

# **BUSINESS OPPORTUNITIES SALES LAW OF 1995**

(815 ILCS 602/5-1)

Effective January 1, 1996

(As amended through January 1, 2002)

---



**Illinois Securities Department**

**JESSE WHITE**  
**Secretary of State**



## *A Message from the Secretary*

---

I am pleased to present the Illinois Business Opportunity Sales Law of 1995, including recent amendments, effective Jan. 1, 2002. This Act provides an invaluable source of information for consumers and business opportunity providers doing business in the state of Illinois.

I urge members of the business opportunity industry to review the most recent changes to this Act to ensure compliance with all provisions. Included is the clarification that a business opportunity exists when any of the six listed representations in Section 5-5.10 (see page one) are part of the contract between seller and purchaser. A marketing plan includes the sale of any enterprise and the provision of continuing technical support. The definition of a "person" now includes a joint stock company or a limited liability partnership. If a business opportunity's registration expires, it can now be renewed within 30 days of expiration.

The new amendments empower employees of the Secretary of State's office to administer oaths and subpoena witnesses and materials deemed relevant to an investigation. A certificate issued by this office shall be prima facie evidence of registration. It is fraudulent and prohibited practice to act as a business opportunity salesperson without a registration, fail to file applications, reports or answers required by the Act or rules or fail to maintain files and records required by the Act or rules. It is permissible to file reviewed financial statements in lieu of an audited financial statement. The amendments further eliminate the need to file a Service of Process form by appointing the Secretary of State for purposes of service of process.

These modifications to the Act are important measures in furthering the goal of protecting Illinois consumers. I sincerely thank those members of the General Assembly who assisted in the legislative process.

Sincerely,

A handwritten signature in cursive script that reads "Jesse White".

JESSE WHITE  
Secretary of State

**BUSINESS OPPORTUNITY SALES LAW OF 1995**  
(as amended through January 1, 2002)

**Table of Contents**

5-1.	Short title .....	1
5-5.	Definitions .....	1
5-5.05.	Advertising .....	1
5-5.10.	Business opportunity .....	1
5-5.15.	Marketing plan .....	2
5-5.20.	Offer or offer to sell .....	2
5-5.25.	Ongoing business .....	3
5-5.30.	Person .....	3
5-5.35.	Purchaser .....	3
5-5.40.	Sale or Sell .....	3
5-5.45.	Seller .....	3
5-5.50.	Secretary of State .....	3
5-10.	Exemptions .....	3
5-15.	Denial or revocation of exemptions .....	5
5-20.	Burden of proof and evidentiary matters .....	6
5-25.	Registration requirement .....	7
5-30.	Registration .....	7
5-35.	Disclosure requirements .....	9
5-40.	Contract or agreement provisions .....	13
5-45.	Denial, suspension, or revocation of registration .....	13
5-50.	Minimum net worth or bond requirement .....	15
5-55.	Administration of this Law .....	16
5-60.	Investigations and subpoenas .....	16
5-65.	Remedies .....	17
5-70.	Rules, forms, orders and hearings .....	18
5-75.	Administrative files and opinions .....	19
5-80.	Scope of the Law; service of process .....	19

5-85. Statutory construction ..... 20

5-90. Severability of provisions ..... 21

5-95. Fraudulent and prohibited practices ..... 21

5-100. Misleading filings ..... 21

5-105. Unlawful representations ..... 21

5-110. Advertising ..... 22

5-115. Criminal penalties ..... 22

5-120. Rescission; surety bond ..... 22

5-125. Persons liable ..... 23

5.130. Miscellaneous provisions ..... 23

5.135. Deposit of moneys ..... 24

5.145. Service of process ..... 24

## **Business Opportunity Sales Law of 1995**

Cite: 815 ILCS 602/5-1 et seq.

**Title:** An Act concerning business activity regulation.

**Sec. 5-1. Short title.** This Article shall be known and may be cited as the Business Opportunity Sales Law of 1995.

**Sec. 5-5. Definitions.** As used in this Law, the terms defined in the Sections following this Section and preceding Section 5-6 have the meanings ascribed therein.

**Sec. 5-5.05. Advertising.** “Advertising” means any circular, prospectus, advertisement or other material or any electronic communication including, but not limited to by radio, television, pictures or similar means used in connection with an offer or sale of any business opportunity.

**(As amended through January 1, 2002.)**

**Sec. 5-5.10. Business opportunity.**

(a) “Business opportunity” means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any product, equipment, supplies or services enabling the purchaser to start a business when the purchaser is required to make a payment to the seller or a person recommended by the seller and the seller represents directly or indirectly, orally or in writing, any of the following, that:

- (1) the seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller;
- (2) the seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser’s products or services;
- (3) the seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser;
- (4) the seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller;
- (5) the seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or
- (6) the seller will provide a marketing plan, provided that this Law

shall not apply to the sale of a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark.

