

HB

393

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 1, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 4.5.02

The JUDICIARY Committee considered:

HB 393

HOUSE BILL NO. 393

SALES OF BUSINESS OPPORTUNITIES

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

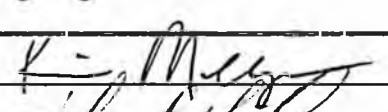
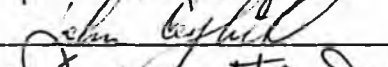
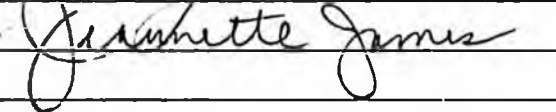
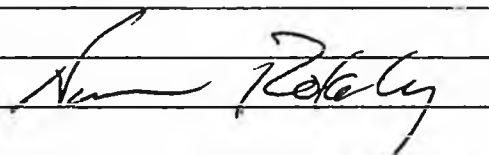
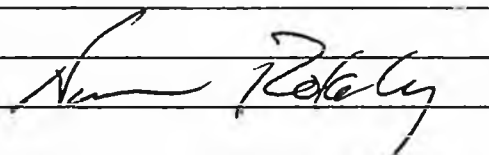
Recommends it be replaced with H CS FOR HB 393 (JUD) [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev. for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LAA
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	✓			
	Coghill			✓	
	JAMES			✓	
Chair: 	Rotalo				✓
Chair: 	Rotalo				✓

*Adopted as Amended
4.5.02*

22-LS1356J
Bannister
4/3/02

CS FOR HOUSE BILL NO. 393(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to unfair and deceptive trade practices and to the sale of business**
2 **opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:
6 (AAA) receipts of fees for registration and renewal of
7 registration for the sale of business opportunities under AS 45.66.040.

8 *** Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:
9 (43) violating AS 45.66 (sale of business opportunities).

10 *** Sec. 3.** AS 45 is amended by adding a new chapter to read:

Chapter 66. Sale of Business Opportunities.

11 **Sec. 45.66.010. Registration required.** A person may not sell or offer to sell
12 a business opportunity unless the person is registered as a seller with the department at
13 least 30 days before the sale or offer to sell begins and has paid the fee required by
14

1 AS 45.66.040.

2 **Sec. 45.66.020. Registration procedure.** (a) To register under
3 AS 45.66.010, a person shall file with the department

4 (1) the disclosure statement required by AS 45.66.080 and any
5 advertising, pamphlets, brochures, or other materials to be used in the offering or
6 promoting of the business opportunity;

7 (2) the bond required by AS 45.66.060;

8 (3) an irrevocable consent appointing the department as the person's
9 agent for the receipt of service of process in a court action or other proceeding against
10 the person, or the successor in interest of the person, for a violation of this chapter;

11 (4) a completed application form that satisfies (b) of this section;

12 (5) a signed statement that the person has read and will comply with
13 this chapter and the regulations adopted under it;

14 (6) the fee required by AS 45.66.040; and

15 (7) other information requested by the department to evaluate whether
16 the person meets the requirements of this chapter.

17 (b) The department shall establish by regulation, the application forms for
18 registrations under this chapter. The application forms must require the submission of
19 the following information:

20 (1) the nature of the business opportunity and the method by which it
21 will be offered, advertised, or promoted;

22 (2) the identity and business practices of the person who will be the
23 seller, including information on a related person; and

24 (3) a disclosure of criminal convictions, civil judgments, orders,
25 consent decrees, and administrative determinations involving allegations of

26 (A) fraud, theft, embezzlement, fraudulent conversion,
27 misappropriation of property, the use of untrue or misleading representations in
28 an attempt to sell or dispose of real or personal property, violations of this
29 chapter, violations of AS 45.63 (telephonic solicitations), violations of
30 AS 45.68 (charitable solicitations), or unfair or deceptive business practices
31 under AS 45.50.471 - 45.50.561, or a substantially similar law of another

1 jurisdiction, by the person who will be the seller or by a related person; or

2 (B) a violation of securities or investment laws by the person
3 who will be the seller or by a related person.

4 (c) Registration under AS 45.66.010 or renewal under AS 45.66.030 is not
5 complete until the person or seller receives an acknowledgment from the department
6 that the person or seller has complied with (a) of this section or AS 45.66.030, as
7 applicable.

8 (d) In this section, "related person" means an owner, employee, agent, or
9 officer of the business opportunity being sold, or a person affiliated with the person
10 who will be the seller of the business opportunity.

11 **Sec. 45.66.030. Renewal of registration.** If a seller continues to sell or offer
12 to sell a business opportunity for more than one year from the date of the department's
13 acknowledgment of the initial registration under this chapter, the seller shall renew the
14 registration each year that the sale or offer to sell continues by filing, before or on the
15 anniversary date of the department's acknowledgment under AS 45.66.020(c), a
16 renewal application, on a form established by the department by regulation, requiring
17 information that is similar to the information required under AS 45.66.020.

18 **Sec. 45.66.040. Registration and renewal fees.** (a) As part of the
19 registration procedure set out in AS 45.66.020(a), a person shall pay a nonrefundable
20 registration fee to the department. With a renewal application, the seller shall pay a
21 nonrefundable renewal fee. The department shall establish the amount of the
22 registration fee and the renewal fee by regulation.

23 (b) Under AS 37.05.146(b), registration and renewal fees collected under this
24 chapter shall be accounted for separately, and appropriations from the account are not
25 made from the unrestricted general fund.

26 **Sec. 45.66.050. Material changes in registration information.** If there is a
27 material change in the information provided under AS 45.66.020 or 45.66.030, the
28 seller shall, within 10 days after the change, file with the department a statement
29 describing the change on a form established by the department by regulation.

30 **Sec. 45.66.060. Surety bond required.** (a) A person registering as a seller
31 shall obtain a surety bond in the amount of \$75,000 issued by a surety company

1 authorized to do business in the state. The bond must be in favor of the state for the
2 benefit of a buyer and must satisfy the conditions established by the department by
3 regulation.

4 (b) If the department finds that the amount of the bond set by (a) of this
5 section is insufficient to protect the public interest, the department may by regulation
6 increase the amount of the bond.

7 **Sec. 45.66.070. Location of offer and sale.** This chapter applies to a sale of,
8 or an offer to sell, a business opportunity if

9 (1) the offer, regardless of whether either party is then present in this
10 state, originates in this state, or is directed by the offeror to this state and received at
11 the place to which the offer is directed, including a post office box; this paragraph
12 does not include an offer that

13 (A) appears in a bona fide newspaper or other publication of
14 general circulation that is not published in this state or that is published in this
15 state but more than two-thirds of its circulation was outside this state during
16 the 12 months preceding the offer; or

17 (B) is made on a radio or television program that originates
18 outside this state and is received in this state;

19 (2) the acceptance

20 (A) has not been previously communicated, orally or in
21 writing, to the offeror outside this state;

22 (B) is communicated to the offeror in this state, regardless of
23 whether the seller or buyer is then present in this state, and the offeree
24 reasonably believes that the offeror is located in this state; and

25 (C) is received at the place to which it was directed, including a
26 post office box; or

27 (3) the buyer is domiciled in this state and the business opportunity is
28 or will be operated in this state.

29 **Sec. 45.66.080. Disclosure requirements.** (a) At least 10 days before a
30 buyer signs the contract required by AS 45.66.090, or at least 10 days before receipt of
31 any consideration by the seller, whichever event occurs first, the seller shall give the

1 buyer the written disclosure statement described in (b) of this section, require the
2 buyer to sign a receipt containing the buyer's name and the date on which the buyer
3 received the disclosure statement, and give the buyer the original receipt with the
4 buyer's original signature. The seller shall retain a copy of the receipt.

5 (b) The department shall specify by regulation the form and content of the
6 disclosure statement required by (a) of this section, including

7 (1) the seller's name, type of business organization, address, and name
8 of any parent or affiliated company related to the transaction;

9 (2) the names, addresses, and other relevant information regarding the
10 owners, officers, directors, and other persons responsible for the seller's business
11 activities related to the contract;

12 (3) the business history of the seller and the seller's representatives and
13 the background of the seller and the seller's representatives that relates to business
14 opportunities;

15 (4) the total contract amount to be paid by the buyer and the schedule
16 of payments;

17 (5) the financial condition of the seller, including audits and recent
18 income statements;

19 (6) a complete description of the services that the seller will perform
20 for the buyer, including training;

21 (7) the history of the seller's registration or attempted registration in
22 this or another state as a seller of business opportunities;

23 (8) a history of civil actions, criminal actions, and consumer protection
24 complaints as described in AS 45.66.020(b)(3) brought against the seller or the seller's
25 representatives related to the sale of business opportunities and the resolution of the
26 actions and complaints in this state or another jurisdiction;

27 (9) identification of any bankruptcy actions filed in court by the seller
28 and the resolution of the actions;

29 (10) if the seller makes a statement about potential earnings that can be
30 made through a business opportunity, the basis for the statement and the economic
31 risks associated with the business opportunity;

1 (11) the rights and obligations of the seller and buyer regarding
2 termination of the contract, including the rights arising out of the bond required by
3 AS 45.66.060; and

4 (12) any additional information that the department determines by
5 regulation is reasonable and in the public interest for the seller to provide in order to
6 make a complete disclosure concerning the contract.

7 **Sec. 45.66.090. Written contract required.** (a) In addition to the other
8 requirements of this chapter, a person may not contract to sell a business opportunity
9 unless the contract is in writing and the seller gives a copy of the contract to the buyer
10 when the buyer signs the contract.

11 (b) The department shall establish by regulation the content and format of the
12 information that must be contained in the contract. At a minimum, the contract must
13 contain

14 (1) the payment terms, including any escrow account required under
15 AS 45.66.100;

16 (2) the name, address, and telephone number of the seller, the seller's
17 agent, and each supplier of products, equipment, or supplies that the seller is to deliver
18 to the buyer;

19 (3) a statement of the form of the seller's business organization;

20 (4) a description of services, including any training services, that the
21 seller is to provide to the buyer;

22 (5) the delivery date of the product, equipment, or supplies being sold
23 or leased;

24 (6) if the seller has represented that there is a buy-back agreement for
25 the business opportunity or that payments are protected or secured, a complete
26 description of those provisions;

27 (7) a statement of the buyer's right to cancel, the circumstances under
28 which cancellation is authorized, and the procedure for cancellation and refunds; and

29 (8) any other terms that the department determines are necessary to
30 protect the public interest.

31 **Sec. 45.66.100. Restrictions on down payments.** (a) A seller may not

1 require a buyer to pay as a down payment more than 20 percent of the initial payment
2 unless the excess above the 20 percent is placed in an escrow account that meets the
3 requirements of AS 45.66.110.

