

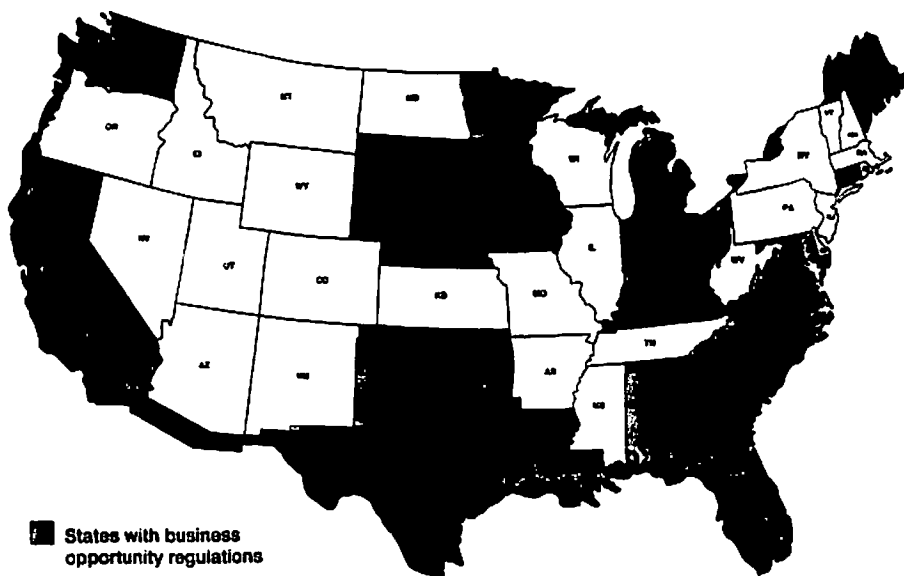
## Regulators Crack Down On Biz Ops

## CLEANING UP

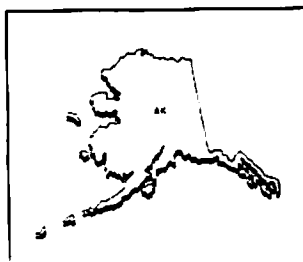
**I**t just doesn't add up. There are approximately 2,000 business opportunity sellers across the United States. The federal government and 24 states regulate business opportunity sales (see "Just The Facts" on page 102)—twice the number of states that regulate nearly the same number of franchise company offerings. And yet state business opportunity registrations amount to a fraction of the number of franchise registrations. The state of Maryland, for instance, has more than 700 registered franchise filings but only about 21 registered business opportunity disclosure filings. What's going on?

Business opportunity regulation in the United States has long enjoyed a somewhat puzzling standoff with the companies it purports to regulate. Yet all indications suggest the situation is changing dramatically. So why isn't more of the business opportunity community under the thumb of state enforcers and the bright lights of public disclosure?

"There is no real consensus among the state laws as to what constitutes a business opportunity," says Andrew C. Selden, a Minneapolis attorney and a former chairman of the American Bar Association's Forum on Franchising. "If we had a uniform legal definition, it would be far easier to



■ States with business opportunity regulations



Good news for investors: After decades of turning their backs on biz op abuses, state and federal governments are taking a closer look.

evaluate the effectiveness of business opportunity regulation. My view is that business opportunities should be regulated to the same extent as franchising, and for the same reasons—to protect the investor through pre-dis-

closure of all material information."

State business opportunity regulators seem to agree. "The statutes in Maryland and the other states that regulate business opportunities have narrow definitions and few regula-

BY ANDREW A. CAFFEY

tions," says Peggy Shanks, a franchise and business opportunity examiner with the Maryland Attorney General's Office. "A lot of the [business opportunity] companies we see are less sophisticated in legal regulation than their franchising counterparts and they are simply not aware of the requirements of our law."

"Here in Washington state we have a definition that limits application in a few important ways," says Martin Cordell, an attorney with the Washington State Securities Division. These include making certain guarantees to the purchaser regarding income to be earned and site location assistance. "But that may change," says Cordell. "Our legislature is considering enlarging the scope of the business opportunity law. We hope legislation adopting these definition changes will pass in the next session."

If that goes through, many more companies will be covered by the law."