- (b) “Business opportunity” does not include:
- (1) any offer or sale of an ongoing business operated by the seller and to be sold in its entirety;
  - (2) any offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser’s ongoing business;
  - (3) any offer or sale of a business opportunity which is a franchise as defined by the Franchise Disclosure Act of 1987;
  - (4) any offer or sale of a business opportunity which is registered pursuant to the Illinois Securities Law of 1953;
  - (5) (Blank)
  - (6) any offer or sale of a business opportunity by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer or sale, of a business opportunity; or
  - (7) cash payments made by a purchaser not exceeding \$500 and the payment is made for the not-for-profit sale of sales demonstration equipment, material or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

**(As amended through January 1, 2002.)**

**Sec. 5-5.15. Marketing plan.** “Marketing plan” means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining specifically to the sale of any enterprise, product, equipment, supplies or services and the advice or training includes, without limitation, ~~but is not limited to~~ preparing or providing:

- (1) Promotional literature, brochures, pamphlets, or advertising materials;
- (2) Training, regarding the promotion, operation or management of the business opportunity; or
- (3) Operational, managerial, ~~technical~~ or financial guidelines or assistance or continuing technical support.

**(As amended through January 1, 2002.)**

**Sec. 5-5.20. Offer or offer to sell.** “Offer” or “offer to sell” includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity.

**Sec. 5-5.25. Ongoing business.** “Ongoing business” means an existing business that, for at least 6 months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

**Sec. 5-5.30. Person.** “Person” means an individual, corporation, trust, partnership, a joint stock company, limited liability partnership, limited liability company, incorporated or unincorporated association or any other entity.

**(As amended through January 1, 2002.)**

**Sec. 5-5.35. Purchaser.** “Purchaser” means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

**Sec. 5-5.40. Sale or sell.** “Sale” or “Sell” means every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

**Sec. 5-5.45. Seller.** “Seller” means a person who sells or offers to sell a business opportunity or any agent or person who directly or indirectly acts on behalf of such person.

**Sec. 5-5.50. Secretary of State.** “Secretary of State” means the Secretary of State of Illinois.

**Sec. 5-10. Exemptions.** Registration pursuant to Section 5-30 shall not apply to any of the following:

- (a) Any offer or sale of a business opportunity which the immediate cash payment made by the purchaser for any business opportunity is at least \$25,000 if the immediate cash payment does not exceed 20% of the purchaser’s net worth as determined exclusive of principal residence, furnishings therein, and automobiles; provided, however, the Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.
- (b) Any offer or sale of a business opportunity which seller does not advertise, solicit, or sell for an initial payment to the seller or a person recommended by the seller exceeding \$500.
- (c) Any offer or sale of a business opportunity where the seller has a net worth of not less than \$1,000,000 as determined on the basis of the seller’s most recent audited financial statement, prepared within 13 months of the first offer in this State. Net worth may be determined on a consolidated basis where the seller is at least 80% owned by one person and that person expressly guarantees the obligations

of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this subsection. The Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.

- (d) Any offer or sale of a business opportunity where the purchaser has a net worth of not less than \$250,000. Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The Secretary of State may by rule or regulation withdraw or further condition the availability of this exemption.
- (e) Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or a dealer registered under the Illinois Securities Law of 1953, where the purchaser is acting for itself or in a fiduciary capacity.
- (f) Any offer or sale of a business opportunity which is defined as a franchise under the Franchise Disclosure Act of 1987 provided that the seller delivers to each purchaser at the earlier of the first personal meeting, or 10 business days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:
  - (1) The Franchise Offering Circular provided for under the Franchise Disclosure Act of 1987 which the Secretary of State may adopt by rule or regulation; or
  - (2) A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. Sec. 436 (1979). For the purposes of this subsection, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity.
- (g) Any offer or sale of a business opportunity for which the cash payment required to be made by a purchaser for any business opportunity does not exceed \$500 and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.
- (h) Any offer or sale of a business opportunity which the Secretary of State exempts by order or a class of business opportunities which the Secretary of State exempts by rule or regulation upon the finding that such exemption would not be contrary to public interest and

that registration would not be necessary or appropriate for the protection of purchasers.