4 (b) In this section,

5 (1) "down payment" means that portion of the initial payment that the
6 buyer is obligated to pay to the seller before or at the time the products, equipment,
7 supplies, or services are delivered, but does not include any amount that is financed by
8 or for which financing is to be obtained by the seller or that results from financing that
9 the seller assists the buyer to obtain;

10 (2) "initial payment" means

11 (A) the total amount that a buyer is obligated to pay under the
12 terms of the contract before or at the time the equipment, supplies, products, or
13 services are delivered or within six months after the buyer commences
14 operation of the business opportunity; or

15 (B) the entire sale price if the contract sets out a specific total
16 sale price for the purchase of the business opportunity and the total price is to
17 be paid partially as a down payment and then in specific monthly payments or
18 a subsequent lump sum payment.

19 **Sec. 45.66.110. Escrow account requirements.** (a) The holder of an escrow
20 account required by AS 45.66.100 must be a person who is independent from the
21 seller, and the escrow account holder may not make direct disbursements from the
22 escrow account except as provided in (c) and (d) of this section.

23 (b) A seller who establishes an escrow account required by AS 45.66.100 shall
24 provide to the escrow account holder a copy of the signed contract between the buyer
25 and the seller. The seller shall promptly report to the department the following
26 information:

27 (1) the name and address of the escrow account holder;

28 (2) the name and address of the financial institution, including the
29 branch, where the escrow account is located; and

30 (3) the escrow account number.

31 (c) Except as provided in (d) of this section or under AS 45.66.120, money

1 placed in an escrow account required by AS 45.66.100 may not be released until 30
2 days have passed since the buyer signed the contract and the buyer notifies the escrow
3 account holder in writing that the products, equipment, supplies, or services required
4 by the contract have been delivered within the time set in the contract between the
5 buyer and seller. The buyer shall notify the escrow account holder of a timely
6 delivery within 10 business days after delivery.

7 (d) Upon notification by the buyer that the contract has been cancelled under
8 AS 45.66.130, the escrow account holder shall release the money held in the escrow
9 account to the buyer.

10 **Sec. 45.66.120. Actions for claims against escrow account.** (a) A buyer
11 who has a claim against an escrow account required by AS 45.66.100 may bring a
12 civil action against the seller or escrow account holder to recover money from the
13 escrow account.

14 (b) Upon the filing of an action brought under this section, the clerk of the
15 court shall mail a copy of the complaint to the attorney general and, upon entry of an
16 order or judgment in the action, shall mail a copy of the order or judgment to the
17 attorney general.

18 (c) A person may not begin an action under this section more than two years
19 after the person discovers or reasonably should have discovered the basis for the
20 claim.

21 (d) The escrow account holder is not liable for the amount by which claims or
22 damages caused by the seller exceed the amount of the escrow account.

23 **Sec. 45.66.130. Cancellation of contract.** (a) A buyer may cancel a contract
24 for any reason if the buyer gives notice of the cancellation to the seller within 30 days
25 after signing the contract.

26 (b) In addition to the right to cancel under (a) of this section, a buyer may
27 cancel the contract at any time if the seller

28 (1) failed to comply with AS 45.66.080 or 45.66.090;

29 (2) used untrue, misleading, incomplete, or deceptive statements in any
30 aspect of advertising, promoting, selling, or offering to sell a business opportunity;

31 (3) fails, within 30 days after the delivery date specified in the

1 contract, to deliver the products, equipment, supplies, or services required under the
2 contract to begin substantial operation of the business to be started under the contract;
3 or

4 (4) fails to provide a location for the business to be started under the
5 contract if the contract requires the seller to provide a location.

6 (c) If provided by mail, the buyer's notice of cancellation is effective when it
7 is deposited in the mail properly addressed to the seller with postage prepaid.

8 (d) The notice of cancellation is not required to have a particular form. The
9 notice is sufficient if it indicates in writing the intention of the buyer not to be bound
10 by the contract.

11 (e) Within 15 days after the date the buyer gives a notice of cancellation under
12 this section, the seller shall refund to the buyer any payments, including payments for
13 shipping costs, made by the buyer and terminate all financial obligations of the buyer
14 under the contract. Within five days after receiving the refund, the buyer shall make
15 available to the seller, at a reasonable time and place, any products, equipment, or
16 supplies delivered by the seller.

17 **Sec. 45.66.140. Prohibited representations.** (a) A person may not state that
18 the person is registered as a seller under this chapter unless the person has complied
19 with the registration or renewal requirements, as applicable, of this chapter.

20 (b) Unless the seller is asked for the information by the buyer, a seller may not
21 state or imply that the seller has a license, consent, or other form of permission from
22 the state to sell business opportunities in this state.

23 (c) A seller may not make, or cause to be made, a representation that is
24 inconsistent with AS 45.66.160.

25 (d) A seller may not state or imply that the seller's compliance with the laws of
26 this state or a municipality constitutes approval or endorsement of the seller by the
27 state or municipality.

28 **Sec. 45.66.150. Untrue statements or omissions.** A person may not, in
29 connection with a sale of or an offer to sell a business opportunity subject to
30 registration under this chapter, directly or indirectly make an untrue statement of
31 material fact in the registration information required in or under AS 45.66.020 -

1 45.66.050 or in other written or oral communications, including the disclosure
2 required by AS 45.66.080 and in advertising related to the sale or offer, or omit to
3 state a material fact necessary, in light of the circumstances under which it is made, to
4 avoid a statement being misleading.

5 **Sec. 45.66.160. Unwarranted conclusions.** (a) Acknowledgment of
6 registration by the department under AS 45.66.020(c) does not constitute a finding by
7 the department that a document filed with the department under this chapter is true,
8 complete, or not misleading.

9 (b) Acknowledgment of registration by the department under AS 45.66.020(c)
10 does not mean that the department has evaluated the merits or qualifications of the
11 seller or business opportunity, or that the department recommends or approves a seller
12 or the business opportunity.

13 (c) Availability of an exemption under AS 45.66.220 for a seller does not
14 mean that the department recommends or approves the seller or the business
15 opportunity.

16 **Sec. 45.66.170. Waiver prohibited and void.** A seller may not request or
17 obtain from a buyer a waiver of the rights or defenses of the buyer under this chapter.
18 A waiver of the rights or defenses of the buyer under this chapter is void.

19 **Sec. 45.66.180. Seller's records and files.** (a) A seller shall maintain a
20 complete set of records relating to the advertising and promotion of the seller's
21 business opportunity for five years and allow the department to inspect and copy them
22 during reasonable business hours.

23 (b) A seller shall keep all documents relating to a contract entered into by the
24 seller for five years after the date the contract is entered into.

25 **Sec. 45.66.190. Public records.** Except for testimony and records related to
26 an investigation by the department under this chapter, the registration application
27 form, registration renewal form, disclosure statement, bond, contract, and other
28 documents required to be prepared or filed with the department under this chapter,
29 including a document created or obtained by the department under AS 45.66.200, are
30 public records available for public inspection and copying under AS 40.25.110 -
31 40.25.220.

1 **Sec. 45.66.200. Denial, suspension, or revocation of registration.** (a)

2 Subject to the other requirements of this section and after reviewing a response
3 submitted by the person under (b) of this section, the department may issue an order
4 denying, suspending, or revoking a registration or renewal of a registration made by a
5 person under AS 45.66.010 - 45.66.030, or prohibiting a person from selling or
6 offering to sell business opportunities, if the department finds that

7 (1) the person failed to comply with this chapter or the regulations
8 adopted under this chapter;

9 (2) the sale of or offer to sell would constitute, or has constituted, a
10 misrepresentation of, deceit of, or fraud on the buyer;

11 (3) the nature of the person's business enterprise or method of
12 business, or the nature or method of the business opportunity, includes activities that
13 are illegal where performed;

14 (4) the person failed to file a document, information, fee, or bond
15 required by AS 45.66.010 - 45.66.060;

16 (5) the literature or advertising of the person, or of another person
17 recommended by the person, is misleading, incorrect, materially incomplete, or
18 deceptive;

19 (6) a person identified in the registration represents an unreasonable
20 risk to the public interest and

21 (A) has been convicted of

22 (i) a felony or misdemeanor involving fraud, theft,
23 embezzlement, fraudulent conversion, misappropriation of property, or
24 the use of untrue or misleading representations in the sale of or offer to
25 sell or otherwise dispose of real or personal property;

26 (ii) violations under this chapter, violations of AS 45.63
27 (telephonic solicitations), violations of AS 45.68 (charitable
28 solicitations), or an unfair trade practice prohibited by AS 45.50.471 -
29 45.50.561, or a substantially similar law of another jurisdiction; or

30 (iii) a violation of securities or investment laws;

31 (B) is subject to a final order or judgment against the person in

1 a civil or administrative action, including a stipulated order or judgment, if the
2 complaint or petition in the action alleged acts constituting

3 (i) a violation of this chapter or a substantially similar
4 law of another jurisdiction;

5 (ii) fraud, theft, embezzlement, fraudulent conversion,
6 or misappropriation of real or personal property;

7 (iii) the use of untrue or misleading representations in
8 an offer to sell or dispose of real or personal property;

9 (iv) the use of unfair trade practices under
10 AS 45.50.471 - 45.50.561 or a substantially similar law of another
11 jurisdiction;

12 (v) a violation of AS 45.63 or AS 45.68, or a
13 substantially similar law of another jurisdiction; or

14 (vi) a violation of securities or investment laws;

15 (C) is subject to an injunction relating to business activity if the
16 injunction resulted from an action brought by a federal, state, or local public
17 agency, including an action related to an occupational license under AS 08.

18 (b) Before issuing an order to a person under (a) of this section, the
19 department shall send by certified mail to the address set out in the person's
20 registration or renewal of registration a notice of intent to issue the order. In the
21 notice, the department shall provide the facts supporting the denial, suspension, or
22 revocation of the registration or renewal of the registration. The person may respond
23 to the notice by submitting a statement signed under penalty of perjury by the person
24 or by an owner or officer of the person.

25 **Sec. 45.66.210. Criminal penalties.** (a) A seller who recklessly violates
26 AS 45.66.010 - 45.66.060, 45.66.080 - 45.66.110, or 45.66.150 is guilty of a class C
27 felony.

28 (b) A seller who recklessly violates AS 45.66.130(e), 45.66.140, or 45.66.170
29 is guilty of a class A misdemeanor.

30 (c) Each violation is a separate offense and a prosecution or conviction for one
31 of the offenses does not bar prosecution or conviction of another offense.

1 (d) In this section, "recklessly" has the meaning given in AS 11.81.900.

