunity requires a measure of care to make sure you find a program that fits your needs and meets your expectations (see "A Closer Look," right).

Thanks to new business opportunity regulations--which are forcing greater professionalism on the sale of these packaged programs, a process that has been lurching forward for the past 15 years--purchasing a business opportunity in today's market is a brighter prospect than it was decades ago.

With the addition of Illinois' new Business Opportunity Sales Act last year, half the states now regulate the sale of business opportunities (see "Lay Of The Land," below). The other half rely on a tangled web of state and federal trade regulation rules and consumer protection laws to fend off bogus operators. Regulators have stepped up enforcement of business opportunity laws by going to the marketplace, attending business opportunity trade shows, tapping into the Internet, urging investors to contact them for information before they buy, and bringing high-profile enforcement lawsuits against violators.

What does business opportunity regulation mean to potential buyers? In most states, it means the seller must provide each buyer with a copy of the company's registered disclosure statement before the sale is completed, in many states at least 10 business days before the conclusion of the sale. That statement typically contains a description of the offering and the products and services that will be supplied by the seller. It also usually describes the company's litigation and bankruptcy history and provides a copy of a sales contract and the seller's most recent financial statements.

This is a tough set of laws for most sellers to meet, particularly when the sale is made on the spot at a trade show or seminar without the opportunity to provide advance disclosure. As a result, state regulators continue to initiate investigations and enforcement actions that show no signs of lessening.

## Year In Review

The number of registrations and the enforcement of business opportunity laws varies dramatically among states. With states such as Michigan and South Carolina having seen more than 600 business opportunity registrations last year, these would seem to be great places to get your new business off the ground, right? Not necessarily: Laws that make it easier for sellers to register may translate into less protection for buyers.

Maryland, on the other hand, adopted a stricter set of business opportunity laws last year--and saw its registration numbers drop from 37 at the end of 1995 to 29 at the end of 1996. Enforcement activity in the state has increased in the past year; the number of formal legal actions filed by the attorney general's office, says Dale E. Cantone, assistant attorney general, increased to 15 during the year from 14 in 1995.

After its first year with the Business Opportunity Sales Act on the books, Illinois reports a sharp increase in the level of enforcement activity. Philip S. Sanson of the Illinois Securities Department at the Secretary of State's Office says the department had already opened 55 investigation cases by the end of February. This followed an active 1996, in which his department initiated 140 investigations and issued 22 formal cease-and-desist orders.

The registration record in Illinois during its first year of business opportunity regulation is also revealing. Of the 56 applications submitted last year, only 17 companies (about 30 percent of the applications submitted) were registered by year-end. "The others," Sanson says, "were either deficient or abandoned."

## Caught In The Net

As if monitoring activity in their states wasn't challenging enough, regulators are dealing with a new, inevitable source of business opportunity sales: the Internet. Several state enforcers report increased business opportunity sales activity on the Internet, and that has drawn regulators to the Net themselves. "We recently cooperated with the Federal Trade Commission in a national effort to notify Internet sellers of their obligations under federal and state laws," says Sanson.

The Internet is the perfect venue for less-than-honest opportunity sellers to reel in prospects, says Chris DeWitt of Michigan's attorney general's office. "The graphics and images projected by many business opportunity Web sites create attractive business propositions, but they have also confused consumers," he says. "If you learn about an investment opportunity on the Internet, it is all the more difficult to determine if the company is legitimate."

As in Michigan and Illinois, Utah's Department of Commerce enforcement counsel Mark E. Kleinfield reports that the Internet has generated several

complaints among Utah consumers. "And we expect the use of the Internet in this area to continue growing," he says. "Our legislature has recently expanded our authority to [regulate] business activity that takes place over the Internet."

Whether on the Internet or in any other venue, business opportunity regulation and enforcement is forcing sellers to clean up their acts. Some states have found success by prowling the aisles of business opportunity trade shows. And enforcement authorities are especially alert to any earnings claims, promises of profitability, assurances that programs are can't-lose investments, and any other forms of overstatement or misrepresentation. In the business opportunity neighborhood, these authorities are the new cops on the beat.

## A Closer Look

Then considering making a business opportunity investment, here are a few key features to look for and some essential questions to ask:

Does the program meet your needs? Just because it sounds like it may make money doesn't make it right for you. Don't spend your money and then just put the materials up on a shelf.

Be realistic, especially about the business's revenue potential. Be sure to listen to sales hype with a critical ear.

You should not spend money you cannot afford to lose.

Always ask the seller for a disclosure statement and whether the company is registered as a business opportunity seller under any state law. If not, ask for a full list of recent buyers, the company's financial statement, and some basic facts about the seller (headquarters location, number of employees, and so on).

Ask how many buyers there have been in your state and what their experience has been.

Ask your state consumer protection authority if there have been any reported legal problems with the company.

## For More Information

The Federal Trade Commission provides an information package about the FTC Franchise and Business Opportunity Rule free of charge. Write to: Public Reference Branch, Federal Trade Commission, Washington, DC 20580, or call (202) 326-3128.

## Contact Sources

**Illinois Securities Department**, Secretary of State's Office, Lincoln Tower, 520 S. Second, #200, Springfield, IL 62701, (217) 782-2256;

**Maryland Office of the Attorney General**, Securities Division, 200 St. Paul Pl., Baltimore, MD 21202, (410) 576-7042;

**Michigan Office of the Attorney General**, P.O. Box 30212, Lansing, MI 48909, (517) 373-1110;

**Utah Department of Commerce**, Division of Consumer Protection, 160 E. 300 S., Salt Lake City, UT 84145, (801) 530-6601.