**Sec. 5-15. Denial or revocation of exemptions.**

- (a) The Secretary of State may by order deny or revoke any exemption specified in Section 5-10 of this Law with respect to a particular offering of one or more business opportunities. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.
- (b) If the public interest or the protection of purchasers so requires, the Secretary of State may by summary order deny or revoke any of the specified exemptions pending final determination of any proceedings under this Section. Upon the entry of the order, the Secretary of State shall promptly notify all interested parties that it has been entered and of the reasons therefor and that the matter will be set for hearing upon written request filed with the Secretary of State within 30 days after the receipt of the request by the respondent. If no hearing is requested and none is ordered by the Secretary of State, the order will remain in effect until it is modified or vacated by the Secretary of State. If a hearing is requested and none is ordered by the Secretary of State, the order will remain in effect until it is modified or vacated by the Secretary of State. If a hearing is requested or ordered, the Secretary of State, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.
- (c) No order under this Section may operate retroactively.
- (d) No person may be considered to have violated Section 5-25 by reason of any offer or sale effected after the entry of an order under paragraph (1) of Section 5-65 of this Law if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.
- (e) Notwithstanding any provision to the contrary, this Law shall not apply to (i) any dealer, salesperson, or investment adviser registered under the Illinois Securities Law of 1953 or any investment adviser representative, or any person who is regularly engaged in the business of offering or selling securities in a transaction exempted under subsection C, H, M, R, Q, or S of Section 4 of the Illinois Securities Law of 1953 or subsection G of Section 4 of the Illinois Securities Law of 1953 provided that such person is registered under the federal securities law, (ii) an associated person described in subdivision (h)(2) of Section 15 of the Federal 1934 Act, (iii) an investment adviser registered under Section 203 of the Federal 1940 Investment Advisors Act, or (iv) a person described in subdivision (a)(11) of Section 202 of the Federal 1940 Investment Advisors Act.

- (f) This Law shall not be deemed to apply in any manner, directly or indirectly, to: (i) a State bank or national bank, as those terms are defined in the Illinois Banking Act, or any subsidiary of a State bank or national bank; (ii) a bank holding company, as that term is defined in the Illinois Bank Holding Company Act of 1957, or any subsidiary of a bank holding company; (iii) a foreign banking corporation, as that term is defined in the Foreign Banking Office Act, or any subsidiary of a foreign banking corporation; (iv) a representative office, as that term is defined in the Foreign Bank Representative Office Act, (v) a corporate fiduciary, as that term is defined in the Corporate Fiduciary Act, or any subsidiary of a corporate fiduciary; (vi) a savings bank organized under the Savings Bank Act, or a federal savings bank organized under federal law, or any subsidiary of a savings bank or federal savings bank; (vii) a savings bank holding company organized under the Savings Bank Act, or any subsidiary of a savings bank holding company; (viii) an association or federal association, as those terms are defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of an association or federal association; (ix) a foreign savings and loan association or foreign savings bank subject to the Illinois Savings and Loan Act of 1985, or any subsidiary of a foreign savings and loan association or foreign savings bank; or (x) a savings and loan association holding company, as that term is defined in the Illinois Savings and Loan Act of 1985, or any subsidiary of a savings and loan association holding company.

**Sec. 5-20. Burden of proof and evidentiary matters.**

- (a) In any administrative, civil, or criminal proceeding related to this Law, the burden of proving an exemption, an exception from a definition or an exclusion from this Law is upon the person claiming it.
- (b) In any action, administrative, civil, or criminal, a certificate under the seal of the State of Illinois, signed by the Secretary of State attesting to the filing of or the absence of any filing of any document or record with the Secretary of State under this Act, shall constitute prima facie evidence of such filing or of the absence of the filing, and shall be admissible in evidence in any administrative, criminal, or civil action.
- (c) In any administrative, civil, or criminal action, the Secretary of State may issue a certificate under the seal of the State of Illinois signed by the Secretary of State, showing that any document or record is a true and exact copy, photocopy or otherwise, of the record or document on file with the Secretary of State under this Act; and such certified document or record shall be admissible in evidence with the same effect as the original document or record would have if actually produced.

(d) Any certificate pursuant to subsection (b) or (c) of this Section shall be furnished by the Secretary of State upon an application therefor in the form and manner prescribed by the Secretary of State by rule, and shall be accompanied by payment of a non-refundable certification fee in the amount specified by rule or by order of the Secretary of State.

**(As amended through January 1, 2002.)**

**Sec. 5-25. Registration requirement.** It is unlawful for any person to offer or sell any business opportunity in this State unless the business opportunity is registered under this Law or is exempt under Section 5-10 of this Law.

**Sec. 5-30. Registration.**

- (a) In order to register a business opportunity, the seller shall file with the Secretary of State one of the following disclosure documents with the appropriate cover sheet as required by subsection (b) of Section 5-35 of this Law, a consent to service of process as specified in subsection (b) of this Section, and the appropriate fee as required by subsection (c) of this Section which is not returnable in any event:
- (1) The Franchise Offering Circular which the Secretary of State may prescribe by rule or regulation; or
  - (2) A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Venture, 16 C.F.R. Sec. 436 (1979). The Secretary of State may by rule or regulation adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Sec. 436 (1979), that has been adopted by the Federal Trade Commission; or
  - (3) A disclosure document prepared pursuant to subsection (b) of Section 5-35 of this Law.
- (b) Every seller shall file, in the form as the Secretary of State may prescribe, an irrevocable consent appointing the Secretary of State or the successor in office to be the seller's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor or administrator which arises under this Law after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by delivering a copy of the process in the office of the Secretary of State, but is not effective unless the plaintiff or petitioner in a suit, action or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail, return receipt requested, to the defendant's or respondent's most current address on file with the