State legislators in Ohio, Maryland and South Carolina amended the language of their business opportunity statutes earlier this year, putting a greater number of companies under their regulations. Similar changes are on the way for Florida.

Legal definitions are not the only transformations in this area. Other fundamental changes in business opportunity regulation are being put in place. Maryland's 21 registrations may pale next to its franchise numbers, but just two years ago, there were only eight registrations on the Maryland books. "We are paying far more attention to [business opportunity regulation] than we have in the past," says Maryland's Shanks, "and we're getting results. Our office is receiving more inquiries, more complaints of abuse,

and more registration applications. We feel the greater level of compliance is a healthy development for business opportunity purchasers in our state."

## A CLOSER LOOK

What is bringing about this increase in activity? The greatest recession in 50 years and low interest rates have altered the marketplace, forcing an unprecedented number of people to consider new ways to supplement their incomes. Workers laid off due to corporate downsizing are desperately trying to replace their paychecks. And, unfortunately, while legitimate business opportunities organize to meet the needs of this new marketplace, the number of fraudulent operators is also on the rise.

To combat the con artists, state administrators of business opportunity laws are putting new resources into enforcement. Here are a few ways the states are flexing their muscles:

- *Attending business opportunity trade shows.* "We attend all the shows in Maryland," says Shanks, "and we've had great success in working with the show organizers to clear up any compliance questions about the exhibitors before the show takes place. Most companies cooperate with us, and we usually issue cease-and-desist orders to the ones that don't." It's not unusual to see state or federal representatives at their own exhibitor's booth at a show.
- *Checking out competitor complaints.* "We receive quite a number of complaints from business opportunity sellers registered under our law about competitors who ignore Washington state's law requirements," says Cordell. "We handle competitor complaints in a somewhat guarded fashion, but we do usually inquire as to why that company is not registered."
- *Investigating advertising.* State administrators work closely with newspapers in their states to screen advertisements for business opportunities that may not be registered. "This has been very effective [in Washington]," says Cordell. "We receive between six and 12 calls each week from rejected advertisers or from newspapers about proposed advertisements for business opportunities that are not registered."

## BEFORE YOU SELL

Many entrepreneurs who offer innovative programs that allow others to start their own businesses are unaware they are violating the law. The following questions will help you determine whether you should be concerned about selling regulated business opportunities, also called seller-assisted marketing plans:

1. Do you sell a program, materials or equipment that enables the purchaser to start a business? (Some states include enhancement or maintenance of an existing business.)

2. Are you paid in excess of \$500 for goods, supplies, equipment or services? (Some state definitions have a smaller threshold.)

3. Do you make any of the following representations?

(Representations include not only oral statements and written promises, but also advertising copy and promotional brochures.)

(a) You will provide assistance in locating sites for vending machines (or any coin-operated devices).

(b) The business opportunity is a "secured investment."

(c) There is a market for any goods or services to be sold or fabricated by the purchaser.

(d) You promise to buy back any unsold products made, grown or bred by the purchaser.

(e) The purchaser will operate a profitable business, or will generate revenues in excess of his or her investment.

(f) You guarantee money can be made. (A guarantee has been construed by one federal court where the word "guarantee" was never used, but the company's advertising conveyed that impression).

(g) You will provide a "marketing plan" (an extremely broad concept).

(h) You will refund the purchase price if the purchaser is dissatisfied.

There are exceptions and exclusions to these statutes, which vary from state to state. To obtain copies of state laws, see the sidebar, "For More Information" on page 101.

-A.A.C.

## FOR MORE INFORMATION . . .

There are several sources of additional information available to business opportunity sellers and buyers.

1. For buyers: National Business Opportunity Services offers the excellent *National Buyer's Guide*, which contains clear explanations of the various types of investments on the market (business opportunities, franchises, multilevel marketing programs, sales representatives, distributorships and dealerships). The \$13.95 guide explains how to investigate one of these investments, outlines what steps the buyer can take to protect his or her investment, and includes a summary of the state and federal laws across the country protecting business opportunity buyers, franchisees, sales representatives and others. Copies of the individual state laws (\$6.95 each) and other useful information are also available. Write to National Business Opportunity Services, P.O. Box 6271, Washington, DC 20015-0271.

