

- (2) Section 3253, Code of 1881 and RCW 63.24.020;
- (3) Section 3254, Code of 1881 and RCW 63.24.030;
- (4) Section 3255, Code of 1881 and RCW 63.24.040;
- (5) Section 3256, Code of 1881 and RCW 63.24.050;
- (6) Section 3257, Code of 1881 and RCW 63.24.060;
- (7) Section 3258, Code of 1881 and RCW 63.24.070;
- (8) Section 3259, Code of 1881 and RCW 63.24.080;
- (9) Section 3260, Code of 1881 and RCW 63.24.090;
- (10) Section 3261, Code of 1881 and RCW 63.24.100;
- (11) Section 3262, Code of 1881 and RCW 63.24.110;
- (12) Section 3263, Code of 1881 and RCW 63.24.120;
- (13) Section 3264, Code of 1881 and RCW 63.24.130; and
- (14) Section 3265, Code of 1881 and RCW 63.24.140.

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CHAPTER 155

[House Bill No. 341]

BUSINESS OPPORTUNITY FRAUD ACT

AN ACT Relating to business opportunities fraud; creating a new chapter in Title 19 RCW; defining crimes; prescribing penalties; making an appropriation; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature finds and declares that the widespread and unregulated sale of business opportunities has become a common area of investment problems and deceptive practices in the state of Washington. As a result, the provisions of this chapter are necessary to counteract the potential negative impact of the sale of business opportunities upon the economy of the state.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Business opportunity" means the sale or lease of any product, equipment, supply, or service which is sold or leased to enable the purchaser to start a business; and:

(a) The seller represents that the seller will provide locations or assist the purchaser in finding locations, on premises neither owned nor leased by the purchaser or seller, for the use or operation of vending machines, display racks, cases, or similar devices or coin-operated amusement machines or similar devices; or

(b) The seller represents that the seller will purchase any product made, produced, fabricated, assembled, modified, grown, or bred by the purchaser using, in whole or part, any product, equipment, supply, or service sold or leased to the purchaser by the seller; or

(c) The seller guarantees that the purchaser will earn an income greater than or equal to the price paid for the business opportunity; or

(d) The seller represents that if the purchaser pays a fee exceeding three hundred dollars directly or indirectly for the purpose of the seller providing a sales or marketing program, the seller will provide such a program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

(2) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

(3) "Seller" means a person who sells or leases a business opportunity.

(4) "Purchaser" means a person who buys or leases a business opportunity.

(5) "Director" means the director of the department of licensing.

(6) "Guarantee" means an undertaking by the seller to refund all or a portion of the purchase price paid for the business opportunity.

NEW SECTION. Sec. 3. (1) An offer to sell or offer to lease a business opportunity occurs in Washington when:

(a) The offer is made in Washington; or

(b) The purchaser resides in Washington at the time of the offer and the business opportunity is or will be located, in whole or in part, in the state of Washington; or

(c) The offer originates from Washington; or

(d) The business opportunity is or will be, in whole or in part, located in Washington.

(2) An offer does not occur in Washington if a seller advertises only in a newspaper having more than two-thirds of its circulation outside the state of Washington, or on a radio or television program originating outside the state and does not sell or lease business opportunities in Washington.

(3) A sale or lease of a business opportunity occurs in Washington when:

(a) The sale or lease is made in Washington; or

(b) The purchaser resides in Washington at the time of the sale or lease, and the business opportunity is or will be located, in whole or in part, in Washington; or

(c) The business opportunity is or will be located in Washington.

NEW SECTION. Sec. 4. Nothing in this chapter applies to:

(1) A radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter;

- (2) A franchise subject to the provisions of chapter 19.100 RCW;
- (3) A security subject to the provisions of chapter 21.20 RCW;
- (4) A newspaper distribution system;
- (5) The sale, lease, or transfer of a business opportunity by a purchaser if the purchaser sells only one business opportunity in any twelve-month period;
- (6) The not-for-profit sale of sales demonstration equipment, materials, or samples where the total cost does not exceed five hundred dollars;
- (7) A marketing program made in conjunction with licensing of a registered trademark or service mark for which no consideration is paid. Any consideration paid in conjunction with the purchase of goods at a bona fide wholesale price does not constitute consideration under this subsection; or
- (8) A transaction regulated pursuant to chapter 18.85 RCW.