Secretary of State, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

- (c) (1) The Secretary of State shall by rule or regulation impose and shall collect fees necessary for the administration of this Law including, but not limited to, fees for the following purposes:
- (A) filing a disclosure document and renewal fee;
  - (B) interpretive opinion fee;-
  - (C) acceptance of service of process pursuant to subsection (b) of Section 5-145;
  - (D) issuance of certification pursuant to Section 5-20; or
  - (E) late registration fee pursuant to Section 5-30 (g).
- (As amended through January 1, 2002.)**
- (2) The Secretary of State may, by rule or regulation, raise or lower any fee imposed by, and which he or she is authorized by law to collect under this Law.
- (d) A registration automatically becomes effective upon the expiration of the 10th full business day after a complete filing, provided that no order has been issued or proceeding pending under Section 5-45 of this Law. The Secretary of State may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The Secretary of State may by order defer the effective date until the expiration of the 10th full business day after the filing of any amendment.
- (e) The registration is effective for one year commencing on the date of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the Secretary of State may by rule or regulation or order require. The annual renewal fee shall be in the same amount as the initial registration fee as established under subsection (c) of Section 5-30 of this Law which shall not be returnable in any event. Failure to renew upon the close of the one year period of effectiveness will result in expiration of the registration. The Secretary of State may by rule or regulation or order require the filing of a sales report.
- (f) The Secretary of State may by rule or regulation or order require the filing of all proposed literature or advertising prior to its use.
- (g) Notwithstanding the foregoing, applications for renewal of registration of business opportunities may be filed within 30 days following the expiration of the registration provided that the applicant pays the annual registration fee together with an additional amount equal to the annual registration fee and files any other information or documents that the Secretary of State may prescribe by rule or order. Any application filed within 30 days following the expiration

of the registration shall be automatically effective as of the time of the earlier expiration provided that the proper fee has been paid to the Secretary of State.

**(As amended through January 1, 2002.)**

**Sec. 5-35. Disclosure requirements.**

- (a) It shall be unlawful for any person to offer or, sell any business opportunity required to be registered under this Law unless a written disclosure document as filed under subsection (a) of Section 5-30 of this Law is delivered to each purchaser at least 10 business days prior to the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.
- (b) The disclosure document shall have a cover sheet which is entitled, in at least 10-point bold type, "DISCLOSURE REQUIRED BY THE STATE OF ILLINOIS." Under the title shall appear the statement in at least 10-point bold type that "THE REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE TO BE PROVIDED 10 BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE". The seller's name and principal business address, along with the date of the disclosure document shall also be provided on the cover sheet. No other information shall appear on the cover sheet. The disclosure document shall contain the following information unless the seller uses a disclosure document as provided in paragraph (1) or (2) of subsection (a) of Section 5-30 of this Law:
- (1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this State.
  - (2) The name of the seller, whether the seller is doing business as an individual, partnership or corporation; the names under which the seller has conducted, is conducting or intends to conduct business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or which will take responsibility for statements made by the seller.

- (3) The names, addresses and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.
- (4) Prior business experience of the seller relating to business opportunities including:
  - (A) The name, address, and a description of any business opportunity previously offered by the seller;
  - (B) The length of time the seller has offered each such business opportunity; and
  - (C) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.
- (5) With respect to persons identified in item (3) of this subsection:
  - (A) A description of the persons' business experience for the 10 year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers; and
  - (B) A listing of the persons' educational and professional backgrounds including, the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.
- (6) Whether the seller or any person identified in item (3) of this subsection:
  - (A) Has been convicted of any felony, or pleaded nolo contendere to a felony charge, or has been the subject of any criminal, civil or administrative proceedings alleging the violation of any business opportunity law, securities law, commodities law, franchise law, fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations;
  - (B) Has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or was an owner, principal officer or general partner or any other person that has so filed or was so adjudged or reorganized during or within the last 7 years.
- (7) The name of the person identified in item (6) of this subsection, nature of and parties to the action or proceeding, court or other forum, date of the institution of the action, docket references to the action, current status of the action or proceeding, terms and conditions or any order or decree, the penalties or damages assessed and terms of settlement.

- (8) The initial payment required, or when the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.
- (9) A detailed description of the actual services the seller agrees to perform for the purchaser.
- (10) A detailed description of any training the seller agrees to provide for the purchaser.
- (11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products or supplies on a premises neither owned nor leased by the purchaser or seller.
- (12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.
- (13) The business opportunity seller that is required to secure a bond under Section 5-50 of this Law, shall state in the disclosure document "As required by the State of Illinois, the seller has secured a bond issued by (insert name and address of surety company), a surety company, authorized to do business in this State. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."
- (14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to:
  - (A) The bases or assumptions for any actual, average, projected or forecasted sales, profits, income or earnings;
  - (B) The total number of purchasers who, within a period of 3 years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser; and
  - (C) The total number of purchasers who, within 3 years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.
- (15) Any seller who makes a guarantee to a purchaser shall give a detailed description of the elements of the guarantee. Such description shall include, but shall not be limited to, the duration, terms, scope, conditions and limitations of the guarantee.

