

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The General Not For Profit Corporation Act of
5 1986 is amended by changing Section 107.50 as follows:

6 (805 ILCS 105/107.50) (from Ch. 32, par. 107.50)

7 Sec. 107.50. Proxies. A member entitled to vote may vote in
8 person or, unless the articles of incorporation or the bylaws
9 otherwise provide, by proxy executed in writing by the member
10 or by that member's duly authorized attorney-in-fact. No proxy
11 shall be valid after 11 months from the date of its execution,
12 unless otherwise provided in the proxy. Where directors, ~~or~~
13 officers, or representatives are to be elected by members, the
14 bylaws may provide that such elections may be conducted by
15 mail, email, or other electronic means.

16 (Source: P.A. 84-1423.)

17 Section 10. The Illinois Business Brokers Act of 1995 is
18 amended by changing Section 10-80 as follows:

19 (815 ILCS 307/10-80)

20 Sec. 10-80. Persons exempt from registration and other
21 duties under law; burden of proof thereof.

1 (a) The following persons are exempt from the requirements
2 of this Act:

3 (1) Any attorney who is licensed to practice in this
4 State, while engaged in the practice of law and whose
5 service in relation to the business broker transaction is
6 incidental to the attorney's practice.

7 (2) Any person licensed as a real estate broker or
8 salesperson under the Illinois Real Estate License Act of
9 2000 who is primarily engaged in business activities for
10 which a license is required under that Act and who, on an
11 incidental basis, acts as a business broker.

12 (3) Any dealer, salesperson, or investment adviser
13 registered pursuant to the Illinois Securities Law of 1953
14 or any investment adviser representative, or any person who
15 is regularly engaged in the business of offering or selling
16 securities in a transaction exempted under subsection C, H,
17 M, R, Q, or S of Section 4 of the Illinois Securities Law
18 of 1953 or subsection G of Section 4 of the Illinois
19 Securities Law of 1953 provided that such person is
20 registered pursuant to federal securities law.

21 (4) An associated person described in subdivision
22 (h) (2) of Section 15 of the Federal 1934 Act.

23 (5) An investment adviser registered pursuant to
24 Section 203 of the Federal 1940 Investment Advisors Act.

25 (6) A person described in subdivision (a) (11) of
26 Section 202 of the Federal 1940 Investment Advisors Act.

1 (7) Any person who is selling a business owned or
2 operated (in whole or in part) by that person in a one time
3 transaction.

4 (b) This Act shall not be deemed to apply in any manner,
5 directly or indirectly, to: (i) a State bank or national bank,
6 as those terms are defined in the Illinois Banking Act, or any
7 subsidiary of a State bank or national bank; (ii) a bank
8 holding company, as that term is defined in the Illinois Bank
9 Holding Company Act of 1957, or any subsidiary of a bank
10 holding company; (iii) a foreign banking corporation, as that
11 term is defined in the Foreign Banking Office Act, or any
12 subsidiary of a foreign banking corporation; (iv) a
13 representative office, as that term is defined in the Foreign
14 Bank Representative Office Act; (v) a corporate fiduciary, as
15 that term is defined in the Corporate Fiduciary Act, or any
16 subsidiary of a corporate fiduciary; (vi) a savings bank
17 organized under the Savings Bank Act, or a federal savings bank
18 organized under federal law, or any subsidiary of a savings
19 bank or federal savings bank; (vii) a savings bank holding
20 company organized under the Savings Bank Act, or any subsidiary
21 of a savings bank holding company; (viii) an association or
22 federal association, as those terms are defined in the Illinois
23 Savings and Loan Act of 1985, or any subsidiary of an
24 association or federal association; (ix) a foreign savings and
25 loan association or foreign savings bank subject to the
26 Illinois Savings and Loan Act of 1985, or any subsidiary of a

1 foreign savings and loan association or foreign savings bank;
2 or (x) a savings and loan association holding company, as that
3 term is defined in the Illinois Savings and Loan Act of 1985,
4 or any subsidiary of a savings and loan association holding
5 company.

6 (b-1) Any franchise seller as defined in the Federal Trade
7 Commission rule entitled Disclosure Requirements and
8 Prohibitions Concerning Franchising, 16 C.F.R. Part 436, as it
9 may be amended, is exempt from the requirements of this Act.
10 ~~Persons registered under the Illinois Franchise Disclosure Act~~
11 ~~of 1987 (and their employees) are exempt from the requirements~~
12 ~~of this Act as to: offers and sales in connection with~~
13 ~~franchising activities; or assisting any of their franchisees~~
14 ~~in the offer or sale of a franchise by any such franchisee for~~
15 ~~the franchisee's own account regardless of whether the sale is~~
16 ~~effected by or through the registered persons.~~

17 (b-2) Any certified public accountant licensed to practice
18 in Illinois, while engaged in the practice as a certified
19 public accountant and whose service in relation to the business
20 broker transaction is incidental to his or her practice, is
21 exempt from the requirements of this Act.