2. For sellers: National Business Opportunity Services (see address above) is compiling a *Business Opportunity Seller's Compliance Kit*, containing copies of all the state business opportunity statutes

the Federal Trade Commission's (FTC) *Franchise and Business Opportunity Rule and Franchise and Business Opportunity Guides*, and other useful materials for business opportunity sellers. The organization is also planning a monthly newsletter for business opportunity sellers with current information on legislative and marketing news, due to begin publication in December. Contact the organization for subscription information.

3. For sellers and buyers: A number of state enforcement agencies (Attorneys General, Consumer Protection Offices) and the FTC offer informative pamphlets on business opportunity sales. To receive FTC pamphlets, write to: Public Reference Branch, Federal Trade Commission, Washington, DC 20580, or call (202) 326-3128, to request information about the Franchise and Business Opportunity Rule. State business opportunity law administrators typically provide information on their states' laws, although some charge you for copies of the laws. For more information, contact your state agencies directly. (For a list of the states regulating business opportunity sales, see the sidebar "Just The Facts" on page 102).

A.A.C.

AUTHORIZED HOME STUDY PROGRAM LEADS TO YOUR PROFESSIONAL CERTIFICATION:

# "There's no reason why a hard-working real estate appraiser can't earn a six-figure income in this profession."



Real estate appraisers are in constant demand by mortgage lenders and banks to appraise the 60,000+ residences that are sold in the U.S. each day.

So says one of our graduates—the owner of his own prospering real estate appraisal firm. With the help of our professional-level training, he has built himself a highly rewarding business.

If you focus on your studies, you can graduate in only 60 to 90 days, and establish your professional reputation quickly. The repeat business that results is your ticket to high earnings, independence, and security. And remember—real estate appraisal services are in regular demand in any economy.

**Your certification: the key to building a highly profitable business.**

At graduation, you'll receive two very important documents. One is your National College diploma. The other is your certification from the American Society of Professional Appraisers. Both are recognized nationwide—symbols of thorough, authoritative training and the highest professional standards.

**More independence, more income, fewer risks.**

As an appraiser you set your own schedule, charging \$200 to \$400 or more per appraisal. Substantial earnings are well within your reach. And, you can phase into the profession safely while phasing out of your old career.

Find out more—call or write today.

**Free career booklet:  
800-223-4542**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**The National College  
of Appraisal and  
Property Management**

2245 Perimeter Park  
Dept. RH354 · Atlanta, Georgia 30328

- **More aggressive enforcement.** Virtually all states are showing a new, aggressive posture toward companies that ignore the law. Business opportunity sellers report the states seem to be taking their business opportunity laws more seriously.

The Federal Trade Commission

(FTC) has regulated business opportunity and franchise sales since 1979, and it has brought a number of enforcement actions under these regulations over the years. Is the pace picking up? "It certainly is," says Craig Tregillus, Franchise Rule Coordinator in the FTC's Bureau of Consumer

Protection. "The FTC Rule regulates both franchise and business opportunity offerings. The bulk of the complaints we receive relate to business opportunities, and we are continuing our efforts to bring those companies violating the law to justice."

The Commission brings anywhere from five to nine cases a year against companies not complying with the FTC Rule. "A few of our recent cases have been particularly successful in assessing penalties that are then used for consumer redress," says Tregillus. "One recent case involved a court-awarded penalty in excess of \$4 million. These types of enforcement cases would not be possible without the highest level of cooperation between the FTC and state agencies."

And the stakes are increasing for violators. "In one recent action, the Department of Justice established for the first time that conspiracy to violate the FTC Rule is a crime," says Tregillus. "From an enforcement agency's viewpoint, we have little doubt that the threat of criminal sanction will grab the attention of

## JUST THE FACTS

Twenty-four states and the Federal Trade Commission regulate sales of "business opportunity ventures," also known as "seller-assisted marketing plans," but they apply a wide variety of definitions as to what exactly is being regulated. Virtually any investment opportunity of \$500 or more (less in some states) that allows the purchaser to start or maintain a business, and in which representations are made regarding profitability, a marketing program, or vending machine location assistance risks coverage under state or federal law. Coverage may require the seller to prepare and provide a disclosure document for delivery prior to closing the sale, register the offering with the state, and meet bonding and escrow requirements.