2 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an
3 offer to sell

4 (1) a business opportunity if the total amount of the payments to be
5 made by the buyer under the contract is less than \$~~200~~²⁵⁰ *Conceptual*

6 (2) a franchise under 16 C.F.R. 436; *Amendment #1*

7 (3) an ongoing business operated by the seller that is to be sold in its
8 entirety;

9 (4) a business opportunity to an ongoing business if the seller will
10 provide products, equipment, supplies, or services that are to be sold by the buyer in
11 connection with the buyer's ongoing business;

12 (5) sales demonstration equipment, materials, or samples for use in
13 sales demonstrations and not for resale, or product inventory sold to the buyer at a
14 bona fide wholesale price;

15 (6) a business opportunity by an executor, an administrator, a marshal,
16 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
17 sale;

18 (7) a security registered under AS 45.55 or a security that is exempted
19 by AS 45.55.900 from registration under AS 45.55;

20 (8) a business opportunity if the sale or offer is made by a person
21 registered with the United States Securities and Exchange Commission when acting
22 within the scope of the person's Securities and Exchange Commission license or by a
23 person registered by the state under AS 45.55 when acting within the scope of
24 registration;

25 (9) a business opportunity by an issuer, or a subsidiary of an issuer, of
26 a class of securities that is

27 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of
28 1934); and

29 (B) registered under 15 U.S.C. 78a - 78lll (Securities Exchange
30 Act of 1934) unless exempt from registration under 15 U.S.C. 78l(g)(2)(A) -

31 (C) or (E) - (H);

1 (10) a business opportunity in which the buyer is

2 (A) a bank, savings and loan association, trust company,
3 insurance company, credit union, or investment company under 15 U.S.C. 80a-
4 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
5 or other financial institution or institutional buyer; or

6 (B) a broker-dealer registered under AS 45.55;

7 (11) a business opportunity that involves a marketing plan made in
8 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
9 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
10 as determined on the basis of the seller's most recent audited financial statement
11 prepared within 13 months of the first offer to sell in this state; net worth may be
12 determined on a consolidated basis if one person owns at least 80 percent of the seller
13 and that one person expressly guarantees the obligations of the seller that arise under
14 the sale or offer claimed to be exempt under this paragraph; or

15 (12) a business opportunity in which either the seller or the buyer is
16 licensed as a real estate broker, associate real estate broker, or real estate salesperson
17 under AS 08.88 and the sale or offer is regulated by AS 08.88.

18 **Sec. 45.66.230. Coordination with other laws.** (a) The rights and remedies
19 in this chapter are in addition to other legal rights and remedies available to a buyer or
20 the department.

21 (b) To the extent of the conflict, the provisions of this chapter govern if a sale
22 or an offer to sell a business opportunity is regulated by this chapter and by AS 45.63
23 (telephonic solicitations), by AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29
24 (Uniform Commercial Code), or by another law, and it is not possible to comply with
25 or to apply both this chapter and the other law.

26 **Sec. 45.66.240. Regulations.** The department may adopt regulations under
27 AS 44.62 (Administrative Procedure Act) to carry out the purposes of this chapter.

28 **Sec. 45.66.900. Definitions.** In this chapter, unless the context indicates
29 otherwise,

30 (1) "advertising" means a circular, a prospectus, an advertisement, or
31 other material or a communication by radio, television, pictures, or similar means used

1 in connection with a sale of or an offer to sell a business opportunity;

2 (2) "business opportunity" means an arrangement under which the
3 seller or a person recommended by the seller will provide to the buyer products,
4 equipment, supplies, or services enabling the buyer to start a business and under which
5 one or more of the following occurs or is to occur:

6 (A) the seller or a person recommended by the seller will
7 provide or assist the buyer in finding locations for the use or operation of
8 vending machines, racks, display cases, or other similar devices on premises
9 that are not owned or leased by the buyer or seller;

10 (B) the seller or a person recommended by the seller will
11 provide or assist the buyer in finding outlets or accounts for the buyer's
12 products or services;

13 (C) the seller or a person specified by the seller will purchase
14 any or all products made, produced, fabricated, grown, bred, or modified by
15 the buyer;

16 (D) the seller or a person specified by the seller will buy back
17 or is likely to buy back any products made, produced, fabricated, grown, bred,
18 or modified by the buyer using, in whole or in part, the product, supplies,
19 equipment, or services that were initially sold or offered for sale to the buyer
20 by the seller;

21 (E) the seller makes an oral or written representation that the
22 buyer will derive income from the business that will exceed the price paid to
23 the seller, and the representation would cause a reasonable person in the
24 buyer's position to believe the income is assured;

25 (F) the seller will refund all or part of the price paid to the
26 seller, or repurchase some or all of the products, equipment, or supplies
27 provided by the seller or a person recommended by the seller if the buyer is
28 dissatisfied with the business; or

29 (G) the seller will provide the buyer with a marketing plan;

30 (3) "buyer" means a person who is solicited to become obligated or
31 does become obligated on a contract;

- 1 (4) "contract" means an agreement relating to a business opportunity;
- 2 (5) "department" means the Department of Law;
- 3 (6) "equipment" includes machines, electrical devices, video or audio
4 devices, computer devices, molds, display racks, vending machines, coin-operated
5 game machines, machines that dispense products, and display units of all kinds;
- 6 (7) "marketing plan" means advice or training provided to the buyer by
7 the seller or a person recommended by the seller pertaining to the sale of products,
8 equipment, supplies, or services;
- 9 (8) "offer" or "offer to sell" means an attempt to sell a business
10 opportunity;
- 11 (9) "product" includes a tangible chattel, including food or living
12 animals, that the buyer intends to
- 13 (A) sell or lease;
- 14 (B) use to perform a service;
- 15 (C) resell or offer to resell to the seller; or
- 16 (D) provide or offer to provide to the seller, or to another
17 person whom the seller suggests the buyer contact, so that the seller or the
18 other person may assist the buyer, either directly or indirectly, to distribute,
19 sell, lease, or otherwise dispose of a product;
- 20 (10) "sale," regarding the sale of a business opportunity, means a
21 contract to sell, lease, or otherwise dispose of the business opportunity or an interest in
22 the business opportunity for value;
- 23 (11) "securities or investment laws" means AS 45.55 (Alaska
24 Securities Act) or a substantially similar statute of another jurisdiction, 15 U.S.C. 77a -
25 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange
26 Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of
27 1940/Investment Advisers Act of 1940);
- 28 (12) "sell," regarding the selling of a business opportunity, means to
29 sell, lease, or otherwise dispose of the business opportunity or an interest in the
30 business opportunity for value;
- 31 (13) "seller" means a person, or the person's agent, who sells or offers

1 to sell a business opportunity;

2 (14) "services" includes assistance, guidance, direction, work, labor, or
3 other act that may be provided by the seller in the initiation or maintenance of a
4 business;

5 (15) "supplies" includes materials used to produce, grow, breed,
6 fabricate, modify, develop, or make a product or other item.

7 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INDIRECT COURT RULE AMENDMENTS. The provisions of AS 45.66.120(b),
10 enacted by sec. 3 of this Act, have the effect of changing

11 (1) Rule 4, Alaska Rules of Civil Procedure, by requiring the clerk of the court
12 to mail a copy of the complaint to the attorney general when an action is filed under
13 AS 45.66.120, enacted by sec. 3 of this Act; and

14 (2) Rule 73, Alaska Rules of Civil Procedure, by requiring the clerk of the
15 court to mail a copy of an order or judgment in an action under AS 45.66.120, enacted by
16 sec. 3 of this Act, to the attorney general.

17 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION: REGISTRATION REGARDING EXISTING ACTIVITIES. (a)
20 Notwithstanding the registration requirements of AS 45.66.010 - 45.66.900, enacted by sec. 3
21 of this Act, a person who, on the day before the effective date of sec. 3 of this Act, is selling
22 or offering to sell a business opportunity may continue to sell or offer to sell a business
23 opportunity until the 45th day after the effective date of sec. 3 of this Act without being
24 registered as a seller under AS 45.66.010, enacted by sec. 3 of this Act. Beginning on the
25 46th day after the effective date of sec. 3 of this Act, a person described in this subsection
26 shall be registered as a seller under AS 45.66.010 in order to continue selling or offering to
27 sell a business opportunity.

28 (b) In this section,

29 (1) "business opportunity" has the meaning given in AS 45.66.900, enacted by
30 sec. 3 of this Act;

31 (2) "offer to sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of

1 this Act;

2 (3) "sell" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
3 Act;

4 (4) "seller" has the meaning given in AS 45.66.900, enacted by sec. 3 of this
5 Act.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **TRANSITION: REGULATIONS.** The Department of Law may proceed to adopt
9 regulations to implement AS 45.66.010 - 45.66.900, enacted by sec. 3 of this Act. The
10 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
11 effective date of sec. 3 of this Act.

12 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **CONDITIONAL EFFECT.** AS 45.66.120(b), enacted by sec. 3 of this Act, takes
15 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
16 art. IV, sec. 15, Constitution of the State of Alaska.

17 * **Sec. 8.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2002.

All
Amendments
rolled into a CS

AMENDMENT

1

OFFERED IN THE HOUSE

BY _____

TO: HB 393

Page 2, line 24:

Delete "and"

Page 3, line 2, following "person":

Delete "."

Insert "; and"

Page 3, following line 2:

Insert a new paragraph to read:

"(4) disclosures of criminal convictions, civil judgments, orders, consent decrees, and administrative determinations involving allegations of violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940)."

Page 11, line 15, following "property;":

Delete "or"

Page 11, line 19, following "jurisdiction;":

Insert "or"

Page 11, following line 19:

Insert a new sub-subparagraph to read:

"(iii) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78III (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940);"

Page 11, line 23, following "chapter":

Insert "or a law of another jurisdiction with substantially similar provisions"

Page 11, line 29:

Following "45.50.561":

Insert "or a law of another jurisdiction with substantially similar provisions"

Following ";"

Delete "or"

Page 11, line 30, following "AS 45.68":

Insert "or laws of another jurisdiction with substantially similar provisions"

Page 11, following line 30:

Insert a new sub-subparagraph to read:

"(vi) violations of AS 45.55 (securities laws) or a law of another jurisdiction with substantially similar provisions, or violations of 15 U.S.C. 77a - 77bbbb (Securities Exchange Act of 1933), 15 U.S.C. 78a - 78III (Securities Exchange Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of 1940); or"

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AMENDMENT # 2

OFFERED IN THE HOUSE BY _____
TO: HB 393

Page 7, line 17:
Delete "seller may not"
Insert "escrow account holder may not"

Page 7, line 18, following "(c)":
Insert "and (d)"

Page 7, line 19, following "shall":
Insert "provide to the escrow account holder a copy of the signed contract between the
buyer and the seller. The seller shall"

Page 7, line 25, following "provided":
Insert "in (d) of this section or"

Page 7, line 26, following "until":
Insert "30 days have passed since the buyer signed the contract and"

Page 7, line 27, following "escrow":
Insert "account"

Page 7, line 29, following "escrow":
Insert "account"

1

2 Page 7, following line 30:

3 Insert a new subsection to read:

4 "(d) Upon notification by the buyer that the contract has been cancelled under
5 AS 45.66.130, the escrow account holder shall release the money held in the escrow
6 account to the buyer."

