

1                   **DIVISION OF CONSUMER PROTECTION AMENDMENTS**

2                                   2022 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Curtis S. Bramble**

5                           House Sponsor: Joel Ferry

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7   **LONG TITLE**

8   **Committee Note:**

9           The Business and Labor Interim Committee recommended this bill.

10           Legislative Vote: 15 voting for 0 voting against 6 absent

11   **General Description:**

12           This bill amends provisions of the Business Opportunity Disclosure Act.

13   **Highlighted Provisions:**

14           This bill:

- 15           ▶ defines terms;
- 16           ▶ amends provisions regarding filings;
- 17           ▶ amends provisions regarding seller disclosure statements;
- 18           ▶ amends provisions regarding furnishing a disclosure statement to a potential

19 purchaser;

- 20           ▶ amends provisions regarding enforcement of the Business Opportunity Disclosure

21 Act; and

- 22           ▶ makes technical and conforming changes.

23   **Money Appropriated in this Bill:**

24           None

25   **Other Special Clauses:**

26           None

27   **Utah Code Sections Affected:**



28 ENACTS:

29 **13-15-201**, Utah Code Annotated 1953

30 **13-15-401**, Utah Code Annotated 1953

31 RENUMBERS AND AMENDS:

32 **13-15-101**, (Renumbered from 13-15-1, as enacted by Laws of Utah 1981, Chapter 69)

33 **13-15-102**, (Renumbered from 13-15-2, as last amended by Laws of Utah 2012,

34 Chapter 152)

35 **13-15-202**, (Renumbered from 13-15-4, as last amended by Laws of Utah 2017,

36 Chapter 98)

37 **13-15-203**, (Renumbered from 13-15-5, as last amended by Laws of Utah 2010,

38 Chapter 378)

39 **13-15-301**, (Renumbered from 13-15-3, as last amended by Laws of Utah 2015,

40 Chapter 335)

41 **13-15-302**, (Renumbered from 13-15-6, as last amended by Laws of Utah 2006,

42 Chapter 47)

43 REPEALS:

44 **13-15-4.5**, as last amended by Laws of Utah 2009, Chapter 183

45 **13-15-7**, as last amended by Laws of Utah 1995, Chapter 85



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **13-15-101**, which is renumbered from Section 13-15-1 is  
49 renumbered and amended to read:

50 **CHAPTER 15. BUSINESS OPPORTUNITY DISCLOSURE ACT**

51 **Part 1. General Provisions**

52 ~~[13-15-1].~~ **13-15-101. Title.**

53 This ~~[act shall be known and may be cited]~~ chapter is known as the "Business  
54 Opportunity Disclosure Act."

55 Section 2. Section **13-15-102**, which is renumbered from Section 13-15-2 is  
56 renumbered and amended to read:

57 ~~[13-15-2].~~ **13-15-102. Definitions.**

58 As used in this chapter:

59 ~~[(1) (a) "Assisted marketing plan" means the sale or lease of any products, equipment,~~  
60 ~~supplies, or services that are sold to the purchaser upon payment of an initial required~~  
61 ~~consideration of \$500 or more for the purpose of enabling the purchaser to start a business, and~~  
62 ~~in which the seller represents:]~~

63 ~~[(i) that the seller will provide locations or assist the purchaser in finding locations for~~  
64 ~~the use or operation of vending machines, racks, display cases, or other similar devices, or~~  
65 ~~currency operated amusement machines or devices, on premises neither owned nor leased by~~  
66 ~~the purchaser or seller;]~~

67 ~~[(ii) that the seller will purchase any or all products made, produced, fabricated, grown,~~  
68 ~~or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to~~  
69 ~~the purchaser;]~~

70 ~~[(iii) that the seller will provide the purchaser with a guarantee that the purchaser will~~  
71 ~~receive income from the assisted marketing plan that exceeds the price paid for the assisted~~  
72 ~~marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by~~  
73 ~~the seller if the purchaser is dissatisfied with the assisted marketing plan; or]~~

74 ~~[(iv) that upon payment by the purchaser of a fee or sum of money, which exceeds~~  
75 ~~\$500 to the seller, the seller will provide a sales program or marketing program that will enable~~  
76 ~~the purchaser to derive income from the assisted marketing plan that exceeds the price paid for~~  
77 ~~the marketing plan;]~~