NEW SECTION. Sec. 5. (1) Any person who proposes to sell or lease a business opportunity must register prior to advertising, soliciting, or making any offer, sale, or lease in this state.

(2) Any person proposing to sell or lease a business opportunity must apply for registration by filing with the director:

- (a) A copy of the disclosure document required by section 7 of this act;
- (b) An irrevocable consent to service of process;
- (c) The prescribed registration fee; and
- (d) Copies of all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(3) If the application meets the requirements for registration, the director shall issue a registration number to the applicant. The applicant must include the number in every advertisement in this state.

(4) Registration is effective for one year. An applicant must renew registration annually unless the director extends the duration of registration in order to stagger renewal periods. The renewal application must contain:

- (a) Any new information necessary to comply with the disclosure requirements of section 7 of this act;
- (b) The prescribed renewal fee; and
- (c) Copies of any and all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(5) The applicant must amend the registration whenever there is any material change in the required information.

(6) The applicant must file copies of all advertisements offering business opportunities seven days before their intended use.

(7) The director may issue an order denying, suspending, or revoking any applicant's registration if the director finds that the order is in the public interest and that:

- (a) The registration application is incomplete or contains any statement which is false or misleading with respect to any material fact; or

(b) Any provision of this chapter or any rule or order lawfully imposed under this chapter has been violated; or

(c) The business opportunity includes or would include activities which are illegal; or

(d) The business opportunity has worked or tended to work a fraud on purchasers or would so operate.

(8) The director shall promptly notify the applicant of any order denying, suspending, or revoking registration. The applicant may request a hearing within fifteen days of notification. If the applicant does not request a hearing, the order remains in effect until the director modifies or vacates it. The applicant shall be notified of the right to request a hearing within fifteen days.

NEW SECTION. Sec. 6. The director shall charge and collect the fees specified by this section. All fees are nonrefundable and shall be deposited in the state treasury.

(1) The registration fee is two hundred dollars.

(2) The renewal fee is one hundred twenty-five dollars.

(3) The amendment fee is thirty dollars.

NEW SECTION. Sec. 7. The seller shall provide the purchaser a written disclosure document at least forty-eight hours before the purchaser signs a business opportunity contract. The cover sheet of the disclosure document shall be entitled: "DISCLOSURES REQUIRED BY THE STATE OF WASHINGTON." The following statement shall appear under the title: "The state of Washington has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract." The cover sheet shall contain only the required title and statement, and both shall be in at least ten point type. The disclosure document shall include at least the following information:

(1) The official name, address, and principal place of business of the seller and of any parent or affiliated company, or any predecessors;

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons responsible for the seller's business opportunity activities;

(3) A statement disclosing which, if any, of the persons listed in subsections (1) or (2) of this section:

(a) Has, at any time during the previous ten years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(b) Has, at any time during the previous ten years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil

action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or any civil action which was brought by a present or former purchaser or purchasers and which involves or involved the business opportunity;

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

The statement shall include the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of settlement or the terms of the order, and the date, nature, terms, and conditions of each such order or ruling;

(4) A statement disclosing which, if any, of the persons listed in subsections (1) and (2) of this section has, at any time during the previous ten years:

(a) Filed in bankruptcy; or

(b) Been adjudged bankrupt; or

(c) Been reorganized due to insolvency; or

(d) Been a principal, director, executive officer, or partner of any other person who has filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency;

(5) A statement of when, where, and how long the seller has:

(a) Offered, sold, or leased business opportunity plans; and

(b) Offered, sold, or leased the specific business opportunity plan offered to the purchaser; and

(c) Operated a business of the type offered to the purchaser;

(6) A statement disclosing:

(a) The total number of business opportunities which the seller has sold or leased; and

(b) The number of failures of business opportunities which the seller has sold or leased;

