

Chapter 15 Business Opportunity Disclosure Act

13-15-1 Short title.

This act shall be known and may be cited as the "Business Opportunity Disclosure Act."

Enacted by Chapter 69, 1981 General Session

13-15-2 Definitions.

As used in this chapter:

- (1)
- (a) "Assisted marketing plan" means the sale or lease of any products, equipment, supplies, or services that are sold to the purchaser upon payment of an initial required consideration of \$500 or more for the purpose of enabling the purchaser to start a business, and in which the seller represents:
 - (i) that the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, or currency operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller;
 - (ii) that the seller will purchase any or all products made, produced, fabricated, grown, or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to the purchaser;
 - (iii) that the seller will provide the purchaser with a guarantee that the purchaser will receive income from the assisted marketing plan that exceeds the price paid for the assisted marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by the seller if the purchaser is dissatisfied with the assisted marketing plan; or
 - (iv) that upon payment by the purchaser of a fee or sum of money, which exceeds \$500 to the seller, the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the assisted marketing plan that exceeds the price paid for the marketing plan.
 - (b) "Assisted marketing plan" does not include:
 - (i) the sale of an ongoing business when the owner of that business sells and intends to sell only that one assisted marketing plan;
 - (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less; or
 - (iii) the sale of a package franchise or a product franchise defined by and in compliance with Federal Trade Commission rules governing franchise and business opportunity ventures.
 - (c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by the purchaser and seller, disclosing the complete details and any limitations or exceptions of the agreement.
- (2) "Business opportunity" means an assisted marketing plan subject to this chapter.
- (3) "Division" means the Division of Consumer Protection of the Department of Commerce.
- (4)
- (a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery of the products, equipment, supplies, or services, or within six months of the commencement of operation of the assisted marketing plan by the purchaser. If payment is over a period

of time, "initial required consideration" means the sum of the down payment and the total monthly payments.

- (b) "Initial required consideration" does not mean the not-for-profit sale of sales demonstration equipment, materials, or supplies for a total price of less than \$500.
- (5) "Person" means any natural person, corporation, partnership, organization, association, trust, or any other legal entity.
- (6) "Purchaser" means a person who becomes obligated to pay for an assisted marketing plan.
- (7) "Registered trademark" or "service mark" means a trademark, trade name, or service mark registered with the United States Patent and Trademark Office, or Utah, or the state of incorporation if a corporation.
- (8) "Seller" means a person who sells or offers to sell an assisted marketing plan.

Amended by Chapter 152, 2012 General Session

13-15-3 Administration and enforcement -- Powers -- Legal counsel -- Fees -- Consumer complaints.

- (1) The division shall administer and enforce this chapter. In the exercise of its responsibilities, the division shall enjoy the powers, and be subject to the constraints, set forth in Title 13, Chapter 2, Division of Consumer Protection.
- (2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of its responsibilities under this chapter.
- (3) All fees collected under this chapter shall be deposited in the Commerce Service Account created by Section 13-1-2.
- (4)
 - (a) As used in this Subsection (4), "consumer complaint" means a complaint that:
 - (i) is filed with the division by a consumer or business;
 - (ii) alleges facts relating to conduct that the division regulates under this chapter; and
 - (iii)
 - (A) alleges a loss to the consumer or business of \$3,500 or more; or
 - (B) is one of at least 50 other complaints against the same person filed by other consumers or businesses during the four years immediately preceding the filing of the complaint.
 - (b) For purposes of determining the number of complaints against the same person under Subsection (4)(a)(iii)(B), the division may consider complaints filed against multiple corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.
 - (c) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4)(d) and (e), a consumer complaint:
 - (i) is a public record; and
 - (ii) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
 - (d) Subsection (4)(c) does not apply to a consumer complaint:
 - (i)
 - (A) if the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; and
 - (B) beginning when the nonmeritorious determination is made; or
 - (ii) that has been on file with the division for more than four years.
 - (e) Before making a consumer complaint that is subject to Subsection (4)(c) or a response described in Subsection (4)(f) available to the public, the division:

- (i) shall redact from the consumer complaint or response any information that would disclose the address, Social Security number, bank account information, email address, or telephone number of the consumer or business; and
 - (ii) may redact the name of the consumer or business and any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.
- (f) A person's initial, written response to a consumer complaint that is subject to Subsection (4)(c) is a public record.