22 (b-3) Any publisher, or regular employee of such publisher,
23 of a bona fide newspaper or news magazine of regular and
24 established paid circulation who, in the routine course of
25 selling advertising, advertises businesses for sale and in
26 which no other related services are provided is exempt from the

1 requirements of this Act.

2 (c) The burden of proof of any exemption or classification
3 provided in this Act shall be on the party claiming the
4 exemption or classification.

5 (Source: P.A. 90-70, eff. 7-8-97; 91-245, eff. 12-31-99.)

6 Section 15. The Business Opportunity Sales Law of 1995 is
7 amended by changing Sections 5-10, 5-30 and 5-35 as follows:

8 (815 ILCS 602/5-10)

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

11 (a) Any offer or sale of a business opportunity for which
12 the immediate cash payment made by the purchaser for any
13 business opportunity is at least \$25,000 if the immediate cash
14 payment does not exceed 20% of the purchaser's net worth as
15 determined exclusive of principal residence, furnishings
16 therein, and automobiles; provided, however, the Secretary of
17 State may by rule or regulation withdraw or further condition
18 the availability of this exemption.

19 (b) Any offer or sale of a business opportunity which the
20 seller does not advertise, solicit, or sell for an initial
21 payment to the seller or a person recommended by the seller
22 exceeding \$500.

23 (c) Any offer or sale of a business opportunity where the
24 seller has a net worth of not less than \$1,000,000 as

1 determined on the basis of the seller's most recent audited
2 financial statement, prepared within 13 months of the first
3 offer in this State. Net worth may be determined on a
4 consolidated basis where the seller is at least 80% owned by
5 one person and that person expressly guarantees the obligations
6 of the seller with regard to the offer or sale of any business
7 opportunity claimed to be exempt under this subsection. The
8 Secretary of State may by rule or regulation withdraw or
9 further condition the availability of this exemption.

10 (d) Any offer or sale of a business opportunity where the
11 purchaser has a net worth of not less than \$250,000. Net worth
12 shall be determined exclusive of principal residence,
13 furnishings therein, and automobiles. The Secretary of State
14 may by rule or regulation withdraw or further condition the
15 availability of this exemption.

16 (e) Any offer or sale of a business opportunity where the
17 purchaser is a bank, savings and loan association, trust
18 company, insurance company, credit union, or investment
19 company as defined by the federal Investment Company Act of
20 1940, pension or profit sharing trust, or other financial
21 institution or institutional buyer, or a dealer registered
22 under the Illinois Securities Law of 1953, where the purchaser
23 is acting for itself or in a fiduciary capacity.

24 (f) Any offer or sale of a business opportunity which is
25 defined as a franchise under the Franchise Disclosure Act of
26 1987 provided that the seller delivers to each purchaser 14 at

1 ~~the earlier of the first personal meeting, or 10 business~~ days
2 prior to the earlier of the execution by a purchaser of any
3 contract or agreement imposing a binding legal obligation on
4 the purchaser or the payment by a purchaser of any
5 consideration in connection with the offer or sale of the
6 business opportunity, a disclosure document prepared in
7 accordance with the requirements of Section 16 of the Illinois
8 Franchise Disclosure Act of 1987, as it may be amended. ~~one of~~
9 ~~the following disclosure documents:~~

10 ~~(1) The Franchise Offering Circular provided for under~~
11 ~~the Franchise Disclosure Act of 1987 which the Secretary of~~
12 ~~State may adopt by rule or regulation; or~~

13 ~~(2) A disclosure document prepared pursuant to the~~
14 ~~Federal Trade Commission rule entitled Disclosure~~
15 ~~Requirements and Prohibitions Concerning Franchising and~~
16 ~~Business Opportunity Ventures, 16 C.F.R. Sec. 436 (1979).~~
17 ~~For the purposes of this subsection, a personal meeting~~
18 ~~shall mean a face-to-face meeting between the purchaser and~~
19 ~~the seller or their representatives, which is held for the~~
20 ~~purpose of discussing the offer or sale of a business~~
21 ~~opportunity.~~

22 (g) Any offer or sale of a business opportunity for which
23 the cash payment required to be made by a purchaser for any
24 business opportunity does not exceed \$500 and the payment is
25 made for the not-for-profit sale of sales demonstration
26 equipment, material, or samples or the payment is made for

1 product inventory sold to the purchaser at a bona fide
2 wholesale price.

3 (h) Any offer or sale of a business opportunity which the
4 Secretary of State exempts by order or a class of business
5 opportunities which the Secretary of State exempts by rule or
6 regulation upon the finding that such exemption would not be
7 contrary to public interest and that registration would not be
8 necessary or appropriate for the protection of purchasers.