- (16) A statement of:
  - (A) The total number of business opportunities that are the same or similar in nature to those that have been sold or organized by the seller;
  - (B) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last 12 months and the number of those who have received the refund or rescission; and
  - (C) The total number of business opportunities the seller intends to sell in this State within the next 12 months.
- (17) A statement describing any contractual restrictions, prohibitions or limitations on the purchaser's conduct. Attach a copy of all business opportunity and other contracts or agreements proposed for use or in use in this State including, without limitation, all lease agreements, option agreements, and purchase agreements.
- (18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.
- (19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.
- (20) A copy of the most recent audited financial statement of the seller, prepared within 13 months of the first offer in this State, together with a statement of any material changes in the financial condition of the seller from that date. The Secretary of State may accept the filing of a reviewed financial statement in lieu of an audited financial statement ~~allow the seller to submit a limited review in order to satisfy the requirements of this subsection.~~
- (21) A list of the states in which this business opportunity is registered.
- (22) A list of the states in which this disclosure document is on file.
- (23) A list of the states which have denied, suspended or revoked the registration of this business opportunity.
- (24) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.
- (25) Any additional information as the Secretary of State may require by rule, regulation, or order.

**(As amended through January 1, 2002.)**

**Sec. 5-40. Contract or agreement provisions.**

- (a) It is unlawful for any person to offer or sell any business opportunity required to be registered unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.
- (b) Contracts or agreements shall set forth in at least ten-point type or equivalent size, if handwritten, the following:
  - (1) The terms and conditions of any and all payments due to the seller;
  - (2) The seller's principal business address and the name and address of the seller's agent in this State authorized to receive service of process;
  - (3) The business form of the seller, whether corporate, partnership, or otherwise;
  - (4) The delivery date or, when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start his or her business; and
  - (5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

**Sec. 5-45. Denial, suspension, or revocation of registration.**

- (a) The Secretary of State may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, a registration if the Secretary of State finds that the order is in the public interest and that any of the following exist:
  - (1) The registration as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.
  - (2) Any provision of this Law or any rule, regulation, order, or condition lawfully imposed under this Law has been willfully violated, in connection with the business opportunity:
    - (A) by the person filing the registration; or
    - (B) by the seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person

filing the registration is directly or indirectly controlled by or acting for the seller.

- (3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending or revoking a registration or a permanent or temporary injunction or final order of any court of competent jurisdiction; but the Secretary of State:
    - (A) may not institute a proceeding against an effective registration under this paragraph more than one year from the date of the order or injunction relied on; and
    - (B) may not enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this Section.
  - (4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed.
  - (5) The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would so operate.
  - (6) There has been a failure to file any documents or information required by Section 5-30 of this Law.
  - (7) The seller has failed to pay the proper filing fee but the Secretary of State may enter only a denial order under this paragraph and the Secretary of State shall vacate any such order when the deficiency has been corrected.
  - (8) The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.
- (b) The Secretary of State may not institute a proceeding under this Section against an effective registration on the basis of a fact or transaction known to the Secretary of State when the registration became effective unless the proceeding is instituted within the next 30 days.
- (c) The Secretary of State may by summary order postpone or suspend the effectiveness of the registration pending final determination of any proceeding under this Section. Upon the entry of the order, the Secretary of State shall promptly notify the seller that the order has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. The written request must be made within 30 days of the entry of the order. If no hearing is requested and none is ordered by the Secretary of State, the order will remain in effect until it is modified or vacated by the Secretary of State. If a hearing is requested or ordered, the Secretary of State, after notice of an opportunity for

hearing to the seller, may modify or vacate the order or extend it until final determination.

- (d) No summary order may be entered under any part of this Section, except the first sentence of subsection (c) of this Section, without appropriate prior notice to the seller, opportunity for hearing, and written findings of fact and conclusions of law.
- (e) The Secretary of State may vacate or modify an order issued under this Section if the Secretary of State finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.
- (f) Notwithstanding anything in this Act to the contrary, the Secretary of State, after notice and opportunity for hearing, may, at the Secretary of State's discretion, enter into an agreed settlement, stipulation, or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation, or consent order shall have the full force and effect of an order issued by the Secretary of State.
- (g) The action of the Secretary of State in issuing any order under this Section shall be subject to judicial review under the Administrative Review Law.