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8 Page 8, line 11, following "escrow":

9 Insert "account"

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AMENDMENT

3

OFFERED IN THE HOUSE
TO: HB 393

BY _____

Page 13, line 3:

- Delete "regulated"
- Insert "registered"

Page 13, line 4:

- Delete "regulation"
- Insert "registration"

MEMORANDUM

State of Alaska Department of Law

TO: Representative Gary Stevens

DATE: March 7, 2002

THROUGH: 
Chrystal Smith
Special Assistant

FILE NO.:

TEL. NO.: 269-5103

SUBJECT: Amendments to HB 393

FROM: Cynthia C. Drinkwater
Assistant Attorney General
Fair Business Practice Section

This memorandum addresses the three subject areas covered by the proposed amendments to HB 393, disclosures of criminal and civil conduct, escrow accounts, and the exemption for securities.

Disclosures of criminal violations/civil judgments

We propose amending AS 45.66.020, the registration provision, to expand the requirements for information that sellers must disclose as part of the registration process. Currently, the bill provides that the application form must require the disclosure of criminal convictions, civil judgments and administrative determinations involving fraud, theft, misrepresentation, violations of certain Alaska laws and similar laws of other jurisdictions. The proposed subparagraph AS 45.66.020(b)(4) would require disclosure of convictions, judgments or administrative determinations involving violations of state or federal securities law. It is important to require disclosure of securities violations because it is not unusual for a fraudulent business opportunity seller to engage in scams that involve or are related to the sale of securities or other investments.

Similarly, securities law violations are the primary subject of the amendments proposed for AS 45.66.200 regarding denials, suspensions and revocations of registration. Under the current version, the department can deny, suspend, or revoke a registration, after providing notice and an opportunity for the seller to respond, if the department finds that there is an unreasonable risk to the public interest and the seller is the subject of certain criminal or civil judgments. The amendments would add securities violations to the list of criminal or civil offenses that could subject a seller to registration action. The other amendments to this section clarify that not only violations of certain Alaska laws, but violations of similar laws from other jurisdictions, will be considered in whether to take action on a registration.

Escrow accounts

We propose amending AS 45.66.110 regarding escrow accounts to clarify how money will be disbursed by the escrow account holder and to provide greater protection to a buyer during the 30 days following the signing of the contract. This is the period in which the buyer, under AS 45.66.130, may cancel a contract for any reason. The proposed language on page 7, line 30 would preserve the money held in escrow for the duration of this period so it would be available to the buyer if the buyer exercised the right to cancel within

Representative Gary Stevens
March 7, 2002
Page 2

that time. The language proposed for page 7, line 20 would require the seller to give a copy of the contract to the escrow account holder so that the escrow account holder will be able to determine when the 30-day period has run. The new paragraph (d) on page 7, line 30 allows the escrow account holder to release money to the buyer in the event of cancellation. Without this language, the buyer may have been required to file a claim under AS 45.66.120 in order to recover escrow funds following cancellation.

The securities exemption

We propose clarifying a term used in the exemption under AS 45.66.220(7) for securities registered or exempted from registration under AS 40.55, by replacing "regulated" and "regulation" with "registered" and "registration." This more narrow language makes clear that only securities that are in compliance with securities law are exempted from registration under the business opportunity law.

Enclosures: Proposed Amendments to HB 393
 HB 393 with proposed amendments engrossed

Alaska State Legislature

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Representative Gary Stevens BUSINESS OPPORTUNITIES BILL

Sponsor Statement – HB 393

This bill creates a new, comprehensive statute regulating the sale of business opportunities. Business opportunities, commonly referred to as “biz opps,” are prepackaged small business deals primarily targeted to novice entrepreneurs. Although some business opportunities offer consumers legitimate methods for earning income, the field is fraught with unfair and deceptive practices.

Typical business opportunities range from work-at-home schemes, like medical billing, to the sale of vending machines, ATMs, greeting card display racks and other products, to the sale of “900 numbers.” These deals are initially pitched to consumers through classified ads, over the Internet, and through “infomercials,” and potential buyers are subjected to high-pressure sales tactics. Unwary consumers are enticed by the promise of high earnings, which rarely materialize. According to the Federal Trade Commission, biz opp scams bilk consumers across the country of tens of millions of dollars each year.

With this bill, Alaska will join approximately half of the states in regulating the sale of business opportunities. Persons who want to sell or advertise business opportunities in Alaska would be required to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. Violators will be subject to civil and criminal penalties. The bill provides important consumer safeguards for entrepreneurial-minded Alaskans.

BUSINESS OPPORTUNITIES BILL

Sectional Analysis

***Sec. 1.** Amends AS 37.05.146(b)(4) to include receipts of fees for business opportunity registration and renewals as program receipts.

***Sec. 2.** Amends AS 45.50.471(b) to provide that a violation of the business opportunity statute is a violation of the Unfair Trade Practices and Consumer Protection Act.

***Sec. 3.** Amends AS 45 by creating a new chapter regulating the Sale of Business Opportunities.

***Sec. 45.66.010. Registration required.**

Prohibits a person from selling or offering to sell a business opportunity unless the person is registered with the department at least 30 days before selling or offering to sell a business opportunity.

***Sec. 45.66.020. Registration procedure.**

Requires that a person pay a registration fee and file certain documents in order to register with the department. The required documents include a copy of advertising materials, a disclosure statement to potential buyers, a surety bond, and a completed application form. The application form will require the seller to disclose the nature of the business opportunity and the method by which it will be advertised; the identity of the seller and owners or agents affiliated with the seller; and criminal convictions, civil judgments, and administrative determinations involving allegations of fraud, theft, and unfair trade practices.

***Sec. 45.66.030. Renewal of registration.**

Provides that a person must file a renewal application if the person sells or offers to sell a business opportunity for more than a year following the department's acknowledgment of registration.

***Sec. 45.66.040. Registration Fees.**

Requires that a seller pay a non-refundable fee to the department for a first-time application and a renewal fee for a renewal application. The amount of the fee will be established by regulation.

***Sec. 45.66.050. Material changes in registration information.**

Requires the reporting of any material changes to the application within 10 days of the change.

***Sec. 45.66.060. Surety bond required.**

Requires a business opportunity seller to post a surety bond in the amount of \$75,000 in order to do business in the state.

***Sec. 45.66.070. Location of offer and sale.**

Provides that the statute applies to a sale or offer to sell a business opportunity if the seller directs the offer to residents of this state, if the offer originates in this state, or if the buyer will operate the business opportunity in this state.

***Sec. 45.66.080. Disclosure requirements.**

Establishes that at least 10 days before the buyer signs the contract, the seller shall give the buyer a written disclosure statement. The disclosure statement must include information about the seller's business history, the seller's financial condition, the seller's legal history, the seller's history of business opportunity registration, the total price and payment schedule for the business opportunity, and the rights and obligations of the parties. Requires that if the seller makes claims about potential earnings, the seller must provide the basis for the claim and associated economic risks.

***Sec. 45.66.090. Written contract required.**

Requires that a seller use a written contract for selling the business opportunity. Contract provisions must include: payment terms; contact information for the seller, the seller's agent, and suppliers; a description of services that the seller is to provide; delivery dates; a complete description of the buy-back agreement if applicable; and a statement of the buyer's right to cancel.

***Sec. 45.66.100. Restrictions on down payments.**

Precludes a seller from requiring a buyer to pay as a down payment more than 20 percent of the initial payment unless any amount above the 20 percent is placed in an escrow account.

***Sec. 45.66.110. Escrow account requirements.**

Requires that the escrow account be held by a person who is independent from the seller, and requires that a seller who establishes an escrow account provide account information to the department. Also prevents the release of escrow funds until the buyer provides written notification to the escrow holder that the products or services required by the contract have been delivered.

***Sec. 45.66.120. Actions for claims against escrow account.**

Allows a buyer who has a claim against an escrow account to bring a civil action against the seller or escrow account holder to recover money from the escrow account.

***Sec. 45.66.130. Cancellation of contract.**

Allows for a buyer to cancel a contract for any reason if the buyer gives notice of the cancellation to the seller within 30 days after signing the contract. Also permits a buyer to cancel the contract at any time if the seller fails to meet disclosure requirements, makes deceptive statements about the business opportunity, or fails to provide services or products required under the contract. Provides that within 15 days of such notice by the buyer, the seller must tender payment to the buyer and terminate the buyer's financial obligations.

***Sec. 45.66.140. Prohibited representations.**

Prohibits sellers from representing that they are registered with the department unless they have complied with the registration requirements, and prohibits other misleading representations about registration status or compliance with the law.

***Sec. 45.66.150. Untrue statements or omissions.**

Prohibits a seller from making an untrue statement of material fact in registration information, disclosure statements, advertising or other communications.

***Sec. 45.66.160. Unwarranted conclusions.**

Provides that acknowledgment of registration by the department does not constitute a recommendation or approval of a seller or a business opportunity.

***Sec. 45.66.170. Waiver prohibited and void.**

Prohibits a seller from requesting that a buyer waive rights or defenses under this chapter.

***Sec. 45.66.180. Seller's records and files.**

Requires that a seller maintain records of the advertisement or promotion of a business opportunity for five years and that the seller allow access to the records by the department. Also requires that a seller keep all documents relating to a contract for four years.

***Sec. 45.66.190. Public records.**

Provides that documents required under this chapter are public records. However, testimony and records related to an investigation by the department would not be public records.

***Sec. 45.66.200. Denial, suspension, or revocation of registration.**

Allows the department to deny, suspend, or revoke a registration for a number of reasons, such as the seller's failure to comply with registration requirements; for fraud or deceit perpetrated on the buyer; or if a person represents an unreasonable risk to the public interest and has been convicted of a crime involving fraud or theft or has violated consumer protection laws. Establishes that prior to taking action under this provision, the department must provide to the person a notice of intent to deny, suspend, or revoke the

registration, and the person has an opportunity to respond to the notice by submitting a sworn statement.

***Sec. 45.66.210. Criminal penalties.**

Provides that a person who recklessly violates the registration, disclosure, or contract provisions of the chapter is guilty of a Class C felony; other violations are punishable as Class A misdemeanors.

***Sec. 45.66.220. Exemptions.**

Exempts from coverage certain transactions including sales or offers to sell:

- A business opportunity if the payments by a buyer under the contract are less than \$200
- a franchise under 16 CFR 436
- an ongoing business to be sold in its entirety
- equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price
- securities
- a business opportunity in which the buyer is a bank or financial institution
- a business opportunity involving a marketing plan made in conjunction with the registration of a trademark or service mark and where the seller has a minimum net worth of \$1,000,000
- a business opportunity where either the seller or the buyer is licensed as a real estate broker, associated real estate broker, or real estate sales person under AS 08.88 and the sale or offer is regulated by AS 08.88

***Sec. 45.66.230. Coordination with other laws.**

Provides that this chapter governs if a sale or offer to sell a business opportunity is regulated by this chapter and by other laws and if compliance with both is not possible.

***Sec. 45.66.240. Regulations.**

Allows the department to adopt regulations under the Administrative Procedure Act to implement this chapter.

