

## Chapter 15 Business Opportunity Disclosure Act

### Part 1 General Provisions

#### 13-15-101 Title.

This chapter is known as the "Business Opportunity Disclosure Act."

Renumbered and Amended by Chapter 243, 2022 General Session

#### 13-15-102 Definitions.

As used in this chapter:

- (1)
  - (a) "Business opportunity" means an arrangement under which a person:
    - (i) sells or leases a product, equipment, a supply, or a service:
      - (A) upon payment of initial required consideration of at least \$500; and
      - (B) for the purpose of enabling the buyer or lessee to start a business; and
    - (ii) represents to the buyer or lessee that:
      - (A) the person will provide a location or assist the buyer or lessee find a location for the use or operation of a vending machine, rack, display case, or other similar device, or a currency-operated amusement machine or device, on premises neither owned nor leased by the person nor the buyer or lessee;
      - (B) the person will purchase a product the buyer or lessee makes, produces, fabricates, grows, or modifies, using in whole or in part the product, equipment, supply, or service the buyer or lessee buys or leases from the person;
      - (C) the person will provide the buyer or lessee with a guarantee that the buyer or lessee will receive income from the product, equipment, supply, or service the buyer or lessee buys or leases from the person that exceeds the amount the buyer or lessee pays to buy or lease the product, equipment, supply, or service, and if not the person will repurchase the product, equipment, supply, or service, if the buyer or lessee is dissatisfied; or
      - (D) the buyer or lessee will or may derive income from the business described in Subsection (1)(a)(i) that exceeds the amount the buyer or lessee pays to buy or lease the product, equipment, supply, or service.
  - (b) "Business opportunity" does not include:
    - (i) the sale of an ongoing business when the owner of that business sells and intends to sell only that one business; or
    - (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less.
- (2) "Division" means the Division of Consumer Protection of the Department of Commerce.
- (3) "Franchise" means the same as that term is defined by Federal Trade Commission rules governing franchise and business opportunity ventures.
- (4) "Guarantee" means a written agreement that:
  - (a) a purchaser and seller sign; and
  - (b) discloses the complete details and each limitation or exception of the agreement.
- (5)

- (a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of a business opportunity:
  - (i) before the day on which the purchaser receives the product, equipment, supply, or service;
  - (ii) the day on which the purchaser receives the product, equipment, supply, or service; or
  - (iii) within six months after the day on which the purchaser and seller enter into the business opportunity.
- (b) "Initial required consideration" includes the sum of any down payment and the total of all additional payments, if the purchaser's payment under the terms of the business opportunity is over a period of time.
- (c) "Initial required consideration" does not include the not-for-profit sale of sales demonstration equipment, materials, or supplies for a total amount of less than \$500.
- (6) "Principal" means as the division determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (7) "Purchaser" means a person who buys or leases from another person a business opportunity.
- (8) "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.
- (9)
  - (a) "Seller" means a person who offers to sell, offers to lease, sells, or leases to another person a business opportunity.
  - (b) "Seller" does not include an individual representative or salesperson, unless the individual is a principal of a sole proprietorship, partnership, association, joint venture, corporation, firm, or other organization or entity used in carrying on a business, that offers to sell, offers to lease, sells, or leases to another person a business opportunity.

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## **Part 2 Seller Duties**

### **13-15-201 Required filings -- Fees -- Rulemaking.**

- (1)
  - (a) Except as provided in Subsection (2), before a person may act as a seller in the state, the person shall obtain a proof of disclosure receipt from the division.
  - (b) To obtain a proof of disclosure receipt from the division, a person shall:
    - (i) file with the division a disclosure statement that complies with Section 13-15-202; and
    - (ii) pay a filing fee as determined by the division in accordance with Section 63J-1-504.
  - (c) A proof of disclosure receipt is valid for one year after the day on which the division issues the receipt.
  - (d) To renew a proof of disclosure receipt, a seller shall comply with the provisions of Subsection (1)(b) at least 30 days before the day on which the seller's current proof of disclosure receipt expires.
- (2)
  - (a) Before a person offers for sale or sells a franchise to be located in the state or to a resident of the state, the person shall obtain a proof of notice receipt from the division.
  - (b) To obtain a proof of notice receipt from the division, a person shall:

- (i) file with the division a notice that states:
  - (A) 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;
  - (B) the name of the applicant;
  - (C) the name of the franchise;
  - (D) the name under which the applicant intends to transact or transacts business, if different than the name of the franchise;
  - (E) the address of the applicant's principal place of business; and
  - (F) the applicant's state-issued business entity number or other government-issued, publicly available identifying number; and
- (ii) pay a filing fee determined by the division in accordance with Section 63J-1-504, not to exceed \$100.
- (c) A seller who does not qualify for a proof notice receipt under this Subsection (2) is subject to Subsection (1).
- (d) A proof of notice receipt is valid for one year after the day on which the division issues the receipt.
- (e) To renew a proof of notice receipt, a person offering for sale or selling a franchise to be located in the state or to a resident of the state, shall comply with the provisions of Subsection (2)(b) at least 30 days before the day on which the person's current proof of notice receipt expires.
- (3) The division shall deposit all fees collected under this section into the Commerce Service Account created in Section 13-1-2.
- (4) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

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**13-15-202 Disclosure statements.**

- (1) An applicant for a proof of disclosure receipt under Subsection 13-15-201(1) shall include the following in a disclosure statement:
  - (a) the name, address, and principal place of business of:
    - (i) the applicant; and
    - (ii) each parent, affiliate, or holding company of the applicant that is responsible for a statement that the applicant makes;
  - (b) an individual statement from each of the following, detailing the person's business experience for the five-year period immediately before the day on which the applicant files the disclosure statement:
    - (i) the applicant;
    - (ii) each parent company of the applicant;
    - (iii) each current director of the applicant; and
    - (iv) each current executive officer of the applicant;
  - (c) for each type of business opportunity the applicant offers to enter into or enters into as a seller:
    - (i) an individual statement from each person described in Subsections (1)(b)(i) and (ii) detailing the length of time, during the five-year period immediately before the day on which the applicant files the disclosure statement, the person has:

- (A) operated a business of the type the purchaser would operate under the business opportunity; and
- (B) offered to sell or lease that type of business opportunity;
- (ii) each trademark, trade name, service mark, advertisement, or other commercial symbol that identifies a product, equipment, a supply, or a service that the applicant sells or leases under the business opportunity;
- (iii) a complete statement of:
  - (A) the total amount that a purchaser pays to obtain or commence the operation of the business under the business opportunity;
  - (B) if all or part of a fee or deposit described in Subsection (1)(c)(iii)(A) is refundable, the conditions under which the fee or deposit is refundable;
  - (C) the product, equipment, supply, or service the applicant provides or performs for a purchaser under the business opportunity; and
  - (D) each oral, written, visual, or other representation that the applicant makes to a prospective purchaser about specific levels of potential sales, income, or gross and net profits under the business opportunity;
- (iv) a complete description of:
  - (A) the type and length of training the applicant promises to a prospective purchaser, if any;
  - (B) each service the applicant promises to perform in connection with the placement of equipment, a product, or a supply at a location from which the equipment, product, or supply will be sold or used; and
  - (C) each agreement the applicant makes with an owner or manager of a location where a purchaser's equipment, product, or supply is placed; and
- (v) a complete copy of each contract to which a purchaser under the business opportunity would be party;
- (d) the total number of business opportunities the applicant has entered into as a seller in each state;
- (e) the total number of business opportunities that the applicant has canceled within the 12 months before the day on which the applicant files the disclosure statement;
- (f) the total number of business opportunities, to which the applicant is a party, for which a purchaser has requested a refund or cancellation within the 12 months before the day on which the applicant files the disclosure statement;
- (g) a statement that discloses each person identified in Subsection (1)(a) who:
  - (i) has been convicted of a felony or misdemeanor or pleaded no contest 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 an administrative or civil action based upon:
    - (A) fraud, embezzlement, fraudulent conversion, misappropriation of property;
    - (B) the use of untrue or misleading representations; or
    - (C) 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 a government agency action;
- (h) a financial statement from the applicant that is:
  - (i) less than 13 months old; and
  - (ii) signed by an officer, director, trustee, or general or limited partner of the applicant, under a declaration that certifies that to the signatory's knowledge and belief the information in the financial statement is true and accurate; and

- (i) a cover sheet that:
  - (i) is attached to the front or appears at the beginning of the disclosure statement; and
  - (ii) conspicuously states in at least 12-point upper- and lower-case boldface type:
    - (A) the name of the applicant;
    - (B) the date on which the applicant files the disclosure;
    - (C) the following notice:

"INFORMATION FOR PURCHASE OF A BUSINESS OPPORTUNITY:

To protect you, the State of Utah has required your seller to give you this disclosure statement. The State of Utah has not verified the accuracy of the information in the disclosure statement."; and

- (D) if the applicant makes a representation described in Subsection (1)(c)(iii)(D) or 13-15-102(1)(a)(ii)(D) the following notice:

"CAUTION

The number of purchasers who have earned through this business opportunity an amount in excess of the amount the purchaser pays for the business opportunity is at least \_\_\_\_\_ which represents at least \_\_\_\_\_% of the total number of purchasers of this business opportunity."