**Sec. 5-50. Minimum net worth or bond requirement.**

- (a) In connection with the offer or sale of a business opportunity, no seller may make or use any of the representations set forth in Section 5-5.10(a)(4) and Section 5-5.10(a)(5) of this Law unless the seller has at all times a minimum net worth of \$25,000 as determined in accordance with generally accepted accounting principles. In lieu of the minimum net worth requirement, the Secretary of State may, by rule, regulation, or order, require a business opportunity seller to obtain a surety bond issued by a surety company authorized to do business in this State. The surety bond shall be in an amount not less than \$25,000 and shall be in favor of this State for the benefit of any purchaser. The Secretary of State may by rule, regulation, or order, increase the amount of the bond for the protection of purchasers and may require the seller to file reports of all sales in this State to determine the appropriate amount of bond.
- (b) Where the seller is required to obtain a surety bond, the seller shall maintain a surety bond for the duration of the guarantee or representation giving rise to the surety bond requirement. Upon expiration of the period of the guarantee, the seller may allow the surety bond to lapse provided that the seller shall give notice to the Secretary of State and all business opportunity purchasers in this State at least 30 days prior to the lapse of the bond.

**Sec. 5-55. Administration of this Law.**

- (a) This Law shall be administered by the Secretary of State.
- (b) It is unlawful for the Secretary of State or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the Secretary of State and which is not made public. No provision of this Law authorizes the Secretary of State or any of the Secretary of State's officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Law. No provision of this Law either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Secretary of State or any of the Secretary of State's officers or employees.
- (c) In no case shall the Secretary of State or any of his or her employees or agents, in the administration of this Law, incur any official or personal liability by instituting an injunction or other proceeding, by denying, suspending, or revoking the registration of any business opportunity, by prohibiting the offer or sale of any business opportunity, or by prohibiting any person from offering or selling business opportunities.

**Sec. 5-60. Investigations and subpoenas.**

- (a) The Secretary of State:
  - (1) may make such public or private investigations within or outside of this State as the Secretary of State deems necessary to determine whether any person has violated or is about to violate any provision of this Law or any rule, regulation, or order under this Law, or to aid in the enforcement of this Law or in the prescribing of rules and forms under this Law;
  - (2) may require or permit any person to file a statement, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated; and
  - (3) may publish information concerning any violation of this Law or any rule, regulation, or order under this Law.
- (b) For the purpose of any investigation or proceeding under this Law, the Secretary of State or his or her designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require, by subpoena or other lawful means provided by this Act or the rules adopted by the Secretary of State, the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State deems relevant or material to the inquiry.

- (c) In case of contumacy by, or refusal to obey a subpoena issued to any person, through the Office of the Attorney General may bring an appropriate action in any circuit court of the State of Illinois for the purpose of enforcing the subpoena.
- (d) It shall be a violation of the provisions of this Law for any person to fail to file with the Secretary of State any report, document, or statement required to be filed under the provisions of this Section or fail to comply with the terms of any order of the Secretary of State issued pursuant to this Law.

**(As amended through January 1, 2002.)**

**Sec. 5-65. Remedies.** Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this Law or any rule, regulation, or order under this Law, the Secretary of State may:

- (1) Issue an order, anything contained in this Law to the contrary notwithstanding directing the person to cease and desist from continuing the act or practice. Any person named in a cease and desist order issued by the Secretary of State may, within 30 days after the date of the entry of the order, file a written request for a hearing with the Secretary of State. If the Secretary of State does not receive a written request for a hearing within the time specified, the cease and desist order will be permanent and the person named in the order will be deemed to have waived all rights to a hearing. If a hearing is requested, the order will remain in force until it is modified, vacated, rescinded or expunged by the Secretary of State.
- (1.5) Prohibit or suspend the offer or sale of any business opportunity, prohibit or suspend any person from offering or selling any business opportunities, impose any fine for violation of this Law, issue an order of public censure, or enter into an agreed settlement or stipulation. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.
- (2) Bring an action in the circuit court of any county to enjoin the acts or practices and to enforce compliance with this Law or any rule, regulation, or order under this Law. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful under this Law or any rule, regulation, or order under this Law.

The court shall not require the Secretary of State to post a bond.

- (3) The Secretary of State may refer such evidence as may be available concerning violations of this Law or any rule, regulation, or order under this Law to the Attorney General or the appropriate State's Attorney, who may, with or without such a reference, institute the appropriate proceedings under this Section.
- (4) In addition to any other sanction or remedy contained in this Section, the Secretary of State, after finding that any provision of this Law has been violated, may impose a fine as provided by rule or order against the violator not to exceed \$10,000 per violation, and may issue an order of public censure against the violator, and charge as costs of the investigation all reasonable expenses, including attorney's fees and witness fees.
- (5) Notwithstanding the foregoing, the Secretary of State, after notice and opportunity for hearing, may at his or her discretion enter into an agreed settlement, stipulation, or consent order with a respondent in accordance with the provisions of the Illinois Administrative Procedure Act. The provisions of the agreed settlement, stipulation, or consent order shall have the full force and effect of an order issued by the Secretary of State.
- (6) The action of the Secretary of State in denying, suspending, or revoking the registration of a business opportunity, in prohibiting or suspending a person from offering or selling business opportunities, in prohibiting or suspending the offer or sale of business opportunities, in imposing any fine for violation of this Law, or in issuing any order shall be subject to judicial review under the Administrative Review Law which shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State under this Law.