9 (Source: P.A. 91-809, eff. 1-1-01.)

10 (815 ILCS 602/5-30)

11 Sec. 5-30. Registration.

12 (a) In order to register a business opportunity, the seller
13 shall file with the Secretary of State one of the following
14 disclosure documents with the appropriate cover sheet as
15 required by subsection (b) of Section 5-35 of this Law, a
16 consent to service of process as specified in subsection (b) of
17 this Section, and the appropriate fee as required by subsection
18 (c) of this Section which is not returnable in any event:

19 (1) The Business Opportunity Disclosure Document
20 ~~Franchise Offering Circular~~ which the Secretary of State
21 may prescribe by rule or regulation; or

22 (2) A disclosure document prepared pursuant to the
23 Federal Trade Commission rule entitled Disclosure
24 Requirements and Prohibitions Concerning Franchising, 16
25 C.F.R. Part 436, or the Federal Trade Commission rule

1 entitled Disclosure Requirements and Prohibitions
2 Concerning Business Opportunities, 16 C.F.R. Part 437, as
3 they may be amended and Business Opportunity Venture, 16
4 C.F.R. Sec. 436 (1979). The Secretary of State may by rule
5 or regulation adopt any amendment to the disclosure
6 document prepared pursuant to 16 C.F.R. Sec. 436 (1979),
7 that has been adopted by the Federal Trade Commission; or

8 (3) A disclosure document prepared pursuant to
9 subsection (b) of Section 5-35 of this Law.

10 (b) Every seller shall file, in the form as the Secretary
11 of State may prescribe, an irrevocable consent appointing the
12 Secretary of State or the successor in office to be the
13 seller's attorney to receive service of any lawful process in
14 any noncriminal suit, action or proceeding against the seller
15 or the seller's successor, executor or administrator which
16 arises under this Law after the consent has been filed, with
17 the same force and validity as if served personally on the
18 person filing the consent. Service may be made by delivering a
19 copy of the process in the office of the Secretary of State,
20 but is not effective unless the plaintiff or petitioner in a
21 suit, action or proceeding, forthwith sends notice of the
22 service and a copy of the process by registered or certified
23 mail, return receipt requested, to the defendant's or
24 respondent's most current address on file with the Secretary of
25 State, and the plaintiff's affidavit of compliance with this
26 subsection is filed in the case on or before the return date of

1 the process, if any, or within such further time as the court
2 allows.

3 (c) (1) The Secretary of State shall by rule or regulation
4 impose and shall collect fees necessary for the
5 administration of this Law including, but not limited to,
6 fees for the following purposes:

7 (A) filing a disclosure document and renewal fee;

8 (B) interpretive opinion fee;

9 (C) acceptance of service of process pursuant to
10 subsection (b) of Section 5-145;

11 (D) issuance of certification pursuant to Section
12 5-20; or

13 (E) late registration fee pursuant to Section
14 5-30(g).

15 (2) The Secretary of State may, by rule or regulation,
16 raise or lower any fee imposed by, and which he or she is
17 authorized by law to collect under this Law.

18 (d) A registration automatically becomes effective upon
19 the expiration of the 10th full business day after a complete
20 filing, provided that no order has been issued or proceeding
21 pending under Section 5-45 of this Law. The Secretary of State
22 may by order waive or reduce the time period prior to
23 effectiveness, provided that a complete filing has been made.
24 The Secretary of State may by order defer the effective date
25 until the expiration of the 10th full business day after the
26 filing of any amendment.

1 (e) The registration is effective for one year commencing
2 on the date of effectiveness and may be renewed annually upon
3 the filing of a current disclosure document accompanied by any
4 documents or information that the Secretary of State may by
5 rule or regulation or order require. The annual renewal fee
6 shall be in the same amount as the initial registration fee as
7 established under subsection (c) of Section 5-30 of this Law
8 which shall not be returnable in any event. Failure to renew
9 upon the close of the one year period of effectiveness will
10 result in expiration of the registration. The Secretary of
11 State may by rule or regulation or order require the filing of
12 a sales report.

13 (f) The Secretary of State may by rule or regulation or
14 order require the filing of all proposed literature or
15 advertising prior to its use.

16 (g) Notwithstanding the foregoing, applications for
17 renewal of registration of business opportunities may be filed
18 within 30 days following the expiration of the registration
19 provided that the applicant pays the annual registration fee
20 together with an additional amount equal to the annual
21 registration fee and files any other information or documents
22 that the Secretary of State may prescribe by rule or order. Any
23 application filed within 30 days following the expiration of
24 the registration shall be automatically effective as of the
25 time of the earlier expiration provided that the proper fee has
26 been paid to the Secretary of State.

1 (Source: P.A. 92-308, eff. 1-1-02.)

