

January 10, 2002

TO: All Legislators

FROM: Senator Jim Baumgart

RE: COSPONSORING LRB 4021/3 - relating to the regulation of business opportunity plans.

---

---

We have all been approached at some time in our lives about entering into some type of get-rich-quick scheme, such as a pyramid scheme or gifting club. Last year many Wisconsin residents were taken in by a gifting club where the participants simply gave \$2,000 to the originator of the scheme on the promise that they would receive \$16,000 in the future, of course that return never materialized for most participants. Wisconsin has laws that prohibit these kinds of schemes but by the time the authorities learn of the scam the perpetrators have closed up and left town. Thus leaving the victims with little opportunity to recover their lost investment.

This legislation was drafted in cooperation with the Department of Agriculture, Trade and Consumer Protection (DATCP) and is designed to protect Wisconsin consumers from fraud and discourage individuals who perpetrate these kinds of schemes from attempting to set up in Wisconsin. If they do enter our state the bill calls for, among other things, registering the business opportunity plan with the Department, a written disclosure, to potential participants, that they are not guaranteed a profit on their investment and to provide some bonding which can then be used to repay any victims, if the business turns out to be a fraud. Please review the analysis below and if you would like to co-sponsor LRB 4021/3 please contact my office at 6-2056 by January 22, 2002.

---

---

***Analysis by the Legislative Reference Bureau***

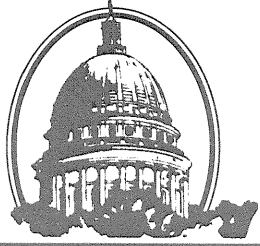
This bill imposes requirements and restrictions on businesses that sell or lease business opportunity plans. Under the bill, a business opportunity plan is defined as an agreement under which a person sells or leases products to another after having made certain types of representations. These representations include statements that the purchaser may earn an amount that is in excess of the purchaser's investment by reselling and releasing the products that are the subject of the plan and that there is a market for these products. Under the bill, a business engaged in selling or leasing these plans must provide the purchasers a written disclosure, which includes a statement that there is no guarantee of the amount to be earned under the plan. To be subject to these provisions, a business engaged in selling or leasing these plans must have sold or leased at least five plans within the 24 months immediately before making an offer to sell or lease the plan or must represent that it intends to sell or lease at least five plans within the 12 months following the date of the sale or lease of the plan being offered.

Under the bill, a business selling or leasing these plans must register the business opportunity plan with the department of agriculture, trade and consumer protection (DATCP) and pay a registration fee of \$300 for the plan. The registrant must also file a bond with DATCP. The bill imposes a minimum of \$75,000 on the amount of the bond and requirements on the type of bond and the qualification of the surety company endorsing the bond, but allows DATCP to promulgate rules to eliminate or change these requirements concerning the type of bond, the surety company and the minimum amount.

The bill exempts various sales or leases and other transactions from these requirements. These exemptions include sales or leases of securities and franchises and certain real estate transactions. Also, a license granted by a business selling or leasing these plans that allows the sale or lease of products under the business' trademark or trade name are exempt if the business has been continually doing business in this state for five years, if the business as well as the license grantee sells or leases the products directly to the public, and if during the previous 12 months the amount of gross receipts from the sale and lease of these products to the general public through a business opportunity plan has equaled at least 50% of the total fair market value of the products that were sold or leased to all of the purchasers participating in the plan. Also exempted is a sale or lease to a purchaser who has been purchasing other products from the business offering the plan for at least six months and who has recouped in the reselling or releasing of these products a gross amount that is equal to the purchaser's investment.

The bill authorizes DATCP to bring suit to enforce these provisions. The bill also imposes forfeitures for the violation of these provisions and also authorizes a court to impose a fine or imprisonment or both if the violation involves an intent to defraud.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.



State Senator  
**James R. Baumgart**

State Capitol: P. O. Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2056  
Toll-free: 1-888-295-8750 • E-Mail: sen.baumgart@legis.state.wi.us

---

## FAX COVER SHEET

DATE: January 8, 2002  
TO: Judy Cardin  
FAX #: (608) 224-4939  
FROM: Patrick Henderson  
Senator Jim Baumgart  
TELEPHONE #: 6-2056  
NO. OF PAGES  
INCLUDING COVER: 11

---

Judy,

Here is the revised draft of the business opportunities regulations draft. I've included the drafter's note where the changes have been noted. Let me know your thoughts ASAP and we will get it introduced.

Regards,  
Pat