

By: Fraser

S.B. No. 1701

A BILL TO BE ENTITLED

AN ACT

relating to the franchise arrangements excluded from the Business Opportunity Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 51.003, Business & Commerce Code, as effective April 1, 2009, is amended to read as follows:

(b) In this chapter, "business opportunity" does not include:

(1) the sale or lease of an established and ongoing business or enterprise that has actively conducted business before the sale or lease, whether composed of one or more than one component business or enterprise, if the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of the business or enterprise or liquidation of the business or enterprise;

(2) a sale by a retailer of goods or services under a contract or other agreement to sell the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining a retail business establishment as a department or division of the retail business establishment;

(3) a transaction that is:

(A) regulated by the Texas Department of

1 Licensing and Regulation, the Texas Department of Insurance, the
2 Texas Real Estate Commission, or the director of the Motor Vehicle
3 Division of the Texas Department of Transportation; and

4 (B) engaged in by a person licensed by one of
5 those agencies;

6 (4) a real estate syndication;

7 (5) a sale or lease to a business enterprise that also
8 sells or leases products, equipment, or supplies or performs
9 services:

10 (A) that are not supplied by the seller; and

11 (B) that the purchaser does not use with the
12 seller's products, equipment, supplies, or services;

13 (6) the offer or sale of a franchise as described by
14 the Petroleum Marketing Practices Act (15 U.S.C. Section 2801 et
15 seq.) and its subsequent amendments;

16 (7) the offer or sale of a business opportunity if the
17 seller:

18 (A) has a net worth of \$25 million or more
19 according to the seller's audited balance sheet as of a date not
20 earlier than the 13th month before the date of the transaction; or

21 (B) is at least 80 percent owned by another
22 person who:

23 (i) in writing unconditionally guarantees
24 performance by the person offering the business opportunity plan;
25 and

26 (ii) has a net worth of more than \$25
27 million according to the person's most recent audited balance sheet

1 as of a date not earlier than the 13th month before the date of the
2 transaction; or

3 (8) an arrangement defined as a franchise by 16 C.F.R.
4 Part 436 [~~Section 436.2(a)~~] and its subsequent amendments if:

5 (A) the franchisor complies in all material
6 respects in this state with 16 C.F.R. Part 436 and each order or
7 other action of the Federal Trade Commission; and

8 (B) before offering for sale or selling a
9 franchise in this state, a person files with the secretary of state
10 a notice containing:

11 (i) the name of the franchisor;

12 (ii) the name under which the franchisor
13 intends to transact business; and

14 (iii) the franchisor's principal business
15 address.

16 SECTION 2. This Act takes effect September 1, 2009.