***Sec. 45.66.900. Definitions.**

Provides definitions, including the definition of "business opportunity" as a contract or agreement for the sale of products, equipment, supplies, or services enabling the buyer to start a business and in which the seller agrees to provide additional services, such as

- Assisting in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices
- Assisting in finding outlets or accounts for the buyer's products or services;
- Purchasing any or all products made, produced, fabricated, grown, bred, or modified by the buyer
- Agreeing to buy back products from the buyer products

-
- Representing that the buyer will derive income from the business that will exceed the price paid to the seller
 - Providing the buyer with a marketing plan

***Sec. 4.** Changes the court rules to require the court clerk, in actions brought against escrow accounts under AS 45.66.120, to mail a copy of the complaint and subsequent orders or judgments to the attorney general.

***Sec. 5.** Provides for a grace period for the registration of sellers of business opportunities who are in business before the effective date of Section 3, allowing them to continue selling or offering to sell for up to 45 days, after which time they must be registered.

***Sec. 6.** Allows the Department of Law to adopt regulations to implement the act.

***Sec. 7** Provides that AS 45.66.120(b) takes effect only if sec. 4 receives the two-thirds majority vote of each house.

***Sec. 8** Provides that Section 6 of the act takes effect immediately under AS 01.10.070(c).

***Sec. 9** Provides that this act, other than Sec. 6, takes effect July 1, 2002.

February 4, 2002

THE BUSINESS OPPORTUNITY BILL

What is a business opportunity?

A business opportunity, or "biz opp", is a pre-packaged small business deal offered primarily to novice entrepreneurs. Unfortunately, these enterprises are often fraudulent. Typical business opportunities range from a variety of work-at-home schemes such as medical billing, to the sale of vending machines, pay telephones, greeting card display racks and other products, to the sale of "900 numbers." They almost always promise high earnings, which rarely materialize. According to the Federal Trade Commission, biz opp scams bilk hundreds of thousands of consumers out of tens of millions of dollars each year.

How are biz opps advertised?

Biz opps are frequently pitched to consumers through classified ads, over the Internet, and through "infomercials," followed up with high-pressure sales pitches. The following are typical biz opp advertisements:

- "Medical Billing. Work from home – Full or Part Time. From \$24K to \$50K+ per year. Home Computer Required. CALL NOW."
- "1000 Envelopes=\$4000. From Home! \$4 per envelope you stuff GUARANTEED!"
- "HERSHEY AND NABISCO VENDING – High weekly income potential. Work 6-8 hrs/wk. Secured and guaranteed locations. \$7000 investment required."
- Small Town Entrepreneur Discovers Amazing Way to Earn Money at Home! FREE Report reveals how you can earn \$\$\$Thousands\$\$\$ each week...sending Fax-Ads to Business Offices in your area.

Who are the likely targets of biz opp scams?

Generally, biz opp fraud targets stay-at-home parents, retirees, people who are out of work, and individuals looking to create their own business. Alaskans may be targeted because of the seasonal nature of many jobs in Alaska, because of the disposable income associated with the PFD, and because of the entrepreneurial spirit of many Alaskans.

What does the bill do?

This bill creates a new, comprehensive statute regulating promoters of business opportunities. It requires persons who sell business opportunities to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. With this bill, Alaska would be joining approximately half of the states, which have statutes requiring registration of business opportunities. In addition to providing an enforcement mechanism for the state, the bill will

ensure that potential investors can be fully informed about a business before entering into a sales agreement.

The bill provides for civil and criminal penalties for violators. A person who recklessly violates the registration requirements is guilty of a Class C felony. A person who recklessly violates the contract or cancellation provisions is guilty of a Class A misdemeanor. The bill also makes clear that a violation of the biz opp statute is also a violation of the Unfair Trade Practices and Consumer Protection Act.

Are there exemptions?

The bill does not apply to a number of transactions, including those transactions in which the total payment from the buyer to the seller is less than \$200. It also does not apply to the sale of a franchise (as defined under federal law), an ongoing business sold in its entirety, securities, and real estate transactions regulated by AS 08.88.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 393
 (H) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; . . ." BRU Criminal Division; Civil Division
 Sponsor Representative Stevens Component Criminal Appeals/Special Litigation
 Requester House Labor and Commerce Committee Component No. 2279; 2206
 Fair Business Practices

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Prog Rcpts	*****	*****	*****	*****	*****	*****
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 393 would provide for the registration and regulation of sellers of business opportunities, which are prepackaged small business deals offered mainly to novice entrepreneurs over the Internet and through newspaper and radio advertisements, television "infomercials," and seminars. Typically, a business opportunity is an arrangement by which the seller provides products, equipment, supplies, or services to the buyer; assists the buyer in finding outlets or accounts for the buyer's products or services; purchases the products made, produced, or modified by the buyer; or provides the buyer with a marketing plan.

The bill would require that sellers of business opportunities register with the state, disclose specific information regarding the business to the buyer before sale, use an escrow account to assure delivery of business assets, and provide a 30-day right of cancellation for the buyer.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughnetee for Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: (907) 465-5370
 Date/Time: 2/21/02 2:42 PM
 Date: 2/21/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 393 - FN#1

ANALYSIS CONTINUATION

A seller who recklessly violates the registration requirements would be guilty of a class C felony. A seller who recklessly violates the contract or cancellation provisions would be guilty of a class A misdemeanor. The bill would also amend AS 45.50.471(b) to specify that a violation of the sale of business opportunities statute constitutes an unfair or deceptive act or practice in the conduct of trade or commerce.

The Department of Law does not anticipate significant revenues or costs from passage of this legislation. However, because there is no regulatory scheme now in effect, we cannot say with certainty how much additional staff time will be required to implement this bill.

Given our experience with implementing the Telephone Solicitation Act, we would guess that no more than ten or twelve sellers of business opportunities will register in the first year. Assuming an initial registration fee of \$150, the revenue in the first year would be approximately \$1,500 to \$1,800. With an annual renewal fee of \$50, the revenue from these same sellers would be \$500 to \$600 in the second year, plus any new initial registrations.

Costs will be generated both by the time spent processing the registration applications, and by time spent on any enforcement actions against unscrupulous sellers of business opportunities, who are generally located out of state and who make exaggerated earnings claims to induce buyer participation, and who would be unlikely to register with the state. We expect that processing ten to twelve applications per year, while perhaps more time consuming than other registrations due to the relative complexity of the business opportunity registration requirements, can be handled within existing funding levels. We have no way of anticipating how many enforcement actions may be required. The Consumer Protection unit is aware of dozens of business opportunity scams around the country, and they know Alaskans are being targeted, but not to what extent. However, the department does not believe the cost of pursuing limited enforcement actions against a few sellers will entail significant amounts of staff time. If our assumptions prove to be inaccurate, the department may need to seek additional funding in the future.

So you want to work at home?

You're conflicted. You need extra income, but you want to be around for your kids. So you're tantalized by the idea of staying home and earning cash. Clever marketers know they have you. They promise a whole world of work-at-home possibilities that sound perfect: "Stuff envelopes on your own time." "Doctors need you to do their medical billing from home." "Like crafts? Great pay for assembly work." They try to lure you with enticing salaries: "Earn hundreds: The faster you work, the more you make."

The problem is, you rarely end up making the money you're promised. In fact, few people make any at all, and most *lose* money. An investigation of 112 work-at-home companies conducted in 2000 by Operation Job Fraud, a task force made up of several Better Business Bureaus and the U.S. Postal Inspection Service, turned up nothing but scams. When the task force investigated ads on the Internet, on posted flyers, and in magazines and newspapers, they "found no evidence of making the money promised," says Katy Conklin of the Better Business Bureau in Chattanooga, Tennessee. "We tried them ourselves. We spent our own money on the kits and materials, and we never made back our investment."

The Federal Trade Commission estimates that tens of millions of dollars a year are lost on these phony offers. Although most people are cheated out of anywhere from \$20 to a couple of hundred, some lose more.

Targeting potential victims is easy. Conklin recalls it happening in her own family. "Two years ago my daughter gave

Read this before you fall for some of the most common rip-offs. **BY JANICE LIEBERMAN**



BEEN CONNED? ←

Complain! Consumer agencies can go after bogus companies only if they know about them. File a complaint with the regional Better Business Bureau where the company is located, and call the Federal Trade Commission at 877-FTC-HELP or log on to ftc.gov.

using guilt tactics such as "Why would you leave your kids at home to work?" The scamsters stop at nothing!" Conklin says that working moms, the disabled, the elderly, students, and non-English-speaking immigrants most often fall victim to these scams.

So why aren't these fraudulent companies tracked down—and shut down? For one thing, many change their names

or addresses and go out of business within a year or two, making it daunting for investigators to track them. Second, such scams often go unreported: Many victims are too embarrassed to complain or don't want to spend time filing a claim.

All of which means it's up to you to protect yourself. As an assistant director of the Bureau of Consumer Protection at the Federal Trade Commission, Mona Spivack works to put these shady companies out of business. We asked her to describe three of the most common fraudulent schemes:

RIP-OFF #1: MEDICAL BILLING FROM HOME

This scam robs you of big bucks up front: According to Spivack, you're typically asked to shell out several hundred dollars for medical-billing software and a list of doctors who need your services. You're told that the doctors will give you lists of patients to bill and forms to input into your computer. You're supposed to submit the computerized forms to a clearinghouse that will forward them to Medicare for reimbursement. "They tell you it can be done on your own time and that you can make \$1,500 a week," says Spivack.

Sounds great, right? But here's the reality: You get the software, and it's hard to use. And when you send out letters to doctors offering them your help, they've never heard of you and aren't interested in your services. In fact, Tom Collier of the Better Business Bureau in Tucson, along with the Pima County Medical Society, surveyed 2,100 doctors to find out whether they'd even consider

having an outsider do their medical billing. Only 15 doctors said yes. "That's 0.6 percent of the market," says Collier.

Carolyn Agustin-Acosta learned about this scam the hard way. She saw an ad in a local paper for medical billing that promised earnings of \$20 to \$40 an hour. The Northridge, California, nurse was working 53 hours a week and needed to supplement her income but didn't want to spend any more time away from her 3-year-old son. After paying \$339 for the software, she received a list of doctors who she then realized didn't exist. "I was in tears," she says. "I lost all that money. I was looking forward to spending more time with my son and having more children, but I can't do it like this."

And once you've been scammed, good luck getting your money back. According to Stephen Gurwitz, a senior trial attorney with the FTC, "You call the customer service department [of the medical-billing company] to tell them the software is useless, and they say, 'Once you open the software, it can't be returned.'" To try to get a refund, he says, you can write letters of complaint to the company, the Better Business Bureau, the FTC, and the consumer protection agency in the state where the business is located.