The states regulating business opportunities sales are Alabama, California, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia and Washington.

-A.A.C.

## HERE'S YOUR CHANCE!

EARN UP TO

# \$ 90,000 A YEAR

Repairing long cracks in windshields and plate glass



- ★ Be Your Own Boss
- ★ No Franchise Fees
- ★ On-Going Support
- ★ Huge Profits

### 1-800-826-8523

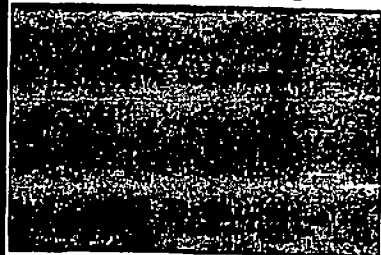
OR WRITE FOR YOUR FREE BROCHURE

## THE GLASS MECHANIX INC.

5313 NOB HILL RD. SUNRISE, FL 33351



**BEFORE**



**AFTER**

those who would otherwise ignore the Rule's requirements."

Even the courts are showing a new willingness to apply the broad definitions that are the hallmark of business opportunity regulation. In 1990, a federal appeals court in New England applied the Connecticut Business Opportunity law to a sophisticated, million-dollar contract between two companies for the marketing of computerized account services to opticians' offices. The court recognized that this was not your everyday business opportunity, but also ruled it did not deserve exemptions or exclusions under the law.

In the court's opinion, "A business opportunity is often nothing more than an occasion for the investor to experience disappointment." The question before it was whether this marketing arrangement met the business opportunity definition, or was so different from the more unscrupulous programs targeted by the law as to escape coverage. The court's answer may serve as the regulatory theme for the decade: "Like drift-net fishing, the Connecticut legislature intended its cast to be wide and deep so that it might cover all business opportunities, not just those of unscrupulous operators promising the miracle of millions for an hour's worth of work."

#### A NEW WORLD

The lesson of the 1990s for the business opportunity community is clear: The days of skating by business opportunity regulation are over. As state and federal enforcers monitor trade shows and newspaper advertising, and as states and business opportunity buyers wake up to the power of these laws, the world of business opportunities will soon resemble its well-regulated franchising cousin. Compliance, presale disclosure, registration, bonding and lawsuits will become the rule for business opportunity sellers in this decade and not the rare exceptions they were in the 1980s.

You read it here first. ■

*Andrew A. Caffey is a partner in the Washington, DC, office of Venable, Baetjer, Howard & Civiletti, where he heads a national practice team specializing in distribution, franchising and business opportunity law.*

## JOIN THE WORLD'S LARGEST ALCOHOL BREATH ANALYZER NETWORK TODAY!

The Original is Still the Greatest! **CommuniDyne, Inc.** is:

- The **ONLY** Manufacturer Who Can Offer Bar Owners a 15% Liability Insurance Discount!
- The **ONLY** Manufacturer Who Offers 24 Hour Service!
- The **ONLY** Manufacturer with Complete Training Using Videos, Written Manuals and Annual Seminars.
- The **ONLY** Manufacturer with 6 Years of Constant Growth and Customer Satisfaction.



**Our C-2000 Generates Big Profits**

**Because IT TALKS!** • Voice Instructions • Voice Results • 24 Hour Service

### DEALERSHIPS AVAILABLE!

To place Computerized Breath Analyzers in top restaurants, night clubs and bars. Each machine can generate up to \$350.00 per week, while promoting customer awareness and reducing liability insurance.

### NO EXPERIENCE NEEDED!

• COMPLETE TRAINING • LEADS AVAILABLE • CASH BUSINESS

**MINIMUM INVESTMENT \$1,695**

**DEALERSHIPS ONLY \$4,485**

**FINANCING AVAILABLE\***

\*To applicants with approved credit.

**CALL TODAY FOR A SUCCESSFUL FUTURE! Toll Free: 1-800-637-8363**

Between 8:30am-5:00pm Mon.-Fri. Central Time Zone



**CommuniDyne**  
INCORPORATED

Manufacturer of Sobriety, Vision & Hearing Screeners.

636 ANTHONY TRAIL, NORTHBROOK, IL 60062  
708-498-2444 / FAX 708-498-6369