

HB

393

TIME SENSITIVE – IMMEDIATE ATTENTION NEEDED

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May 10, 2002

Senator Robin Taylor
State Capitol, Room 30
Juneau, AK 99801-1182

Subject: House Bill 393 – Sales of Business Opportunities

Dear Senator Taylor:

I write on behalf of Altacor and our thousands of Alaskan Amway Distributors and Quixtar Independent Business Owners to express our concerns regarding HB 393 – a bill proposing to create a business opportunity law. 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 should be corrected. We'd like to offer a potential practical solution.

HB 393 currently contains a **\$250 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 threshold**. It is 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.

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.

Senator Taylor, 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,



Bryan Harrison
Corporate Government Affairs

cc: Senate Judiciary Committee Members
John Hesse, Direct Selling Association

Add the underlined text to Sec. 45.66.220. Exemptions.

(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than ~~\$250~~ \$500;

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 BRU Criminal Division; Civil Division
practices and to the sale of business opportunities; . . ." Component Criminal Appeals/Special Litigation
 Sponsor Representative Stevens Fair Business Practices
 Requester House Labor and Commerce Committee Component No. 2279; 2206

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 Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/21/02 2:42 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/21/2002
 Agency: Department of Law

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.

Alaska State Legislature

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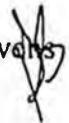


INTERIM ADDRESS:
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Representative Gary Stevens

Memorandum

To: Senator Robin Taylor, Chair
Senate Judiciary Committee

From: Representative Gary Stevens 

Date: May 6, 2002

Re: HB 393

I would like to respectfully request that you schedule HB 393, "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", for a hearing at your earliest convenience.

Thank you for your consideration of this request.

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.

CS HB 393 (JUD) – THE 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 \$250
- 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.

April 15, 2002

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 pitiful 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

CS HB 393 (JUD) -THE SALE OF BUSINESS OPPORTUNITIES

- Business opportunities, or "biz opps," are prepackaged small business deals offered primarily to novice entrepreneurs. Fraudulent biz opps bilk consumers nationwide of tens of millions of dollars a year, according to the FTC. These scams take a variety of forms, from stuffing envelopes or doing medical billing at home, to the sale of vending machines or greeting card display racks, to selling internet businesses. Promoters use high-pressure sales tactics and promise huge earnings to buyers. The scams often target vulnerable Alaskans: senior citizens, individuals at home because of disability or illness, or people experiencing financial difficulties.
- HB 393 will protect Alaskans from this type of scam by requiring sellers of business opportunities to register with the state and providing safeguards for consumers. It will allow the Department of Law to take preventative action *before* consumers are scammed. The bill:
 - Requires promoters to register prior to offering to sell business opportunities in Alaska. They will have to disclose information about the business opportunity and about their civil and criminal history and meet other registration requirements.
 - Obligates a promoter to give a buyer a disclosure statement 10 days before selling a business opportunity. The disclosure must include information about the seller's legal and financial background and the total price and payment schedule.
 - Requires the use of a written contract that sets out the payment terms, the services to be provided by the seller, delivery dates, and the buyer's right to cancel.
 - Precludes a seller from obtaining more than 20% of payment up front, unless the additional amount is placed in an escrow account at a financial institution.
 - Allows a buyer to cancel the contract within 30 days. The contract can also be cancelled after this 30-day period if the seller failed to meet disclosure requirements, made deceptive statements about the business opportunity, or failed to provide services.
- HB 393 provides exemptions for business opportunities that involve total payments under \$250, for business transactions that fall under other regulatory schemes, for ongoing business transactions, and for direct sellers under certain circumstances.
- Under HB 393, violations of the business opportunity registration requirements are also violations of the Unfair Trade Practices and Consumer Protections Act, AS 45.50.471, et seq. In addition, they may be punishable as criminal offenses.



Honorable Ben Stevens, Chair
Senate Labor and Commerce Committee
Alaska Capitol Room, Room 119
Juneau, AK 99801-1182

April 26, 2002

RE: HB 393 (Stevens) – Support

Dear Chair Stevens:

On behalf of the members of AARP In Alaska, we urge you and your colleagues on the Senate Labor and Commerce Committee to support HB 393, authored by Representative Gary Stevens, and co-sponsored by Representatives Kertula, Dyson, and Murkowski.

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,

Marguerite Stetson
Executive Council Member for Advocacy

- cc: Senator Austerman
- Senator Leman
- Senator Torgerson
- Senator Davis
- Representative Gary Stevens
- Representative Kertula
- Representative Dyson
- Representative Murkowski