78 (1) (a) "Business opportunity" means an arrangement under which a person:

79 (i) sells or leases a product, equipment, a supply, or a service:

80 (A) upon payment of initial required consideration of at least \$500; and

81 (B) for the purpose of enabling the buyer or lessee to start a business; and

82 (ii) represents to the buyer or lessee that:

83 (A) the person will provide a location or assist the buyer or lessee find a location for  
84 the use or operation of a vending machine, rack, display case, or other similar device, or a  
85 currency-operated amusement machine or device, on premises neither owned nor leased by the  
86 person nor the buyer or lessee;

87 (B) the person will purchase a product the buyer or lessee makes, produces, fabricates,  
88 grows, or modifies, using in whole or in part the product, equipment, supply, or service the  
89 buyer or lessee buys or leases from the person;

90 (C) the person will provide the buyer or lessee with a guarantee that the buyer or lessee  
 91 will receive income from the product, equipment, supply, or service the buyer or lessee buys or  
 92 leases from the person that exceeds the amount the buyer or lessee pays to buy or lease the  
 93 product, equipment, supply, or service, and if not the person will repurchase the product,  
 94 equipment, supply, or service, if the buyer or lessee is dissatisfied; or

95 (D) the buyer or lessee will or may derive income from the business described in  
 96 Subsection (1)(a)(i) that exceeds the amount the buyer or lessee pays to buy or lease the  
 97 product, equipment, supply, or service.

98 (b) ["Assisted marketing plan"] "Business opportunity" does not include:

99 (i) the sale of an ongoing business when the owner of that business sells and intends to  
 100 sell only that one [~~assisted marketing plan~~] business; or

101 (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a  
 102 total price of \$500 or less[~~;~~ ~~or~~].

103 [~~(iii) the sale of a package franchise or a product franchise defined by and in~~  
 104 ~~compliance with Federal Trade Commission rules governing franchise and business~~  
 105 ~~opportunity ventures.~~]

106 [~~(c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by~~  
 107 ~~the purchaser and seller, disclosing the complete details and any limitations or exceptions of~~  
 108 ~~the agreement.~~]

109 [~~(2) "Business opportunity" means an assisted marketing plan subject to this chapter.~~]

110 [~~(3)~~] (2) "Division" means the Division of Consumer Protection of the Department of  
 111 Commerce.

112 (3) "Franchise" means the same as that term is defined by Federal Trade Commission  
 113 rules governing franchise and business opportunity ventures.

114 (4) "Guarantee" means a written agreement that:

115 (a) a purchaser and seller sign; and

116 (b) discloses the complete details and each limitation or exception of the agreement.

117 [~~(4)~~] (5) (a) "Initial required consideration" means the total amount a purchaser is  
 118 obligated to pay under the terms of [~~the assisted marketing plan, either prior to or at the time of~~  
 119 ~~delivery of the products, equipment, supplies, or services, or~~] a business opportunity:

120 (i) before the day on which the purchaser receives the product, equipment, supply, or

121 service;

122 (ii) the day on which the purchaser receives the product, equipment, supply, or service;

123 or

124 (iii) within six months [of the commencement of operation of the assisted marketing  
125 plan by] after the day on which the purchaser and seller enter into the business opportunity. [If  
126 payment is over a period of time, "initial required consideration" means]

127 (b) "Initial required consideration" includes the sum of [the] any down payment and the  
128 total [monthly] of all additional payments, if the purchaser's payment under the terms of the  
129 business opportunity is over a period of time.

130 [(b)] (c) "Initial required consideration" does not [mean] include the not-for-profit sale  
131 of sales demonstration equipment, materials, or supplies for a total [price] amount of less than  
132 \$500.

133 [(5) "Person" means any natural person, corporation, partnership, organization,  
134 association, trust, or any other legal entity.]

135 (6) "Principal" means as the division determines by rule made in accordance with Title  
136 63G, Chapter 3, Utah Administrative Rulemaking Act.

137 [(6)] (7) "Purchaser" means a person who [becomes obligated to pay for an assisted  
138 marketing plan] buys or leases from another person a business opportunity.

139 [(7)] (8) "Registered trademark" or "service mark" means a trademark, trade name, or  
140 service mark registered with the United States Patent and Trademark Office, or Utah, or the  
141 state of incorporation if a corporation.