A variation on the medical-billing scheme is one in which you're encouraged to help out Uncle Sam. The company provides you with a list of people who are due a government refund for some reason, say they overpaid on their taxes. Allegedly you'll get a cut of that refund as a commission. The list runs you about \$80, but as in the medical billing scam, the phone numbers and addresses

you're furnished with are fake (or if they're real, you have to talk strangers into giving you their money)—and you're still responsible for the cost of the phone calls and the postage.

RIP-OFF #2: HOME ASSEMBLY

Feeling crafty? Think you might try your hand at assembling picture frames or sewing—all on your own time? This offer, usually found in the classifieds, promises you up to several hundred dollars a week, depending on how fast you can assemble the products. You're asked to send in \$40 to \$100 for the supplies, which you receive in the mail with an instruction booklet. But you're sent only enough supplies for one sample item, and then your handiwork must be seen and "approved" by management. That part, of course, is rarely mentioned over the phone when you call the number posted in the ad.

Investigators say that these operators make it impossible for you to earn money. These wheeler-dealers send you craft kits with parts missing or pieces that don't fit. Or they ask you to sew something relatively easy but reject the result. "I've had professional seamstresses call me up crying, saying their sewing on something simple was sent back," Spivack says.

RIP-OFF #3: ENVELOPE STUFFING

It *sounds* so simple—which is why this scam has been around for years. How it works: You respond to an ad and are promised about \$5 per stuffed envelope. You pay \$25 to \$50 for envelopes, stamps, flyers, and a mailing list. What you get in return is a flyer to photocopy

4 clues that you're being scammed

CLUE 1: "Act now" pitches. Some con artists try to pressure you by saying that most of the positions are filled, so you had better act now. A legitimate employer will give you time to think about signing on.

CLUE 2: Evasive answers. Always ask for a detailed description of what you're expected to do to earn money, and of how, when, and how much you'll be paid. Get it in writing, and read the fine print.

CLUE 3: The claim that "anyone can do it." A real employer usually wants a résumé and references.

CLUE 4: Claims that you can make more at home than in a similar office job. To check out a work-at-home job, research the going rate for doing that same job in an office. For instance, data entry may pay \$7 to \$10 an hour. That's \$1,600 a month if you work full-time. An ad that promises you \$2,000 a week for doing the same job at home is probably bogus.

and send to people whom you're supposed to solicit by placing a newspaper ad conning them to "make money stuffing envelopes." So you've essentially passed along a chain letter duping others.

"It happened to us twice. I'm almost embarrassed to say it," one scammed woman confided to *Redbook*. The first incident happened a year ago, when she was pregnant and wanted to supplement her husband's income. What could be easier than stuffing envelopes in the comfort of her own home? Plus, she had worked in an office and knew how to get the job done quickly. She was so excited that she paid extra to have the kit sent to her faster. After spending \$40 she received a packet. Realizing it was a chain-letter scam, she did nothing with it; she didn't want to cheat other people.

The next time she answered an ad for stuffing envelopes, it read "This is not a scam." She sent \$80 and received nothing. "I actually called directory assistance to find the name of the person whose testimonial was in the original ad," she says. "Of course there was no listing for that person. I was so angry." She has since decided to make money babysitting. □

Where the **real** jobs are

Here's the good news about working from home: Legitimate opportunities do exist. Some require special skills, such as typing and bookkeeping, and most will want you to have your own work space. Below are job-list websites recommended by Rosalind Mays, author of *The Real Deal on Telecommuting*, who has a work-at-home site of her own (see below). Before you sign on with any company, check it out with the Better Business Bureau in the region where the business is located.

www.wahm.com/jobs.html This site—the Work at Home Moms job listing—links to job postings at monster.com, hotjobs.com, and other sites.

www.tjobs.com Search here by category for listings of creative and technical jobs (such as writing and programming), among others.

www.workaholics4hire.com This site provides links to other sites' job postings, but also includes its own listings of telecommuting positions in various fields.

www.sohojobs.org The Small Office-Home Office Jobs website profiles and evaluates other job sites, including their weekly job postings.

www.telecommuting.cjb.net Rosalind Mays's site lists jobs from newspapers, websites, and other sources, as well as links to other job-list sites.

—Lisa Pilnik

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March 13, 2002

NU SKIN

MAR 13 2002

The Honorable Norman Rokeberg, Chair
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Representative Rokeberg:

I am writing on behalf of the Nu Skin Enterprises (NSE) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. Nu Skin has 655 distributors who direct sell their products and/or services to customers in Alaska. Direct selling is a well-established method for marketing products to consumers in Alaska.

NSE and its independent distributors are concerned that the definition of a business opportunity under the proposed bill is not clear and would cause confusion. Alaska's consumers need this proposal that regulates business opportunities to be clear on what constitutes a business opportunity. **Our primary concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal.** The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. The lower threshold could potentially subject many of our distributors to burdensome registration and bonding requirements, which would hurt virtually eliminate their ability to pursue their legitimate, small businesses.

A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity. This higher threshold would balance limited government resources required to enforce the statute against the potential for more significant monetary harm to consumers of opportunities. It would exempt the majority of legitimate direct sellers from undue burdens. These individuals are also protected by generous one-year refund policies on all items purchased under the NSE marketing plan.

For these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest you modify the definition of business opportunity as follows:

Add the underlined text to Sec. 45.66.900, Definitions:

...(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur...

NU SKIN ENTERPRISES, INC. / LEGAL DEPARTMENT

ONE NU SKIN PLAZA • 75 WEST CENTER • PROVO, UTAH 84601 • 801-345-3800 • FAX 801-345-3899

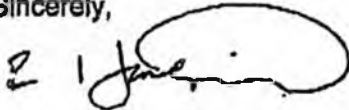
House Bill 393
Page 2

Strike Sec 45.66.220. exemptions, to conform as follows:

~~This chapter does not apply to a sale of or an offer to sell (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200...~~

These changes make it clear that those individuals in Alaska who pursue this as a small but legitimate income-earning opportunity do not fall under this law.

Sincerely,



Richard M. Hartvigsen
Vice President, Regulatory Affairs

RMH/ml

**DIRECT SELLING ASSOCIATION**

1275 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004-2411
202/347-8866 • Fax 202/347-0055

MAR 13 2002

March 12, 2002

The Honorable Norman Rokeberg
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Re: DSA Opposition to House Bill 393 - a Proposal to Regulate the Sale of Business Opportunities

Dear Chairman Rokeberg:

I am writing on behalf of the Direct Selling Association (DSA) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. DSA and its members have been involved in the effort to curb fraud in the sales of business opportunities at the federal and state levels since the late 1970's. Business opportunity fraud undermines vital public confidence in industries like direct selling, which utilize and depend upon individual entrepreneurship. Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in a direct selling opportunity is comparatively low. Unfortunately, we are concerned that the definition of a business opportunity under your review is not clear and would cause confusion among Alaska's consumers.

We support the purpose of legislation like House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture. Twenty-three states have enacted similar laws in response to deceptive and unfair practices in connection with the sale of business opportunities and the Federal Trade Commission has adopted a Trade Regulation Rule (Trade Rule) in this area. Unfortunately, we oppose House Bill 393 in its current form.

The Direct Selling Association, established in 1910, is the trade association representing the more than 150 companies that market their products and/or services to customers via independent salespeople, primarily through home parties or person-to-person sales. Our association members include some of the nation's most well known commercial names, such as Amway, Avon, Mary Kay, and Shaklee. This global industry generates more than \$83 billion in worldwide sales each year, \$25.57 billion in the U.S. and has a salesforce of more than 11 million people in the U.S. We have on average over 30,000 direct salespeople per Congressional district and thus there are approximately 30,000 direct sellers living and working in Alaska.

The Honorable Norman Rokeberg
DSA Opposition to House Bill 393
Page 2

Profile of the Typical Direct Seller: Part-Time Sales Activity to Supplement Family Income

Direct selling is a well-established method for marketing products to consumers directly, primarily in their homes. Companies within the industry market a broad range of consumer products and services, including household cleaning products, cosmetics and other personal care products, jewelry, cookware and other house wares, educational materials, household decorative products such as baskets, home improvement products, food, and vitamins. Most direct selling companies within our industry are small businesses. Over 99.5 percent of the direct salespeople that market these companies' products are independent contractors. Each of these independent contractors in effect is a micro-small business. Simply stated, direct selling is an ideal way for people with an entrepreneurial spirit to earn extra money without experience, without capital, and without having to make a full-time commitment to an employer.

As the result of this ease of access and flexibility in work arrangements, direct selling has wide appeal among women who have significant family responsibilities, as well as attracting substantial numbers of minorities, the elderly, and handicapped persons. Of our more than 11 million independent contractor salespeople across the United States, about 73 percent are women.

DSA's Opposition to House Bill 393

Alaska's consumers need this proposal to regulate business opportunities to be crystal clear on what exactly constitutes a business opportunity. **Our one concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal.** The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. In fact only three states, Connecticut, New Hampshire and North Carolina, contain a similar threshold. These thresholds exist:

- To require a strict compliance mode on those business opportunities where people invest a large amount of money up-front;
- To focus limited, valuable state resources on situations where people can be seriously harmed; and
- To reassure people involved in small income-earning programs that they will be protected from inadvertent coverage.

The lower threshold would subject many small income-earning opportunities to onerous registration and bonding requirements, which would hurt many of these very small businesses. It would also take the necessary focus of enforcement off the large business opportunities, where people can be seriously harmed, and spread limited state resources over a much wider field.

In 1980, the Iowa Attorney General's Office showed that the average business opportunity fraud victim lost on average \$5,400. In 1995, the Wall Street Journal ran a story entitled "Undercover Blitz Targets Business Opportunity Scams". This story noted that the victims were defrauded of

The Honorable Norman Rokeberg
DSA Opposition to House Bill 393
Page 3

between \$1,500 and \$6,000. We believe that Alaska should target the business opportunities that pose the most harm.

The clear trend in the regulation of business opportunities is toward higher dollar thresholds stated in the definitions section of the law. A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity.

For all of these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Add the underlined text to Sec. 45.66.900, Definitions;

... (2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . ; and

Strike Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell ~~(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200.~~

This change and movement makes it clear to all - consumers and regulators alike - that the type of small income-earning opportunity represented by the DSA membership does not fall under this law.

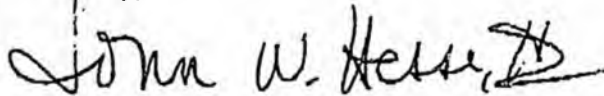
For your information, in 1984 the North American Securities Administrators Association developed a model Business Opportunity Sales Act (NASAA Model), which contains a \$500 threshold. In addition, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act. This Act has a \$500 threshold as well.

The Honorable Norman Rokoberg
DSA Opposition to House Bill 393
Page 4

In summary, DSA opposes House Bill 393 in its current form. We would support an amendment to raise the threshold amount from \$200 to \$500, placing the threshold in the definitions section of the bill. This request is based upon the practices of the vast majority of states regulating the sales of business opportunities as well as the Federal Trade Commission. In addition, the two most widely referenced model acts in this area contain a \$500 threshold. Alaska's resources should be directed at fighting the fraud posed by large business opportunity scams. Any law in this area should not confuse Alaska's consumers with a convoluted definition of a business opportunity.