Amended by Chapter 335, 2015 General Session

13-15-4 Information to be filed by seller -- Representations.

- (1) Any seller of an assisted marketing plan shall file the following information with the division:
- (a) the name, address, and principal place of business of the seller, and the name, address, and principal place of business of the parent or holding company of the seller, if any, who is responsible for statements made by the seller;
 - (b) all trademarks, trade names, service marks, or advertising or other commercial symbols that identify the products, equipment, supplies, or services to be offered, sold, or distributed by the prospective purchaser;
 - (c) an individual detailed statement covering the past five years of the business experience of each of the seller's current directors and executive officers and an individual statement covering the same period for the seller and the seller's parent company, if any, including the length of time each:
 - (i) has conducted a business of the type advertised or solicited for operation by a prospective purchaser;
 - (ii) has offered or sold the assisted marketing plan; and
 - (iii) has offered for sale or sold assisted marketing plans in other lines of business, together with a description of the other lines of business;
 - (d) a statement of the total amount that shall be paid by the purchaser to obtain or commence the business opportunity such as initial fees, deposits, down payments, prepaid rent, and equipment and inventory purchases; provided, that if all or part of these fees or deposits are returnable, the conditions under which they are returnable shall also be disclosed;
 - (e) a complete statement of the actual services the seller will perform for the purchaser;
 - (f) a complete statement of all oral, written, or visual representations that will be made to prospective purchasers about specific levels of potential sales, income, gross and net profits, or any other representations that suggest a specific level;
 - (g) a complete description of the type and length of any training promised to prospective purchasers;
 - (h) a complete description of any services promised to be performed by the seller in connection with the placement of the equipment, products, or supplies at any location from which they will be sold or used; and a complete description of those services together with any agreements that will be made by the seller with the owner or manager of the location where the purchaser's equipment, products, or supplies will be placed;
 - (i) a statement that discloses any person identified in Subsection (1)(a) who:
 - (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

- (ii) has been held liable or consented to the entry of a stipulated judgment in any civil action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property, or the use of untrue or misleading representations in the sale or attempted sale of any real or personal property, or upon the use of any unfair, unlawful or deceptive business practice; or
 - (iii) is subject to an injunction or restrictive order relating to business activity as the result of an action brought by a public agency;
 - (j) a financial statement of the seller signed by one of the seller's officers, directors, trustees, or general or limited partners, under a declaration that certifies that to the signatory's knowledge and belief the information in the financial statement is true and accurate; a financial statement that is more than 13 months old is unacceptable;
 - (k) a copy of the entire marketing plan contract;
 - (l) the number of marketing plans sold to date, and the number of plans under negotiation;
 - (m) geographical information including all states in which the seller's assisted marketing plans have been sold, and the number of plans in each such state;
 - (n) the total number of marketing plans that were cancelled by the seller in the past 12 months; and
 - (o) the number of marketing plans that were voluntarily terminated by purchasers within the past 12 months and the total number of such voluntary terminations to date.
- (2) The seller of an assisted marketing plan filing information under Subsection (1) shall pay a fee as determined by the department in accordance with Section 63J-1-504.
- (3) Before commencing business in this state, the seller of an assisted marketing plan shall file the information required under Subsection (1) and receive from the division proof of receipt of the filing.
- (4) A seller of an assisted marketing plan claiming an exemption from filing under this chapter shall file a notice of claim of exemption from filing with the division. A seller claiming an exemption from filing bears the burden of proving the exemption. The division shall collect a fee for filing a notice of claim of exemption, as determined by the department in accordance with Section 63J-1-504.
- (5) A representation described in Subsection (1)(f) shall be relevant to the geographic market in which the business opportunity is to be located. When the statements or representations are made, a warning after the representation in not less than 12 point upper and lower case boldface type shall appear as follows:

CAUTION

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least _____ which represents _____% of the total number of purchasers of this business opportunity.

Amended by Chapter 378, 2010 General Session

13-15-4.5 Notice of exemption filing.