142 [(8)] (9) (a) "Seller" means a person who offers to sell, offers to lease, sells, or [offers  
143 to sell an assisted marketing plan] leases to another person a business opportunity.

144 (b) "Seller" does not include an individual representative or salesperson, unless the  
145 individual is a principal of a sole proprietorship, partnership, association, joint venture,  
146 corporation, firm, or other organization or entity used in carrying on a business, that offers to  
147 sell, offers to lease, sells, or leases to another person a business opportunity.

148 Section 3. Section **13-15-201** is enacted to read:

149 **Part 2. Seller Duties**

150 **13-15-201. Required filings -- Fees -- Rulemaking.**

151 (1) (a) Except as provided in Subsection (2), before a person may act as a seller in the

152 state, the person shall obtain a proof of disclosure receipt from the division.

153 (b) To obtain a proof of disclosure receipt from the division, a person shall:

154 (i) file with the division a disclosure statement that complies with Section [13-15-202](#);

155 and

156 (ii) pay a filing fee as determined by the division in accordance with Section

157 [63J-1-504](#).

158 (c) A proof of disclosure receipt is valid for one year after the day on which the  
159 division issues the receipt.

160 (d) To renew a proof of disclosure receipt, a seller shall comply with the provisions of  
161 Subsection (1)(b) at least 30 days before the day on which the seller's current proof of  
162 disclosure receipt expires.

163 (2) (a) Before a person offers for sale or sells a franchise to be located in the state or to  
164 a resident of the state, the person shall obtain a proof of notice receipt from the division.

165 (b) To obtain a proof of notice receipt from the division, a person shall:

166 (i) file with the division a notice that states:

167 (A) the franchisor is in substantial compliance with the requirements of the Federal  
168 Trade Commission rule found at Title 16, Chapter I, Subchapter d, Trade Regulation Rules,  
169 Part 436, Disclosure Requirements and Prohibitions Concerning Franchising;

170 (B) the name of the applicant;

171 (C) the name of the franchise;

172 (D) the name under which the applicant intends to transact or transacts business, if  
173 different than the name of the franchise;

174 (E) the address of the applicant's principal place of business; and

175 (F) the applicant's state-issued business entity number or other government-issued,  
176 publicly available identifying number; and

177 (ii) pay a filing fee determined by the division in accordance with Section [63J-1-504](#),  
178 not to exceed \$100.

179 (c) A seller who does not qualify for a proof notice receipt under this Subsection (2) is  
180 subject to Subsection (1).

181 (d) A proof of notice receipt is valid for one year after the day on which the division  
182 issues the receipt.

183 (e) To renew a proof of notice receipt, a person offering for sale or selling a franchise  
 184 to be located in the state or to a resident of the state, shall comply with the provisions of  
 185 Subsection (2)(b) at least 30 days before the day on which the person's current proof of notice  
 186 receipt expires.

187 (3) The division shall deposit all fees collected under this section into the Commerce  
 188 Service Account created in Section [13-1-2](#).

189 (4) The division may make rules in accordance with Title 63G, Chapter 3, Utah  
 190 Administrative Rulemaking Act, to carry out the provisions of this section.

191 Section 4. Section **13-15-202**, which is renumbered from Section 13-15-4 is  
 192 renumbered and amended to read:

193 ~~[13-15-4].~~ **13-15-202. Disclosure statements.**

194 ~~[(1) A seller of an assisted marketing plan shall annually file the following information~~  
 195 ~~with the division:]~~

196 ~~[(a) the name, address, and principal place of business of the seller, and the name,~~  
 197 ~~address, and principal place of business of the parent or holding company of the seller, if any,~~  
 198 ~~who is responsible for statements made by the seller;]~~

199 ~~[(b) the trademarks, trade names, service marks, or advertising or other commercial~~  
 200 ~~symbols that identify the products, equipment, supplies, or services to be offered, sold, or~~  
 201 ~~distributed by the prospective purchaser;]~~

202 ~~[(c) an individual detailed statement covering the past five years of the business~~  
 203 ~~experience of each of the seller's current directors and executive officers and an individual~~  
 204 ~~statement covering the same period for the seller and the seller's parent company, if any,~~  
 205 ~~including the length of time each:]~~

