

CHAPTER 55
IOWA BUSINESS OPPORTUNITY SALES ACT

[Prior to 10/22/86, Insurance Department [510]]

191—55.1(523B) Definitions and interpretations.

55.1(1) For purposes of this chapter, “the Act” is deemed to mean the Iowa Business Opportunity Sales Act. [Iowa Code chapter 523B]

55.1(2) For the purposes of Iowa Code section 523B.1(1)“a,” the term “offer for sale” shall be deemed to mean every attempt or offer to exchange or dispose of, solicitation of an offer to buy, or an advertisement for a business opportunity for value.

55.1(3) For the purposes of Iowa Code section 523B.1(1)“a,” the term “predesigned sales or marketing program” shall be deemed to mean a method, program, plan, system or outline of the operation of a business. The method, program, plan, system or outline is arranged for use and furnished with the purchase of a business opportunity which includes, but is not limited to, manuals, advertisement materials or seminars intended to aid the purchaser in selling, marketing or conducting the business opportunity.

55.1(4) For purposes of Iowa Code section 523B.1(1)“a”(1), “similar devices for the promotion and sale of merchandise” shall be deemed to include, but not be limited to:

a. Vending machines, electric game machines, racks, display cases and other similar devices for selling foods or products supplied to the purchaser by the seller;

b. Ovens or other cooking devices for the sale of “fast food” or “snack food” such as pizza, sandwiches or hot drinks;

c. Equipment and materials to set up a miniature golf course;

d. Market projection formats for purposes of establishing and operating any business, including, but not limited to, a retail business;

e. Electronic equipment and instructional materials for the purpose of establishing message-recording services or security systems;

f. Providing, or renting to third parties, equipment or supplies used for cleaning or washing homes or businesses;

g. Supplies, instructions, or equipment for home-manufacture or assembly of products to be sold by the purchaser of the business opportunity.

55.1(5) For the purposes of Iowa Code section 523B.1(7):

a. “Total amount a purchaser is obligated to pay” shall be deemed to mean any form of consideration given by a purchaser to the seller in exchange for the opportunity to enter into an oral or written contract to operate the business opportunity being offered or sold by the seller;

b. Consideration may include, but is not limited to:

(1) Tender of money, materials or products valued at fair market value; or

(2) Security or escrow deposits.

c. Consideration may also include, but is not limited to, payments for, or in the nature of payments for:

(1) Promotional literature;

(2) Rental or purchase of space, location or equipment;

(3) Assistance in advertising, set-up of operation, or financing;

(4) Training of the buyer in connection with the marketing, promotion or distribution of the product;

(5) Periodic minimum purchase amounts, or periodic fees; or

(6) Inventory.

d. Initial investment shall not include periodic payments where the amount or rate of the payments is based on net sales or gross sales on a similar business activity basis.

55.1(6) For the purposes of the Act, “financial statement” shall be deemed to include the following items, which shall be completed in accordance with generally accepted accounting principles:

a. A copy of seller’s balance sheet prepared as of a date within 120 days prior to the filing of the application;

b. A profit and loss statement and statement of changes in financial position for each of the three fiscal years preceding the date of the balance sheet, or for the period of the seller's and any predecessor's existence if less than three years;

c. If prepared, a copy of seller's most recent audited financial statement; and

d. Such other financial information as may be required pursuant to Iowa Code section 523B.4(3) "i."

55.1(7) Every seller claiming an exemption from registration based upon the availability of Iowa Code section 523B.1(1) "b"(3) shall permit all purchasers to use the trademark or service mark in conjunction with the operation of the business.

55.1(8) Every seller claiming an exemption from registration based upon the availability of Iowa Code section 523B.1(1) "b"(8) shall not pursue negotiations with a potential buyer unless representation of potential buyer is begun at the earliest of, and continued from, the following events:

a. Prior to, or concurrently with, the first offer made to the purchaser by the seller;

b. Prior to confirmation of any sale or payment pursuant to any sale;

c. Prior to the delivery of any merchandise; or

d. Prior to the point at which any services are performed in preparation for or pursuant to any such sale.

191—55.2(523B) Jurisdictional authority.

55.2(1) Scope. The provisions of the Act concerning offer and sale shall apply when the offer or sale is made in this state.

55.2(2) Definition of "in this state." For the purposes of the Act, Iowa Code section 523B.1(1) "a," and this chapter, an offer is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the seller to this state and is received by the purchaser in this state.

This rule is intended to implement Iowa Code section 523B.10.

191—55.3(523B) Registration application procedure. Every application for registration for the offer or sale of a business opportunity shall be filed with the administrator, along with a fee of \$250 and shall contain the information set forth in Iowa Code section 523B.4. The seller shall submit a consent to service and, if applicable, a corporate resolution, both of which shall be on the form provided by the administrator. All forms shall be notarized.

