

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