206 ~~[(i) has conducted a business of the type advertised or solicited for operation by a~~  
 207 ~~prospective purchaser;]~~

208 ~~[(ii) has offered or sold the assisted marketing plan; and]~~

209 ~~[(iii) has offered for sale or sold assisted marketing plans in other lines of business,~~  
 210 ~~together with a description of the other lines of business;]~~

211 ~~[(d) (i) a statement of the total amount that shall be paid by the purchaser to obtain or~~  
 212 ~~commence the business opportunity such as initial fees, deposits, down payments, prepaid rent,~~  
 213 ~~and equipment and inventory purchases; and]~~

214 ~~[(ii) if all or part of the fees or deposits described in Subsection (1)(d)(i) are returnable,~~  
215 ~~the conditions under which the fees or deposits are returnable;]~~

216 ~~[(e) a complete statement of the actual services the seller will perform for the~~  
217 ~~purchaser;]~~

218 ~~[(f) a complete statement of the oral, written, or visual representations that will be~~  
219 ~~made to prospective purchasers about specific levels of potential sales, income, gross and net~~  
220 ~~profits, or any other representations that suggest a specific level;]~~

221 ~~[(g) a complete description of the type and length of any training promised to~~  
222 ~~prospective purchasers;]~~

223 ~~[(h) (i) a complete description of any services promised to be performed by the seller in~~  
224 ~~connection with the placement of the equipment, products, or supplies at any location from~~  
225 ~~which they will be sold or used; and]~~

226 ~~[(ii) a complete description of the services described in Subsection (1)(h)(i) together~~  
227 ~~with any agreements that will be made by the seller with the owner or manager of the location~~  
228 ~~where the purchaser's equipment, products, or supplies will be placed;]~~

229 ~~[(i) a statement that discloses any person identified in Subsection (1)(a) who:]~~

230 ~~[(i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a~~  
231 ~~felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement,~~  
232 ~~fraudulent conversion, or misappropriation of property;]~~

233 ~~[(ii) has been held liable or consented to the entry of a stipulated judgment in a civil~~  
234 ~~action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property,~~  
235 ~~or the use of untrue or misleading representations in the sale or attempted sale of any real or~~  
236 ~~personal property, or upon the use of any unfair, unlawful or deceptive business practice; or]~~

237 ~~[(iii) is subject to an injunction or restrictive order relating to business activity as the~~  
238 ~~result of an action brought by a public agency;]~~

239 ~~[(j) a financial statement that is less than 13 months old of the seller signed by one of~~  
240 ~~the seller's officers, directors, trustees, or general or limited partners, under a declaration that~~  
241 ~~certifies that to the signatory's knowledge and belief the information in the financial statement~~  
242 ~~is true and accurate;]~~

243 ~~[(k) a copy of the entire marketing plan contract;]~~

244 ~~[(l) the number of marketing plans sold to date, and the number of plans under~~



245 negotiation;]

246 [~~(m) geographical information, including the states in which the seller's assisted~~  
247 ~~marketing plans have been sold, and the number of plans in each state;]~~

248 [~~(n) the total number of marketing plans that were cancelled by the seller in the past 12~~  
249 ~~months; and]~~

250 [~~(o) the number of marketing plans that were voluntarily terminated by purchasers~~  
251 ~~within the past 12 months and the total number of such voluntary terminations to date.]~~

252 [~~(2) The seller of an assisted marketing plan filing information under Subsection (1)~~  
253 ~~shall pay an annual fee as determined by the department in accordance with Section 63J-1-504~~  
254 ~~when the seller files the information required under Subsection (1).]~~

255 [~~(3) (a) Before commencing business in this state, a seller of an assisted marketing plan~~  
256 ~~shall file the information required under Subsection (1) and receive from the division proof of~~  
257 ~~receipt of the filing.]~~

258 [~~(b) A seller shall annually comply with Subsections (1) and (2) by no later than the~~  
259 ~~anniversary of the day on which the seller receives from the division proof of receipt of the~~  
260 ~~filing.]~~