(7) The terms and conditions of payment, including the initial payment, downpayment, and any additional or recurring payments;

(8) A copy of any statement concerning estimated or projected sales or earnings, the data on which the estimations or projections are based, and an explanation of the extent to which the data relates to the actual operations of the business opportunity offered to the purchaser;

(9) A copy of the bond or written notice of the depository, the name of the trustee, and account number of the trust account, if the seller is required by section 10 of this act to establish either a bond or trust account;

(10) A copy of the seller's current (not more than three months old) financial statement and any amendments necessary to reflect material changes in the seller's financial condition;

(11) An unexecuted copy of any business opportunity contract or agreement which the purchaser may be required to sign;

(12) Any additional information which the director requires by rule or order.

NEW SECTION. Sec. 8. The director may, by rule or order:

(1) Accept any disclosure document filed with agencies of the United States or any other state; or

(2) Accept any disclosure document compiled in accordance with any rule or regulation of any agency of the United States or any other state; or

(3) Waive disclosure of information which is inapplicable or unnecessary for protection of purchasers.

NEW SECTION. Sec. 9. Every person who proposes to sell or lease a business opportunity in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

NEW SECTION. Sec. 10. (1) If the seller makes any guarantee described in section 2(1)(c) of this act, the seller shall have a surety bond issued by a surety company authorized to do business in Washington or a trust account with a licensed and insured bank or savings institution located in the state of Washington. The trustee shall be acceptable to the director. The bond or the trust account shall be at least fifty thousand dollars. The

director may, by rule or order, establish procedures for the initiation, operation, or termination of any bond or trust account required under this section.

(2) The bond or trust account shall be in the name of the state of Washington. It shall be for the benefit of the state and any person injured by any violation of this chapter, or by the seller's breach of any business opportunity contract or obligation arising from a business opportunity contract. The state may bring an action against the bond or trust account to recover penalties. The state or an injured person may bring an action against the bond or trust account for damages to the injured person. The liability of the surety or trustee shall be only for actual damages and shall not exceed the amount of the bond or trust account.

NEW SECTION. Sec. 11. (1) Every business opportunity contract shall be in writing and shall be dated and signed by the purchaser.

(2) The seller shall provide the purchaser with a copy of the completed contract at the time the purchaser signs the contract.

(3) The seller may not receive any consideration before the purchaser signs a business opportunity contract.

(4) The contract shall include the following notifications, in ten point type, immediately above the space for the purchaser's signature:

(a) "Do not sign this contract if any of the spaces for agreed terms are blank."

(b) "Do not sign this contract unless you received a written disclosure document from the seller at least forty-eight hours before signing."

(c) "You are entitled to a copy of this contract at the time you sign it."

(d) "You have seven days exclusive of Saturday, Sunday, and holidays to cancel this contract for any reason by sending written notice to the seller by certified mail, return receipt requested. Notice of cancellation should be mailed to:

.....
(seller's name and business street address)

The notice must be postmarked before midnight of the seventh day exclusive of Saturday, Sunday, and holidays after you sign the contract.

The seller shall return all deposits and payments within ten days after receipt of your cancellation notice.

You must make available to the seller all equipment, products, and supplies provided by the seller within ten days after receipt of all refunded deposits and payments."

NEW SECTION. Sec. 12. It is unlawful for any person:

(1) To make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

(2) To employ any device, scheme, or artifice to defraud; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

(5) To knowingly violate any rule or order of the director.

NEW SECTION. Sec. 13. Any seller who violates any provision of this chapter is liable to the purchaser. The purchaser may sue for actual damages, or an injunction, or rescission, or other relief.

In addition, the purchaser may sue for costs of suit, including a reasonable attorney's fee. The court may increase the amount of damages awarded up to three times the amount of actual damages.

NEW SECTION. Sec. 14. The director may make public or private investigations within or outside the state of Washington to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter. The director, or any officer designated by the director, may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant to the inquiry.

If any person fails to comply with a lawful subpoena, or refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt.