Thank you for your time and attention to DSA's concerns. Please do not hesitate to contact me directly with questions or concerns. I can be reached by telephone at (202) 220-9420 or by email to jhesse@dsa.org. Thank you for your time and attention to this request.

Sincerely,



John W. Hesse, II
Senior Attorney & Director, Government Relations

MAR 11 2002

March 4, 2002

The Honorable Norman Rokeberg
Chairman, Alaska House Judiciary Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: House Bill 393, A Proposal to Regulate the Sales of Business Opportunities

Dear Representative Rokeberg:

On behalf of Mary Kay Independent Beauty Consultants and Sales Directors in Alaska, let me express opposition to House Bill 393 in its current form. The bill has been referred to the House Judiciary Committee.

Mary Kay Inc. is a direct selling company and an active member of the Direct Selling Association (DSA). Mary Kay Beauty Consultants and Sales Directors buy directly from the Company and sell quality skin care and color cosmetics directly to loyal customers..

Each of these independent contractors is in effect a micro-small business. A Mary Kay career is an ideal way for women with an entrepreneurial spirit to earn extra money without experience, without capital, and without having to make a full-time commitment to an employer. One of the attractions of the career is the low start-up cost and lack of red tape. She can work as much or as little as dictated by her personal circumstances.

Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in a direct selling opportunity is comparatively low. We support the purpose of House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture.

The \$200.00 threshold contained in House Bill 393 is atypical of the thresholds in the other state business opportunity laws. The vast majority of states that regulate the sale of business opportunities use a \$500 threshold, as does the Federal Trade Commission Rule. We believe that such a low threshold would pose a burden to business and government alike and would reduce the effectiveness of the legislation. Consequently, we urge the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. The amendment is included on the attached page. Without such amendment, we respectfully oppose the bill.

Representative Norman Rokeberg
Page Two
March 5, 2002

For your information, in 1984 the North American Securities Administrators Association developed a model Business Opportunity Sales Act (NASAA Model), which contains a \$500 threshold. In addition, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act. This Act has a \$500 threshold as well.

Thank you for your time.

Sincerely,



Anne Crews
Vice President, Corporate Affairs

Attachment

cc: John Hesse
Direct Selling Association

SUGGESTED AMENDMENT

We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Categorizing ventures as business opportunities usually requires registration with the State, payment of a fee, posting a bond, disclosing information, etc. If the threshold is low, direct selling could be covered and cost of the regulation could easily exceed cost of entering the career.

Add the underlined text to Sec. 45.66.900, Definitions;

. . .(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . and;

Change Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$500. . .

KIRBY

March 14, 2002

Norman Rokeberg, Chairman
Legislative Session Contact:
State Capitol, Room 118
Juneau, AK 99801-1182
907-465-4968
fax: (907) 465-2040

Re: The Kirby Company Opposition to House Bill 393 - a Proposal to Regulate the Sale of Business Opportunities

Dear Norman Rokeberg:

I am writing on behalf of The Kirby Company (Kirby) concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. Business opportunity fraud undermines vital public confidence in direct selling businesses like Kirby, which utilize and depend upon individual entrepreneurship. Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in direct selling opportunity is comparatively low. Although the cost of the Kirby opportunity is nothing but hard work, we are concerned that the definition of a business opportunity under your review is not clear and would cause confusion among Alaska's consumers.

We support the purpose of legislation like House Bill 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture. Twenty-three states have enacted similar laws in response to deceptive and unfair practices in connection with the sale of business opportunities and the Federal Trade Commission has adopted a Trade Regulation Rule (Trade Rule) in this area. Unfortunately, we oppose House Bill 393 in its current form.

Since 1917, The Kirby Company has manufactured premium home cleaning systems and has sold those systems to independent distributors who market them to customers exclusively through person-to-person in home sales. There are approximately fifty (50) people affiliated with the Kirby opportunity living and working in Alaska.

Kirby's Opposition to House Bill 393

Alaska's consumers need this proposal to regulate business opportunities to be crystal clear on what exactly constitutes a business opportunity. Our one concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal. The \$200 threshold contained in House Bill 393 is atypical of the thresholds in the other

1920 West 114th Street • Cleveland, Ohio 44102
Phone 216-228-2400 • FAX 216-221-3162

A Scott Fetzer Company

state business opportunity laws. In fact only three states, Connecticut, New Hampshire and North Carolina, contain a similar threshold. These thresholds exist:

- To require a strict compliance mode on those business opportunities where people invest a large amount of money up-front;
- To focus limited, valuable state resources on situations where people can be seriously harmed; and
- To reassure people involved in small income-earning programs that they will be protected from inadvertent coverage.

The lower threshold would subject many small income-earning opportunities to onerous registration and bonding requirements, which would hurt many of these very small businesses. It would also take the necessary focus of enforcement off the large business opportunities, where people can be seriously harmed, and spread limited state resources over a much wider field.

The clear trend in the regulation of business opportunities is toward higher dollar thresholds stated in the definitions section of the law. A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity.

For all of these reasons, we oppose the bill in its current form and suggest the adoption of an amendment to the bill, replacing the \$200 threshold with a \$500 threshold. We suggest that you modify the definition of business opportunity to fulfill our request as follows:

Add the underlined text to Sec. 45.66.900, Definitions;

. . . (2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur . . . ; and

Strike Sec. 45.66.220. Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell ~~(+) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200 . . .~~

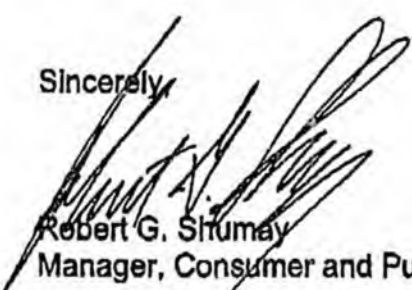
This change and movement makes it clear to all - consumers and regulators alike - that the type of small income-earning opportunity represented by direct sellers does not fall under this law.

For your information, in 1984 the North American Securities Administrators Association developed a model Business Opportunity Sales Act (NASAA Model), which contains a \$500 threshold. In addition, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act. This Act has a \$500 threshold as well.

In summary, DSA opposes House Bill 393 in its current form. We would support an amendment to raise the threshold amount from \$200 to \$500, placing the threshold in the definitions section of the bill. This request is based upon the practices of the vast majority of states regulating the sales of business opportunities as well as the Federal Trade Commission. In addition, the two most widely referenced model acts in this area contain a \$500 threshold. Alaska's resources should be directed at fighting the fraud posed by large business opportunity scams. Any law in this area should not confuse Alaska's consumers with a convoluted definition of a business opportunity.

Thank you for your time and attention to The Kirby Company's concerns. Please do not hesitate to contact me directly with questions or concerns. I can be reached by telephone at (216) 529-6203 or by email to rgshumay@kirbywhq.com. Thank you for your time and attention to this request.

Sincerely,



Robert G. Shumay
Manager, Consumer and Public Relations

RGS\kd



Honorable Norman Rokeberg, Chair
House Judiciary Committee
Alaska Capitol Room 118 (MS 3100)
Juneau, AK 99801-1182

RE: HB 393 (Stevens) – Support

Dear Chair Rokeberg:

On behalf of the 112,000 members of AARP in Alaska, we urge you and your colleagues on the House Judiciary Committee to support HB 393, authored by Representative Gary Stevens.

HB 393 will address an issue that is often of concern to retirees. . . prepackaged "business opportunities" targeted at novice entrepreneurs and "work at home" schemes.

The bill would require that sellers of business opportunities register with the State and would require them to disclose specific information to the potential buyer before the sale. They would also be required to use an escrow account to assure delivery of promised goods and provide a 30-day right of cancellation to the buyer.

Representative Stevens has provided exceptions for some recognized direct selling operations. HB 393 would target those individuals and organizations that should not be allowed to operate in Alaska.

Government has a legitimate role in consumer protection. AARP believes HB 393 is an excellent example of appropriate oversight and regulation.

On behalf of all Alaskans who have been taken in by phony "business opportunities", AARP urges an "AYE" vote on HB 393.

Should you have any questions about our position, please feel free to contact Marie Darlin (586-3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907-762-3314), AARP Legislative Representative; or me (907-245-5259).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marguerite Stetson".

Marguerite Stetson
Executive Council Member for Advocacy

cc: Representative Ogan, Vice Chair
Representative Coghill
Representative James
Representative Meyer
Representative Berkowitz
Representative Kookesh
Representative Stevens
Marie Darlin, AARP Capital City Task Force
Pat Luby, AARP Legislative Representative



HERBALIFE INTERNATIONAL OF AMERICA, INC.
1800 Century Park East
Century City, CA 90067-1501
(310) 410-9600 FAX (310) 203-7770

BRIAN L. KANE
Chief Operating Officer

MAR 18 2002

March 14, 2002

The Honorable Norman Rokeberg, Chair
Legislative Session Contact:
State Capitol, Room 118
Juneau, AK 99801-1182

Re: Opposition to House Bill 393 - a Proposal to Regulate the Sale of Business Opportunities

Dear Representative Rokeberg:

I am writing on behalf of Herbalife International and its hundreds of Alaska distributors concerning House Bill 393, a proposal to regulate the sale of business opportunities in Alaska. Herbalife, as a leading member of the Direct Selling Association, has been involved in the effort to curb fraud in the sales of business opportunities at the federal and state levels since the 1980s. Business opportunity fraud undermines vital public confidence in industries like direct selling, which utilize and depend upon individual entrepreneurship. Clear distinctions can be drawn between direct selling and business opportunities because the investment required to participate in a direct selling opportunity is comparatively low. Unfortunately, we are concerned that the definition of a business opportunity in HB 393 is not clear and would cause confusion among Alaska's consumers.

We support the purpose of legislation like HB 393, which is to protect Alaska's citizens from risking large amounts of money for what might be an unproven or unprofitable business venture. Twenty-three states have enacted similar laws in response to deceptive and unfair practices in connection with the sale of business opportunities and the Federal Trade Commission has adopted a Trade Regulation Rule (Trade Rule) in this area. Unfortunately, we oppose House Bill 393 in its current form.

Herbalife International is a direct selling company with business in more than 50 countries. Through our network of more than one million independent Distributors, we sell close to \$2 billion in nutritional and personal care products annually. As a member of the DSA, we are part of an \$83 billion global industry. In the U.S. alone, direct selling generates \$25 billion in sales and has a sales force of more than 11 million people. We have on average over 30,000 direct salespeople per Congressional district and thus there are approximately 30,000 direct sellers living and working in Alaska.