261 [~~(4) A seller of an assisted marketing plan claiming an exemption from filing under~~  
262 ~~this chapter shall file a notice of claim of exemption from filing with the division. A seller~~  
263 ~~claiming an exemption from filing bears the burden of proving the exemption. The division~~  
264 ~~shall collect a fee for filing a notice of claim of exemption, as determined by the department in~~  
265 ~~accordance with Section 63J-1-504.]~~

266 [~~(5) A representation described in Subsection (1)(f) shall be relevant to the geographic~~  
267 ~~market in which the business opportunity is to be located. When the statements or~~  
268 ~~representations are made, a warning after the representation in not less than 12 point upper and~~  
269 ~~lower case boldface type shall appear as follows:]~~

270 (1) An applicant for a proof of disclosure receipt under Subsection 13-15-201(1) shall  
271 include the following in a disclosure statement:

272 (a) the name, address, and principal place of business of:

273 (i) the applicant; and

274 (ii) each parent, affiliate, or holding company of the applicant that is responsible for a  
275 statement that the applicant makes;

276 (b) an individual statement from each of the following, detailing the person's business  
277 experience for the five-year period immediately before the day on which the applicant files the  
278 disclosure statement:

279 (i) the applicant;

280 (ii) each parent company of the applicant;

281 (iii) each current director of the applicant; and

282 (iv) each current executive officer of the applicant;

283 (c) for each type of business opportunity the applicant offers to enter into or enters into  
284 as a seller:

285 (i) an individual statement from each person described in Subsections (1)(b)(i) and (ii)  
286 detailing the length of time, during the five-year period immediately before the day on which  
287 the applicant files the disclosure statement, the person has:

288 (A) operated a business of the type the purchaser would operate under the business  
289 opportunity; and

290 (B) offered to sell or lease that type of business opportunity;

291 (ii) each trademark, trade name, service mark, advertisement, or other commercial  
292 symbol that identifies a product, equipment, a supply, or a service that the applicant sells or  
293 leases under the business opportunity;

294 (iii) a complete statement of:

295 (A) the total amount that a purchaser pays to obtain or commence the operation of the  
296 business under the business opportunity;

297 (B) if all or part of a fee or deposit described in Subsection (1)(c)(iii)(A) is refundable,  
298 the conditions under which the fee or deposit is refundable;

299 (C) the product, equipment, supply, or service the applicant provides or performs for a  
300 purchaser under the business opportunity; and

301 (D) each oral, written, visual, or other representation that the applicant makes to a  
302 prospective purchaser about specific levels of potential sales, income, or gross and net profits  
303 under the business opportunity;

304 (iv) a complete description of:

305 (A) the type and length of training the applicant promises to a prospective purchaser, if  
306 any;

307 (B) each service the applicant promises to perform in connection with the placement of  
308 equipment, a product, or a supply at a location from which the equipment, product, or supply  
309 will be sold or used; and

310 (C) each agreement the applicant makes with an owner or manager of a location where  
311 a purchaser's equipment, product, or supply is placed; and

312 (v) a complete copy of each contract to which a purchaser under the business  
313 opportunity would be party;

314 (d) the total number of business opportunities the applicant has entered into as a seller  
315 in each state;

316 (e) the total number of business opportunities that the applicant has canceled within the  
317 12 months before the day on which the applicant files the disclosure statement;

318 (f) the total number of business opportunities, to which the applicant is a party, for  
319 which a purchaser has requested a refund or cancellation within the 12 months before the day  
320 on which the applicant files the disclosure statement;

321 (g) a statement that discloses each person identified in Subsection (1)(a) who:

322 (i) has been convicted of a felony or misdemeanor or pleaded no contest to a felony or  
323 misdemeanor charge, if the felony or misdemeanor involved fraud, embezzlement, fraudulent  
324 conversion, or misappropriation of property;

325 (ii) has been held liable or consented to the entry of a stipulated judgment in an  
326 administrative or civil action based upon:

327 (A) fraud, embezzlement, fraudulent conversion, misappropriation of property;

328 (B) the use of untrue or misleading representations; or

329 (C) the use of any unfair, unlawful, or deceptive business practice; or

330 (iii) is subject to an injunction or restrictive order relating to business activity as the  
331 result of a government agency action;

332 (h) a financial statement from the applicant that is:

333 (i) less than 13 months old; and

334 (ii) signed by an officer, director, trustee, or general or limited partner of the applicant,  
335 under a declaration that certifies that to the signatory's knowledge and belief the information in  
336 the financial statement is true and accurate; and