**(As amended through January 1, 2002.)**

#### **Sec. 5-70. Rules, forms, orders and hearings.**

- (a) The Secretary of State may amend, modify, vacate, and expunge orders and may make, amend and rescind rules and forms as are necessary to carry out the provisions of this Law including rules and forms governing disclosure documents, applications and reports, and defining any terms, whether or not used in this Law insofar as the definitions are not inconsistent with the provisions of this Law. For the purpose of rules and forms, the Secretary of State may classify business opportunities, persons, and matters within

his or her jurisdiction, and prescribe different requirements for different classes.

- (b) No rule, form, or order may be made, amended, or rescinded unless the Secretary of State finds that the action is necessary or appropriate in the public interest or for the protection of the purchaser. In prescribing rules and forms the Secretary of State may cooperate with the administrators of other jurisdictions with a view to effectuating the policy of this Law to achieve maximum uniformity in the form and content of disclosure statements, applications, and reports whenever practicable.
- (c) No provision of this Law imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Secretary of State, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

**Sec. 5-75. Administrative files and opinions.**

- (a) A document is filed with the Secretary of State when all requirements of this Law with respect to filing have been complied with and the required fee has been paid.
- (b) The Secretary of State shall keep records of all applications for registration and disclosure documents which are or have been effective under this Law and all orders which have been entered under this Law. The register shall be open for public inspection.
- (c) Unless otherwise provided by law, any registration statement, filing, application, or report filed with the Secretary of State shall be open for public inspection.
- (d) The Secretary of State may honor written requests from interested persons for non-binding opinions upon the payment of a fee established pursuant to subsection (c) of Section 5-30 of this Law, which shall not be returnable in any event.

**Sec. 5-80. Scope of the Law; service of process.**

- (a) The provisions of this Law concerning sales and offers to sell apply to persons who sell or offer to sell when:
  - (1) An offer to sell is made in this State;
  - (2) An offer to purchase is made and accepted in this State; or
  - (3) The purchaser is domiciled in this State and the business opportunity is or will be operated in this State.
- (b) For the purpose of this Section, an offer to sell is made in this State, whether or not either party is then present in this State, when:
  - (1) The offer originates from this State; or
  - (2) The offer is directed by the offeror to this State and received at the place to which it is directed or at any post office in this State in the case of a mailed offer.

- (c) For the purpose of this Section, an offer to sell is accepted in this State when acceptance:
  - (1) Is communicated to the offeror in this State; and
  - (2) Has not previously been communicated to the offeror, orally, or in writing, outside this State; and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed or at any post office in this State in the case of a mailed acceptance.
- (d) When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this Law or any rule, regulation, or order under this Law, and the person has not filed a consent to service of process and personal jurisdiction over the person cannot otherwise be obtained in this State, that conduct shall be considered equivalent to the person's appointment of the Secretary of State to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor or administrator which grows out of that conduct and which is brought under this Law or any rule, regulation, or order under this Law with the same force and validity as if served on the person personally. Service may be made by filing a copy of the process in the office of the Secretary of State, and it is not effective unless:
  - (1) The plaintiff, who may be the Secretary of State in a suit, action, or proceeding instituted by the Secretary of State, forthwith sends notice of the service and a copy of the process by certified or registered mail, return receipt requested, to the defendant's or respondent's most current address on file with the Secretary of State or takes other steps which are reasonably calculated to give actual notice; and
  - (2) The plaintiff's affidavit of compliance with this subsection (d) of this Section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (e) When process is served under this Section, the court, or the Secretary of State in a proceeding before the Secretary of State, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

**Sec. 5-85. Statutory construction.** This Law shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Sec. 5-90. Severability of provisions.** If any provision of this Law or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Law that can be given effect without the invalid provision or application.

**Sec. 5-95. Fraudulent and prohibited practices.**

- (a) It is unlawful for any person, in connection with the offer or sale of any business opportunity in this State or any offer or sale pursuant to the exemptions granted under subdivisions 5-10(a), (c), (d), or (h), directly or indirectly:
- (1) To employ any device, scheme or artifice to defraud;
  - (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
  - (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.
- (b) No person shall, either directly or indirectly, do any of the following:
- (1) offer or sell any business opportunity without registration under this Act unless the person offering or selling the opportunity is exempt under the Act;
  - (2) fail to file with the Secretary of State any application, report, document, or answer required to be filed under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act or fail to comply with the terms of any order issued pursuant to this Act or any rules adopted by the Secretary of State; or
  - (3) fail to keep or maintain any records as is required under the provisions of this Act or any rule adopted by the Secretary of State pursuant to this Act.