- (1)
- (a) Any franchise exempt from this chapter pursuant to Subsection 13-15-2(1)(b)(iii) shall, prior to offering for sale or selling a franchise to be located in this state or to a resident of this state, file with the division a notice that the franchisor is in substantial compliance with the requirements of the Federal Trade Commission rule found at Title 16, Chapter I, Subchapter d, Trade Regulation Rules, Part 436, Disclosure Requirements and Prohibitions Concerning

Franchising and Business Opportunity Ventures, together with a filing fee determined by the department pursuant to Section 63J-1-504, not to exceed \$100.

- (b) The notice shall state:
 - (i) the name of the applicant;
 - (ii) the name of the franchise;
 - (iii) the name under which the applicant intends to or does transact business, if different than the name of the franchise;
 - (iv) the applicant's principal business address; and
 - (v) the applicant's federal employer identification number.
- (2)
 - (a) The initial exemption granted under this section is for a period of one year from the date of filing the notice.
 - (b) The exemption may be renewed each year for an additional one-year period upon filing a notice for renewal and paying a renewal fee determined pursuant to Section 63J-1-504, not to exceed \$100.
- (3) The division may make rules to implement this section.

Amended by Chapter 183, 2009 General Session

13-15-5 Disclosure statement furnished to buyer -- Contents.

All the information required under Section 13-15-4 shall be contained in a single disclosure statement or prospectus which shall be provided to any prospective purchaser at least 10 business days prior to the earlier of:

- (1) the execution by prospective purchaser of any agreement imposing a binding legal obligation on such prospective purchaser by which the seller knows or should know, in connection with the sale or proposed sale of the "assisted marketing plan"; or
- (2) the payment by a prospective purchaser, by which the seller knows or should know of any consideration in connection with the sale or proposed sale of the "assisted market plan." The disclosure statement or prospectus may not contain any material or information other than that required under Section 13-15-4. However, the seller may give prospective purchasers nondeceptive information other than that contained in the disclosure statement or prospectus if it does not contradict the information required to appear in the disclosure statement or prospectus. A cover sheet attached to the disclosure statement or prospectus shall conspicuously state the name of the seller, the date of issuance of the disclosure statement or prospectus, and a notice printed in not less than 12 point upper and lower case boldface type as follows:

INFORMATION FOR PURCHASE OF A MARKETING PLAN:

To protect you, the State Division of Consumer Protection has required your seller to give you this information. The State Division of Consumer Protection has not verified this information as to its accuracy. The notice may contain additional precautions deemed necessary and pertinent. The seller, in lieu of the information requested by Section 13-15-4, may file with the commission and provide to prospective purchasers certified disclosure documents authorized for use by the Federal Trade Commission pursuant to Title 16, Chapter I, Subchapter d, Trade Regulation Rules, Part 436, "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

Amended by Chapter 378, 2010 General Session

13-15-6 Failure to file disclosures -- Relief where seller fails to comply with chapter -- Relief where division granted judgment or injunction -- Administrative fines.

- (1) If a seller fails to file the disclosures required under Section 13-15-4, or fails after demand by the division to file the disclosure within 15 days, the division, consistent with Section 13-2-5, shall begin adjudicative proceedings and shall issue a cease and desist order.
- (2) Any purchaser of a business opportunity from a seller who does not comply with this chapter is entitled, in an appropriate court of competent jurisdiction, to rescission of the contract, to an award of a reasonable attorney's fee and costs of court in an action to enforce the right of rescission, and to the amount of actual damages or \$2,000, whichever is greater.
- (3) In the event the division is granted judgment or injunctive relief in an appropriate court of competent jurisdiction, the division, in addition to any other relief, is entitled to an award of reasonable attorney's fees, costs of court, and investigative fees.
- (4)
 - (a) In addition to other penalties under this chapter, and to its other enforcement powers under Title 13, Chapter 2, Division of Consumer Protection, the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter.
 - (b) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

Amended by Chapter 47, 2006 General Session

13-15-7 Civil penalty for violation of cease and desist order.

Any person who violates any cease and desist order issued under this chapter is subject to a civil penalty not to exceed \$5,000 for each violation. Civil penalties authorized by this chapter may be imposed in any civil action brought by the attorney general or by a county attorney under this section. All penalties received shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8. No action to collect a civil penalty may be commenced more than five years after the date the penalty was imposed.

Amended by Chapter 85, 1995 General Session