337 (i) a cover sheet that:

338 (i) is attached to the front or appears at the beginning of the disclosure statement; and

339 (ii) conspicuously states in at least 12-point upper- and lower-case boldface type:

340 (A) the name of the applicant;

341 (B) the date on which the applicant files the disclosure;

342 (C) the following notice:

343 "INFORMATION FOR PURCHASE OF A BUSINESS OPPORTUNITY:

344 To protect you, the State of Utah has required your seller to give you this disclosure

345 statement. The State of Utah has not verified the accuracy of the information in the disclosure

346 statement."; and

347 (D) if the applicant makes a representation described in Subsection (1)(c)(iii)(D) or

348 [13-15-102\(1\)\(a\)\(ii\)\(D\)](#) the following notice:

349 "CAUTION

350 ~~[No guarantee of earnings or ranges of earnings can be made.]~~ The number of

351 purchasers who have earned through this business opportunity an amount in excess of the

352 amount ~~[of their initial payment]~~ the purchaser pays for the business opportunity is at least

353 \_\_\_\_\_ which represents at least \_\_\_\_\_% of the total number of purchasers of this business

354 opportunity."

355 (2) The disclosure statement described in Subsection (1) may not include material or

356 information other than the material and information required under Subsection (1).

357 Section 5. Section **13-15-203**, which is renumbered from Section 13-15-5 is

358 renumbered and amended to read:

359 ~~[13-15-5].~~ **13-15-203. Disclosure statement furnished to purchaser --**

360 **Additional nondeceptive information permitted.**

361 ~~[All the information required under Section [13-15-4](#) shall be contained in a single~~

362 ~~disclosure statement or prospectus which shall be provided to any prospective purchaser at~~

363 ~~least 10 business days prior to the earlier of:]~~

364 (1) A seller shall provide the disclosure statement described under Section [13-15-202](#)

365 to a prospective purchaser at least 10 business days before the day on which the earlier of the

366 following occurs:

367 ~~[(1)]~~ (a) the [execution by prospective purchaser of any] prospective purchaser

368 executes an agreement imposing a binding legal obligation on [such] the prospective purchaser

369 [by which the seller knows or should know,] in connection with the seller's sale or proposed  
 370 sale of [~~the "assisted marketing plan"~~] a business opportunity; or

371 [~~(2)~~] (b) the [~~payment by a~~] prospective purchaser[~~, by which the seller knows or~~  
 372 ~~should know of any consideration~~] makes a payment or provides consideration in connection  
 373 with the seller's sale or proposed sale of [~~the "assisted market plan."~~ ~~The disclosure statement~~  
 374 ~~or prospectus may not contain any material or information other than that required under~~  
 375 ~~Section 13-15-4. However, the seller may give prospective purchasers nondeceptive~~  
 376 ~~information other than that contained in the disclosure statement or prospectus if it does not~~  
 377 ~~contradict the information required to appear in the disclosure statement or prospectus. A~~  
 378 ~~cover sheet attached to the disclosure statement or prospectus shall conspicuously state the~~  
 379 ~~name of the seller, the date of issuance of the disclosure statement or prospectus, and a notice~~  
 380 ~~printed in not less than 12 point upper and lower case boldface type as follows:}] a product or  
 381 business opportunity.~~

382 ~~[INFORMATION FOR PURCHASE OF A MARKETING PLAN:]~~

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

391 (2) A seller may provide a prospective purchaser nondeceptive information apart from  
 392 the disclosure statement described in Section 13-15-202, if the information does not contradict  
 393 the information required in the disclosure statement.

394 Section 6. Section **13-15-301**, which is renumbered from Section 13-15-3 is  
 395 renumbered and amended to read:

396 **Part 3. Enforcement**

397 [~~13-15-3~~]. **13-15-301. Administration and enforcement -- Powers -- Legal**  
 398 **counsel -- Fees.**

399 (1) The division shall administer and enforce the provisions of this chapter[~~. In the~~

400 ~~exercise of its responsibilities, the division shall enjoy the powers, and be subject to the~~  
401 ~~constraints, set forth in Title 13, Chapter 2, Division of Consumer Protection]~~ in accordance  
402 with Chapter 2, Division of Consumer Protection.