Profile of the Typical Direct Seller: Part-Time Sales Activity to Supplement Family Income

Direct selling is a well-established method for marketing products to consumers directly, primarily in their homes. Companies within the industry market a broad range of consumer products and services, including household cleaning products, cosmetics and other personal care products, jewelry, cookware and other house wares, educational materials, household decorative products such as baskets, home improvement products, food, and vitamins. Most direct selling companies within our industry are small businesses. Over 99.5 percent of the direct salespeople that market these companies' products are independent contractors. Each of these independent contractors in effect is a micro-small business. Simply stated, direct selling is an ideal way for people with an entrepreneurial spirit to earn extra money without experience, without capital, and without having to make a full-time commitment to an employer.

As the result of this ease of access and flexibility in work arrangements, direct selling has wide appeal among women who have significant family responsibilities, as well as attracting substantial numbers of minorities, the elderly, and handicapped persons. Of our more than 11 million independent contractor salespeople across the United States, about 73 percent are women.

Alaska's consumers need this proposal to regulate business opportunities to be crystal clear on what exactly constitutes a business opportunity. Our one concern is the exemption threshold of \$200 contained in the bill and its placement in the proposal. The \$200 threshold contained in HB 393 is atypical of the thresholds in the other state business opportunity laws. In fact only three states, Connecticut, New Hampshire and North Carolina, contain a similar threshold. These thresholds exist:

- To require a strict compliance mode on those business opportunities where people invest a large amount of money up-front;
- To focus limited, valuable state resources on situations where people can be seriously harmed; and
- To reassure people involved in small income-earning programs that they will be protected from inadvertent coverage.

The lower threshold would subject many small income-earning opportunities to onerous registration and bonding requirements, which would hurt many of these very small businesses. It would also take the necessary focus of enforcement off the large business opportunities, where people can be seriously harmed, and spread limited state resources over a much wider field.

The clear trend in the regulation of business opportunities is toward higher dollar thresholds stated in the definitions section of the law. A majority of the other twenty-three states that regulate business opportunities and the Federal Trade Commission use a \$500 threshold stated in the definitions section of their statutes and regulations. Twenty-seven states choose not to regulate the sale of business opportunities. If the state chooses

to regulate the sale of business opportunities, Alaska should follow the trend and enact a bill with a \$500 threshold stated in the definition of a business opportunity.

In summary, Herbalife opposes HB 393 in its current form. We would support an amendment to raise the threshold amount from \$200 to \$500, placing the threshold in the definitions section of the bill. This request is based upon the practices of the vast majority of states regulating the sales of business opportunities as well as the Federal Trade Commission. In addition, the two most widely referenced model acts in this area contain a \$500 threshold. Alaska's resources should be directed at fighting the fraud posed by large business opportunity scams. Any law in this area should not confuse Alaska's consumers with a convoluted definition of a business opportunity.

On behalf of our company and its Alaska-based Independent Distributors, I thank you for your time and attention to our concerns.

Sincerely,

Brian L. Kane
Chief Operating Officer

A handwritten signature in black ink, appearing to read 'B. Kane', with a long, sweeping horizontal line extending to the right.

AVON

the company for women

JOSEPHINE MILLS

DIRECTOR-GLOBAL GOVERNMENT AFFAIRS
GOVERNMENT AFFAIRS

AVON PRODUCTS, INC.
WORLD HEADQUARTERS
1345 AVENUE OF THE AMERICAS
NEW YORK, NY 10105-0196

212.282.5609 TEL
212.282.6086 FAX
josephine.mills@avon.com

March 13, 2002

The Honorable Norman Rokeberg
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

RE: **House Bill 393 – Relating to Unfair and Deceptive Trade Practices
and the Sale of Business Opportunities**

Dear Chairman Rokeberg:

On behalf of the many Avon Sales Representatives in the State of Alaska, I'm writing to express concern regarding House Bill 393 as it relates to the sale of business opportunities.

By way of background, for 116 years, Avon Products, Inc. has been selling products through independent Sales Representatives. These independent Representatives are primarily women who often sell on a part-time basis, to supplement their income or to finance a short-term objective, such as, hospital bills, college tuition, or vacation plans. The Avon Representative is free to set her own hours and can sell as much or as little as she pleases, at times convenient to herself and her customers, either at the customer's home or in the workplace where she may hold a traditional job. In most instances, the Avon Representative sells to friends, co-workers, and family members.

We feel the \$200 threshold contained in House Bill 393 is much too low. This low threshold would subject many small income earnings opportunities to onerous registration and requirements that would gnaw at the roots of the direct selling entrepreneur. At the same time, it would cause enforcement agencies to lose focus, which should be based on the larger business opportunities, where individuals can be seriously hurt. We respectfully request the threshold be set at \$500, consistent with most other states. This is also consistent with the Federal Trade Commission rule.

We also suggest that you modify the definition of business opportunity to place the threshold exemption where it can be more easily identified. This would require the following suggested change:

Add the underlined text to Sec.45.66.900, Definitions;

...(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer, products, equipment, supplies or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money in excess of \$500 to the seller and under which one or more of the following occurs or is to occur...and;

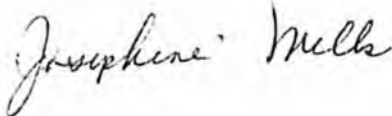
Change Sec.45.66.220, Exemptions, to conform as follows:

This chapter does not apply to a sale of or an offer to sell (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$200 \$500...

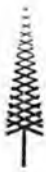
In summary, Avon Products, Inc. is asking you to amend House Bill 393 to raise the threshold amount from \$200 to \$500. We are also asking that the dollar exemption be more appropriately placed within the text of the legislation.

We respectfully ask for your consideration in this matter.

Sincerely,



cc: Judiciary Committee



ALTICOR

March 14, 2002

Altacor Inc.
7575 Fulton St. East
Ada, MI 49355 USA
616.787.1000 phone
www.altacor.com

MAR 18 2002

Representative Norman Rokeberg, Chairman
House Judiciary Committee
State Capitol #24
Juneau, Alaska 99801

RE: Opposition in Current Form: HB 393/Business Opportunities

Dear Chairman Rokeberg:

I write on behalf of Altacor and our thousands of Alaskan Amway Distributors and Quixtar Independent Business Owners to express our **opposition** to HB 393 – a bill proposing to create a business opportunity law – **in the bill's existing form**. We'd like to offer a potential practical solution. While we support the sponsor's intent to protect Alaskans from unscrupulous, risky or overly expensive business investments – this bill contains a fundamental flaw that must be corrected.

In 1995, the Wall Street Journal noted cases of business opportunity where the victims were defrauded of between \$1,500 and \$6,000. Alaskan consumers would be best served if efforts, energy and resources were focused on the perpetration of these types of serious and substantial frauds.

HB 393 currently contains a **\$200 threshold** for business opportunities that would be regulated by the act. However, the majority of other states that have found a need to regulate this activity typically use a **\$500 up-front threshold**. It should also be revealing that many states with a reputation for strong consumer protection programs (California, Florida and Illinois) – as well as the Federal Trade Commission - also utilize \$500 thresholds.

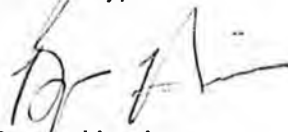
This standard \$500 threshold protects small income opportunities such as those offered by direct sellers including Amway/Quixtar distributors, Avon ladies, and Mary Kay beauty consultants from the unnecessary burdens of state filing, bonding, reporting and other requirements that may be appropriate for larger enterprises. These small entrepreneurs earn money to supplement their family incomes by selling products to family, friends and neighbors while interesting others to do the same. Certainly, we wish to prevent unnecessary burdens upon these small Alaska businesses and avert the chilling effects on others becoming Amway/Quixtar distributors.

The most fundamental reason for excluding opportunities under \$500 (especially direct sales opportunities) from the law is that such low-cost opportunities have not been a significant source of business opportunity frauds – the very problem HB 393 attempts to address. In addition, the mere cost of the regulation could easily exceed the cost of the opportunity itself; and the financial statements and other required documents are largely meaningless to direct sellers.

I have attached a proposed amendment for your consideration that would address our concerns. Adoption of this amendment will protect Alaskan consumers while avoiding inadvertent or unnecessary coverage of Alaskan direct sellers.

Chairman Rokeberg, thank you for your kind attention. If you have any questions please feel free to contact me at (616) 787-5633 or email bharrison@alticor.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Harrison", written over a light blue horizontal line.

Bryan Harrison
Corporate Government Affairs

cc: House Judiciary Committee Members
Representative Gary Stevens
John Hesse, Direct Selling Association

Add the underlined text to Sec. 45.66.900, Definitions;

(2) "business opportunity" means an arrangement under which the seller or a person recommended by the seller will provide to the buyer products, equipment, supplies, or services enabling the buyer to start a business for which the buyer is required to pay an initial fee or sum of money of \$500 or more to the seller and under which one or more of the following occurs or is to occur . . . and;

Change Sec. 45.66.220. Exemptions: This chapter does not apply to a sale of or an offer to sell:

(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than ~~\$200~~ \$500.



March 15, 2002

VIA FACSIMILE (907) 465-2040

Norman Rokeberg
Legislative Session Contact
State Capitol, Room 118
Juneau, AK 99801-1182

Re: House Bill 393 - Business Opportunities

Dear Norman:

I am writing this letter to you as the Chief Administrative Officer of Home Interiors & Gifts, Inc., a direct selling company (the "Company") that has been in existence since 1957. Our Company is based in Dallas, Texas and our products include framed artwork and mirrors, candles and candle holders, plaques, figurines, planters, artificial floral displays, wall shelves and sconces which are sold to independent contractor sales representatives ("Displayers") who resell the products primarily using the "party plan" method to conduct in-home presentations or shows for potential customers. As of the end of the year 2001, the Company sold its products to approximately 59,000 Displayers in the U.S., Mexico, Puerto Rico and Canada.

I understand that your committee is in the process of reviewing House Bill 393 - Business Opportunities concerning the regulation of business opportunities in Alaska. I appreciate your diligence in investigating and considering all communications and the positions of various businesses and individuals that have an interest in House Bill 393. We understand and support your concern about the regulation of business opportunities, but would like to make you aware of the following facts:

- Most states who have enacted such regulations allow a \$500 threshold in the definition of business opportunity, and we encourage you, as you consider House Bill 393, to not only increase the threshold from \$300 to \$500, but also to move it into the definitions section of the bill (see below).
- It is important that your consumers understand exactly what constitutes a "business opportunity" so that they can comply with the bonding and registration requirements in House Bill 393. Please insure that House Bill 393 clearly sets out the definition.
- Keep in mind that the majority of other states do NOT regulate the sale of business opportunities, and the enactment of such legislation in Alaska could be a deterrent to doing business there.

For the reasons stated above, the Company opposes enactment of House Bill 393 in its current form; we would support it if it is revised to raise the threshold level to \$500 and the definition of "business opportunity" is clearly stated in the definitions section of House Bill 393.

I will be happy to speak with you at any time about our concerns and House Bill 393. Please contact me if you have any questions.

Very truly yours,

Leonard A. Robertson
Chief Administration Officer