NEW SECTION. Sec. 15. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order to cease and desist pending the hearing. The temporary order shall remain in effect until ten days after the hearing. If a person does not request a hearing within fifteen days of receiving an order to cease and desist, the order becomes final. Any person who is named in the order to cease and desist shall be notified of the right to request a hearing within fifteen days.

NEW SECTION. Sec. 16. (1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or

personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

(4) Any person who violates section 5 or 7 of this act is guilty of a gross misdemeanor. Any person who knowingly violates section 5 or 7 of this act is guilty of a class B felony. Any violation of section 12 of this act is a class B felony. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

(5) The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by chapter ... (Substitute Senate Bill No. 3640), Laws of 1981 may, with or without such reference, institute appropriate criminal proceedings.

NEW SECTION. Sec. 17. The director may make, amend, and repeal rules, forms, and orders as necessary to carry out the provisions of this chapter. The director may honor requests for interpretive opinions.

NEW SECTION. Sec. 18. The director shall appoint a competent person to administer this chapter. The director shall delegate to an administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator will hold office at the pleasure of the director.

NEW SECTION. Sec. 19. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law.

NEW SECTION. Sec. 20. Any violation of this chapter is declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 22. This chapter may be known and cited as the Business Opportunity Fraud Act.

NEW SECTION. Sec. 23. Sections 1 through 22 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 24. There is appropriated to the department of licensing from the general fund, the sum of one hundred thirty-seven thousand dollars, or so much thereof as may be necessary, to carry out the purposes of this act.

NEW SECTION. Sec. 25. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981.

Passed the House April 26, 1981.

Passed the Senate April 26, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 156

[Substitute House Bill No. 324]

INTEREST RATES FOR GOVERNMENT FINANCES

AN ACT Relating to interest rates concerning government finances; amending section 16, chapter 153, Laws of 1957 and RCW 17.28.160; reenacting section 35.45.150, chapter 7, Laws of 1965 as amended by section 37, chapter 56, Laws of 1970 ex. sess. and by section 2, chapter 93, Laws of 1970 ex. sess. and RCW 35.45.150; amending section 35.55.100, chapter 7, Laws of 1965 and RCW 35.55.100; amending section 35.55.110, chapter 7, Laws of 1965 and RCW 35.55.110; amending section 35.55.120, chapter 7, Laws of 1965 and RCW 35.55.120; amending section 35.56.110, chapter 7, Laws of 1965 and RCW 35.56.110; amending section 35.56.120, chapter 7, Laws of 1965 and RCW 35.56.120; amending section 35.56.130, chapter 7, Laws of 1965 and RCW 35.56.130; amending section 35.73.060, chapter 7, Laws of 1965 as amended by section 1, chapter 30, Laws of 1979 ex. sess. and RCW 35.73.060; amending section 36.67.040, chapter 4, Laws of 1963 as last amended by section 1, chapter 145, Laws of 1980 and RCW 36.67.040; amending section 36.88.140, chapter 4, Laws of 1963 as amended by section 3, chapter 66, Laws of 1970 ex. sess. and RCW 36.88.140; amending section 36.88.230, chapter 4, Laws of 1963 and RCW 36.88.230; amending section 7, chapter 194, Laws of 1967 and RCW 36.88.470; amending section 3, chapter 151, Laws of 1923 as last amended by section 58, chapter 56, Laws of 1970 ex. sess. and RCW 39.44.030; amending section 3, chapter 80, Laws of 1899 as amended by section 1, chapter 88, Laws of 1971 ex. sess. and RCW 39.56.010; amending section 5, chapter 80, Laws of 1899 and RCW 39.56.030; amending section 4, chapter 7, Laws of 1941 and RCW 53.43.040; amending section 9, chapter 390, Laws of 1955 as amended by section 60, chapter 195, Laws of 1973 1st ex. sess. and RCW 54.16.080; amending section 3, chapter 150, Laws of 1957 and RCW 54.24.220; amending section 1, chapter 82, Laws of 1935 as amended by section 1, chapter 102, Laws of 1937 and RCW 57.20.030; amending section 2, chapter 69, Laws of 1925 ex.