**(As amended through January 1, 2002.)**

**Sec. 5-100. Misleading filings.** It is unlawful for any person to make or cause to be made, in any document filed with the Secretary of State or in any proceeding under this Law any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

**Sec. 5-105. Unlawful representations.** Neither the fact that an application for registration has been filed nor the fact that a business opportunity is

effectively registered constitutes a finding by the Secretary of State that any document filed under this Law is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a business opportunity means that the Secretary of State has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person or business opportunity. It is unlawful to make, or cause to be made, to any purchaser any representation inconsistent with the requirements of this Section.

**Sec. 5-110. Advertising.** It is unlawful for any person, in connection with the offer or sale of any business opportunity in this State, to publish, circulate or use any advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

**Sec. 5-115. Criminal penalties.**

- (a) Any person who willfully violates Sections 5-25, 5-50, 5-95, 5-105, 5-110, subsection (a) of Section 5-35, or subsection (a) of Section 5-40, or subsection (d) of Section 5-60 of this Law or who willfully violates any order of which the person has notice, or who violates Section 5-100 of this Law knowing that the statement made was false or misleading in any material respect is guilty of a Class 3 felony for each offense. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.
- (b) No prosecution for any crime under this Law may be commenced more than 5 years after the alleged violation.
- (c) Nothing in this Law limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute.
- (d) The Secretary of State may refer such evidence as may be available concerning violations of this Law or any rule, regulation, or order under this Law to the Attorney General or appropriate State's attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Law.

**Sec. 5-120. Rescission; surety bond.**

- (a) Any person who violates Section 5-25, 5-50, subsection (a) of Section 5-35, or subsection (a) of Section 5-40 of this Law, is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money or other valuable consideration paid for the business opportunity and for actual damages, together with interest at 10% per annum from the date of sale, reasonable attorney's fees and court costs.

- (b) Any person who violates Section 5-95, 5-105, or 5-110 of this Law is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money or other valuable consideration paid for the business opportunity and for treble the actual damages, together with interest at 10% per annum from the date of sale, reasonable attorney's fees and court costs.
- (c) Any person who violates Section 5-95, 5-105, 5-110, or subsection (a) of Section 5-35 of this Law, or who breaches any business opportunity contract or agreement or any obligation arising under the contract or agreement is liable to the purchaser who may sue the surety of the bond, either at law or in equity to recover all money or other valuable consideration paid for the business opportunity and actual damages, together with interest at 10% per annum from the date of sale, reasonable attorney's fees and court costs. The liability of the surety shall not exceed the amount of the bond.

**Sec. 5-125. Persons liable.** Every person who directly or indirectly controls a person liable under Section 5-120 or 5-125 of this Law, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions and every employee of a person so liable who materially aids in the act or transaction constituting the violation is also liable jointly or severally with and to the same extent as such person, unless the person liable under this Section proves that he or she did not know, and in the exercise of reasonable care could not have known of the existence of the facts constituting the alleged liability. There is contribution, as in cases of contract, among the several persons held liable.

**Sec. 5-130. Miscellaneous provisions.**

- (a) No action shall be maintained under Section 5-120 of this Law unless commenced before 3 years after the act or transaction constituting the violation.
- (a-5) No administrative action shall be brought by the Secretary of State for relief under this Law after the earlier to occur of (i) 3 years from the date upon which the Secretary of State had notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation of the Act, or (ii) 5 years from the date on which the alleged violation occurred.
- (b) The rights and remedies under this Law are in addition to any other rights or remedies that may exist at law or in equity.
- (c) Any condition, stipulation or provision binding any purchaser of a business opportunity to waive compliance with or relieving a person from any duty or liability imposed by or any right provided by this Law or any rule, regulation or order issued pursuant to this Law is void.

**Sec. 5-135. Deposit of moneys.** All moneys received under this Law shall be deposited into the Securities Audit and Enforcement Fund.

**Sec. 5-145. Service of process.**

- (a) The offer or sale of business opportunities in this State by any person, unless exempt from registration under this Act, shall constitute an appointment of the Secretary of State, or his or her successors in office, by the person to be the true and lawful attorney for the person upon whom may be served all lawful process in any action or proceeding against the person, arising out of the offer or sale of the securities.
- (b) Service of process under this Section shall be made by serving a copy upon the Secretary of State or any employee in his or her office designated by the Secretary of State to accept such service for him or her, provided notice and a copy of the process are, within 10 days after receiving the notice and process, sent by registered mail or certified mail, return receipt requested, by the plaintiff to the defendant, at the last known address of the defendant. The filing fee for service of process under this Section shall be as established pursuant to Section 5-30 of this Act, and shall not be returnable in any event. The Secretary of State shall keep a record of all processes each of which shall show the day of the service.

**(As amended through January 1, 2002.)**