403 (2) The attorney general, upon request, shall give legal advice to, and act as counsel  
404 for, the division in the exercise of [~~its~~] the division's responsibilities under this chapter.

405 (3) (a) In addition to the division's enforcement powers under Chapter 2, Division of  
406 Consumer Protection:

407 (i) the division director may impose an administrative fine of up to \$2,500 for each  
408 violation of this chapter; and

409 (ii) the division may bring an action in a court of competent jurisdiction to enforce a  
410 provision of this chapter.

411 (b) In a court action by the division to enforce a provision of this chapter, the court  
412 may:

413 (i) declare that an act or practice violates a provision of this chapter;

414 (ii) issue an injunction for a violation of this chapter;

415 (iii) order disgorgement of any money received in violation of this chapter;

416 (iv) order payment of disgorged money to an injured purchaser or consumer;

417 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

418 (vi) award any other relief that the court deems reasonable and necessary.

419 (4) If a court of competent jurisdiction grants judgment or injunctive relief to the  
420 division, the court shall award the division:

421 (a) reasonable attorney fees;

422 (b) court costs; and

423 (c) investigative fees.

424 (5) (a) A person who violates an administrative or court order issued for a violation of  
425 this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

426 (b) A civil penalty authorized under this section may be imposed in any civil action  
427 brought by the attorney general on behalf of the division.

428 (6) All money received for the payment of a fine or civil penalty imposed under this  
429 section shall be deposited into the Consumer Protection Education and Training Fund created  
430 in Section [13-2-8](#).

431 ~~[(3) All fees collected under this chapter shall be deposited in the Commerce Service~~  
432 ~~Account created by Section 13-1-2.]~~

433 ~~[(4) (a) As used in this Subsection (4), "consumer complaint" means a complaint that:]~~

434 ~~[(i) is filed with the division by a consumer or business;]~~

435 ~~[(ii) alleges facts relating to conduct that the division regulates under this chapter; and]~~

436 ~~[(iii) (A) alleges a loss to the consumer or business of \$3,500 or more; or]~~

437 ~~[(B) is one of at least 50 other complaints against the same person filed by other~~

438 ~~consumers or businesses during the four years immediately preceding the filing of the~~

439 ~~complaint.]~~

440 ~~[(b) For purposes of determining the number of complaints against the same person~~

441 ~~under Subsection (4)(a)(iii)(B), the division may consider complaints filed against multiple~~

442 ~~corporations, limited liability companies, partnerships, or other business entities under~~

443 ~~common ownership to be complaints against the same person.]~~

444 ~~[(c) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4)(d) and (e), a~~  
445 ~~consumer complaint:]~~

446 ~~[(i) is a public record; and]~~

447 ~~[(ii) may not be classified as a private, controlled, or protected record under Title 63G,~~  
448 ~~Chapter 2, Government Records Access and Management Act.]~~

449 ~~[(d) Subsection (4)(c) does not apply to a consumer complaint:]~~

450 ~~[(i) (A) if the division determines through an administrative proceeding that the~~  
451 ~~consumer complaint is nonmeritorious; and]~~

452 ~~[(B) beginning when the nonmeritorious determination is made; or]~~

453 ~~[(ii) that has been on file with the division for more than four years.]~~

454 ~~[(e) Before making a consumer complaint that is subject to Subsection (4)(c) or a~~  
455 ~~response described in Subsection (4)(f) available to the public, the division:]~~

456 ~~[(i) shall redact from the consumer complaint or response any information that would~~  
457 ~~disclose the address, Social Security number, bank account information, email address, or~~  
458 ~~telephone number of the consumer or business; and]~~

459 ~~[(ii) may redact the name of the consumer or business and any other information that~~  
460 ~~could, in the division's judgment, disclose the identity of the consumer or business filing the~~  
461 ~~consumer complaint.]~~

462 ~~[(f) A person's initial, written response to a consumer complaint that is subject to~~  
463 ~~Subsection (4)(c) is a public record.]~~

464 Section 7. Section **13-15-302**, which is renumbered from Section 13-15-6 is  
465 renumbered and amended to read:

466 ~~[13-15-6].~~ **13-15-302. Private right of action.**

467 ~~[(1) If a seller fails to file the disclosures required under Section 13-15-4, or fails after~~  
468 ~~demand by the division to file the disclosure within 15 days, the division, consistent with~~  
469 ~~Section 13-2-5, shall begin adjudicative proceedings and shall issue a cease and desist order.]~~

470 ~~[(2)]~~ (1) [Any] A purchaser [of a business opportunity from] may bring an action in a  
471 court of competent jurisdiction against a seller who does not comply with this chapter.