- (2) The disclosure statement described in Subsection (1) may not include material or information other than the material and information required under Subsection (1).

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**13-15-203 Disclosure statement furnished to purchaser -- Additional nondeceptive information permitted.**

- (1) A seller shall provide the disclosure statement described under Section 13-15-202 to a prospective purchaser at least 10 business days before the day on which the earlier of the following occurs:
  - (a) the prospective purchaser executes an agreement imposing a binding legal obligation on the prospective purchaser in connection with the seller's sale or proposed sale of a business opportunity; or
  - (b) the prospective purchaser makes a payment or provides consideration in connection with the seller's sale or proposed sale of a product or business opportunity.
- (2) A seller may provide a prospective purchaser nondeceptive information apart from the disclosure statement described in Section 13-15-202, if the information does not contradict the information required in the disclosure statement.

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**Part 3  
Enforcement**

**13-15-301 Administration and enforcement -- Powers -- Legal counsel -- Fees.**

- (1) The division shall administer and enforce the provisions of this chapter in accordance with 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 the division's responsibilities under this chapter.

- (3)
  - (a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
    - (i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
    - (ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
  - (b) In a court action by the division to enforce a provision of this chapter, the court may:
    - (i) declare that an act or practice violates a provision of this chapter;
    - (ii) issue an injunction for a violation of this chapter;
    - (iii) order disgorgement of any money received in violation of this chapter;
    - (iv) order payment of disgorged money to an injured purchaser or consumer;
    - (v) impose a fine of up to \$2,500 for each violation of this chapter; or
    - (vi) award any other relief that the court deems reasonable and necessary.
- (4) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
  - (a) reasonable attorney fees;
  - (b) court costs; and
  - (c) investigative fees.
- (5)
  - (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
  - (b) A civil penalty authorized under this section may be imposed in any civil action brought by the attorney general on behalf of the division.
- (6) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

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**13-15-302 Private right of action.**

- (1) A purchaser may bring an action in a court of competent jurisdiction against a seller who does not comply with this chapter.
- (2) If a court of competent jurisdiction finds that a seller violated this chapter, a purchaser who brings an action under Subsection (1) is entitled to:
  - (a) rescission of the contract;
  - (b) an award of reasonable attorney fees and costs of court in an action to enforce the right of rescission; and
  - (c) an amount equal to the greater of:
    - (i) actual damages; or
    - (ii) \$2,000.

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**Part 4  
Miscellaneous**

**13-15-401 Consumer complaints.**

- (1) As used in this section, "consumer complaint" means a complaint that:
  - (a) a consumer or business files with the division;
  - (b) alleges facts relating to conduct that the division regulates under this chapter; and
  - (c)
    - (i) alleges a loss to the consumer or business described in Subsection (1)(a) of \$3,500 or more;  
or
    - (ii) is one of at least 50 complaints filed with the division:
      - (A) against the same person; and
      - (B) during the four-year period immediately before the day on which the consumer or business described in Subsection (1)(a) files the complaint.
- (2) For purposes of determining the number of complaints against the same person under Subsection (1)(c)(ii)(A), 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.
- (3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a consumer complaint:
  - (a) is a public record; and
  - (b) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (4) Subsection (3) does not apply to a consumer complaint:
  - (a) that is nonmeritorious, beginning the day on which:
    - (i) the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; or
    - (ii) a court of competent jurisdiction finds the complaint nonmeritorious; or
  - (b) that is on file with the division for more than four years after the day on which the person files the complaint.
- (5) Before making a consumer complaint that is subject to Subsection (3) or a response described in Subsection (6) available to the public, the division:
  - (a) shall redact from the consumer complaint and the seller's response any information that would disclose:
    - (i) the consumer or seller's:
      - (A) address;
      - (B) social security number;
      - (C) bank account information;
      - (D) email address; or
      - (E) telephone number; or
    - (ii) information similar in nature to the information described in Subsection (5)(a)(i); and
  - (b) 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.
- (6) A seller's initial, written response to a consumer complaint that is subject to Subsection (3) is a public record.

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