This rule is intended to implement Iowa Code section 523B.2(4).

191—55.4(523B) Exemption application procedure.

55.4(1) Every seller desiring confirmation of the availability of an exemption under Iowa Code section 523B.1(1) "b"(1) to (9) shall submit the following information:

a. A written request for an exemption which contains a description of the actual facts that are the basis for the request and a citation to the applicable subsection of the rule or statute.

b. Such further information or documentation as may be required by the administrator.

55.4(2) Every application for exemption must be accompanied by a \$50 fee.

55.4(3) Every application submitted pursuant to this rule shall be signed by a principal of the applicant business and the signature shall be properly notarized.

This rule is intended to implement Iowa Code sections 523B.2(4) and 523B.10.

191—55.5(523B) Surety bond, trust account or letter of credit.

55.5(1) Pursuant to Iowa Code section 523B.3, a business opportunity seller shall not be permitted to do business in this state unless the business opportunity seller has obtained a surety bond, trust account or letter of credit.

55.5(2) Dollar amount required. The amount of the surety bond, trust account or guaranteed letter of credit shall be a minimum of \$15,000, but the administrator may require a greater amount if it is determined that the greater amount is necessary for the protection of purchasers of the business opportunity.

55.5(3) Criteria for determining amount. For the purposes of administering Iowa Code section 523B.3, any or all of the following criteria may be determinative as to whether a greater amount of coverage under the surety bond, trust account or guaranteed letter of credit shall be required.

- a.* If the business has actively operated for less than two years.
- b.* If the business opportunity or seller has capital or real property investment in this state with a fair market value of less than \$100,000.
- c.* If the net worth of the business opportunity, as demonstrated by seller's balance sheet reflects a net worth of less than \$100,000.

This rule is intended to implement Iowa Code section 523B.3.

191—55.6(523B) Orders. The administrator may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the Act.

This rule is intended to implement Iowa Code section 523B.10.

191—55.7(523B) Investigations and subpoenas.

55.7(1) The administrator may:

- a.* Make private and public investigations within or outside of this state as the administrator deems necessary to determine whether a person has violated or is about to violate any provision of the Act or any rule or order hereunder or to aid in the enforcement of the Act or in the prescribing of rules and forms hereunder;
- b.* Require or permit any person to file a statement, under oath or otherwise as the administrator determines as to all the facts and circumstances concerning the matter to be investigated; and
- c.* Publish information concerning any violation of the Act or any rule or order hereunder.

55.7(2) For the purpose of any investigation or proceeding under this Act, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the productions of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to the inquiry.

55.7(3) No person is excused from attending and testifying or from producing any document or record before the administrator or in obedience to subpoena of the administrator or any officer designated by it, or in any proceeding instituted by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required of said person may tend to incriminate or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which that person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

This rule is intended to implement Iowa Code section 523B.10.

191—55.8(523B) Forms. Forms and instructions are developed by the division to aid and assist applicants in fulfilling the requirements set forth by the Act.

Copies of all necessary forms and instructions may be obtained from the Iowa Division of Insurance, Securities Division, Lucas State Office Building, Des Moines, Iowa 50319.

The list which follows describes these forms and instructions which members of the public shall use when dealing with the division. Each direction shall be complied with and each question in every form answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER	DESCRIPTION
BSOP 1	Business Opportunity Registration/Exemption Application. Used when filing for registration or applying for exemption under the Act. Provides information regarding the applicant. 1 page, both sides.

- BSOP 2 Seller’s Disclosure Form. Used when filing for registration under the Act. provides information regarding principals of the business opportunity. 1 page.
- BSOP 3 Business Opportunity Seller’s Bond. Used by issuer of the surety bond obtained pursuant to the Act. 1 page.
- BSOP 4 Consent to be Sued by Service on Commissioner of Insurance. Used by parties registering under the Act. 1 page.
- BSOP 5 Resolution Authorizing Appointment of Commissioner of Insurance as Process Agent. Used by parties registering under or requesting confirmation of exemption from the Act. 1 page.

This rule is intended to implement Iowa Code section 523B.10.

191—55.9(523B) Fees. The following fees are hereby established by the administrator:

1. Application packet	\$	5.00
2. Certification	\$	5.00
3. Filing fee (exemptions)	\$	50.00
4. Filing fee (registrations)	\$	250.00
5. List of registrants	\$	10.00
6. Name change	\$	10.00
7. Photocopies of records (per page)	\$	0.50

All fees are nonrefundable.

This rule is intended to implement Iowa Code section 523B.10.

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