472 (2) If a court of competent jurisdiction finds that a seller violated this chapter, a  
473 purchaser who brings an action under Subsection (1) is entitled[, in an appropriate court of  
474 competent jurisdiction,] to:

475 (a) rescission of the contract[, to];

476 (b) an award of [a] reasonable [attorney's fee] attorney fees and costs of court in an  
477 action to enforce the right of rescission[, and to the]; and

478 (c) an amount equal to the greater of:

479 (i) actual damages; or

480 (ii) \$2,000[, whichever is greater].

481 ~~[(3) In the event the division is granted judgment or injunctive relief in an appropriate~~  
482 ~~court of competent jurisdiction, the division, in addition to any other relief, is entitled to an~~  
483 ~~award of reasonable attorney's fees, costs of court, and investigative fees.]~~

484 ~~[(4) (a) In addition to other penalties under this chapter, and to its other enforcement~~  
485 ~~powers under Title 13, Chapter 2, Division of Consumer Protection, the division director may~~  
486 ~~impose an administrative fine of up to \$2,500 for each violation of this chapter.]~~

487 ~~[(b) All money received through administrative fines imposed under this section shall~~  
488 ~~be deposited in the Consumer Protection Education and Training Fund created by Section~~  
489 ~~13-2-8.]~~

490 Section 8. Section **13-15-401** is enacted to read:

491 **Part 4. Miscellaneous**

492 **13-15-401. Consumer complaints.**



- 493 (1) As used in this section, "consumer complaint" means a complaint that:  
494 (a) a consumer or business files with the division;  
495 (b) alleges facts relating to conduct that the division regulates under this chapter; and  
496 (c) (i) alleges a loss to the consumer or business described in Subsection (1)(a) of  
497 \$3,500 or more; or  
498 (ii) is one of at least 50 complaints filed with the division:  
499 (A) against the same person; and  
500 (B) during the four-year period immediately before the day on which the consumer or  
501 business described in Subsection (1)(a) files the complaint.
- 502 (2) For purposes of determining the number of complaints against the same person  
503 under Subsection (1)(c)(ii)(A), the division may consider complaints filed against multiple  
504 corporations, limited liability companies, partnerships, or other business entities under  
505 common ownership to be complaints against the same person.
- 506 (3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a  
507 consumer complaint:  
508 (a) is a public record; and  
509 (b) may not be classified as a private, controlled, or protected record under Title 63G,  
510 Chapter 2, Government Records Access and Management Act.
- 511 (4) Subsection (3) does not apply to a consumer complaint:  
512 (a) that is nonmeritorious, beginning the day on which:  
513 (i) the division determines through an administrative proceeding that the consumer  
514 complaint is nonmeritorious; or  
515 (ii) a court of competent jurisdiction finds the complaint nonmeritorious; or  
516 (b) that is on file with the division for more than four years after the day on which the  
517 person files the complaint.
- 518 (5) Before making a consumer complaint that is subject to Subsection (3) or a response  
519 described in Subsection (6) available to the public, the division:  
520 (a) shall redact from the consumer complaint and the seller's response any information  
521 that would disclose:  
522 (i) the consumer or seller's:  
523 (A) address;

- 524 (B) social security number;
- 525 (C) bank account information;
- 526 (D) email address; or
- 527 (E) telephone number; or
- 528 (ii) information similar in nature to the information described in Subsection (5)(a)(i);

529 and

530 (b) may redact the name of the consumer or business and any other information that  
531 could, in the division's judgment, disclose the identity of the consumer or business filing the  
532 consumer complaint.

533 (6) A seller's initial, written response to a consumer complaint that is subject to  
534 Subsection (3) is a public record.

535 Section 9. **Repealer.**

536 This bill repeals:

537 Section **13-15-4.5, Notice of exemption filing.**

538 Section **13-15-7, Civil penalty for violation of cease and desist order.**