2 (815 ILCS 602/5-35)

3 Sec. 5-35. Disclosure requirements.

4 (a) It shall be unlawful for any person to offer or, sell
5 any business opportunity required to be registered under this
6 Law unless a written disclosure document as filed under
7 subsection (a) of Section 5-30 of this Law is delivered to each
8 purchaser at least 14 ~~10-business~~ days prior to the execution
9 by a purchaser of any contract or agreement imposing a binding
10 legal obligation on the purchaser or the payment by a purchaser
11 of any consideration in connection with the offer or sale of
12 the business opportunity.

13 (b) The disclosure document shall have a cover sheet which
14 is entitled, in at least 10-point bold type, "DISCLOSURE
15 REQUIRED BY THE STATE OF ILLINOIS." Under the title shall
16 appear the statement in at least 10-point bold type that "THE
17 REGISTRATION OF THIS BUSINESS OPPORTUNITY DOES NOT CONSTITUTE
18 APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE STATE OF
19 ILLINOIS. THE INFORMATION CONTAINED IN THIS DISCLOSURE
20 DOCUMENT HAS NOT BEEN VERIFIED BY THIS STATE. IF YOU HAVE ANY
21 QUESTIONS OR CONCERNS ABOUT THIS INVESTMENT, SEEK PROFESSIONAL
22 ADVICE BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE
23 TO BE PROVIDED 10 BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE
24 SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY PAYMENT TO THE
25 SELLER OR THE SELLER'S REPRESENTATIVE". The seller's name and

1 principal business address, along with the date of the
2 disclosure document shall also be provided on the cover sheet.
3 No other information shall appear on the cover sheet. The
4 disclosure document shall contain the following information
5 unless the seller uses a disclosure document as provided in
6 paragraph (1) or (2) of subsection (a) of Section 5-30 of this
7 Law:

8 (1) The names and residential addresses of those
9 salespersons who will engage in the offer or sale of the
10 business opportunity in this State.

11 (2) The name of the seller, whether the seller is doing
12 business as an individual, partnership or corporation; the
13 names under which the seller has conducted, is conducting
14 or intends to conduct business; and the name of any parent
15 or affiliated company that will engage in business
16 transactions with purchasers or which will take
17 responsibility for statements made by the seller.

18 (3) The names, addresses and titles of the seller's
19 officers, directors, trustees, general managers, principal
20 executives, agents, and any other persons charged with
21 responsibility for the seller's business activities
22 relating to the sale of the business opportunity.

23 (4) Prior business experience of the seller relating to
24 business opportunities including:

25 (A) The name, address, and a description of any
26 business opportunity previously offered by the seller;

1 (B) The length of time the seller has offered each
2 such business opportunity; and

3 (C) The length of time the seller has conducted the
4 business opportunity currently being offered to the
5 purchaser.

6 (5) With respect to persons identified in item (3) of
7 this subsection:

8 (A) A description of the persons' business
9 experience for the 10 year period preceding the filing
10 date of this disclosure document. The description of
11 business experience shall list principal occupations
12 and employers; and

13 (B) A listing of the persons' educational and
14 professional backgrounds including, the names of
15 schools attended and degrees received, and any other
16 information that will demonstrate sufficient knowledge
17 and experience to perform the services proposed.

18 (6) Whether the seller or any person identified in item
19 (3) of this subsection:

20 (A) Has been convicted of any felony, or pleaded
21 nolo contendere to a felony charge, or has been the
22 subject of any criminal, civil or administrative
23 proceedings alleging the violation of any business
24 opportunity law, securities law, commodities law,
25 franchise law, fraud or deceit, embezzlement,
26 fraudulent conversion, restraint of trade, unfair or

1 deceptive practices, misappropriation of property or
2 comparable allegations;

3 (B) Has filed in bankruptcy, been adjudged
4 bankrupt, been reorganized due to insolvency, or was an
5 owner, principal officer or general partner or any
6 other person that has so filed or was so adjudged or
7 reorganized during or within the last 7 years.

8 (7) The name of the person identified in item (6) of
9 this subsection, nature of and parties to the action or
10 proceeding, court or other forum, date of the institution
11 of the action, docket references to the action, current
12 status of the action or proceeding, terms and conditions or
13 any order or decree, the penalties or damages assessed and
14 terms of settlement.

15 (8) The initial payment required, or when the exact
16 amount cannot be determined, a detailed estimate of the
17 amount of the initial payment to be made to the seller.

18 (9) A detailed description of the actual services the
19 seller agrees to perform for the purchaser.

20 (10) A detailed description of any training the seller
21 agrees to provide for the purchaser.

22 (11) A detailed description of services the seller
23 agrees to perform in connection with the placement of
24 equipment, products or supplies at a location, as well as
25 any agreement necessary in order to locate or operate
26 equipment, products or supplies on a premises neither owned

