

551A.1 Definitions.

1. *"Advertising"* means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means used in connection with an offer or sale of a business opportunity.

2. *a. "Business opportunity"* means an opportunity to start a business according to the terms of a contract between a seller and purchaser in which the purchaser provides an initial investment exceeding five hundred dollars; the seller represents that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start the business; and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by 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, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. "Business opportunity" does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity entered into under this chapter or prior to July 1, 1981.

3. *"Contract"* means any agreement between parties which is express or implied, and which is made orally or in writing.

4. "*Franchise*" means a contract between a seller and a purchaser where the parties agree to all of the following:

- a. A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.
- b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, "*franchisee*" means a person to whom a franchise is granted and "*franchisor*" means a person who grants a franchise.

5. "*Initial investment*" means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, "*initial investment*" means the sum of the down payment and the total monthly payments specified in the contract.

6. "*Marketing plan*" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

- a. Promotional literature, brochures, pamphlets, or advertising materials.
- b. Training regarding the promotion, operation, or management of the business opportunity.
- c. Operational, managerial, technical, or financial guidelines or assistance.

7. "*Offer*" or "*offer to sell*" means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

8. "*Ongoing business*" means an existing business that for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

9. "*Person*" means the same as defined in section 4.1, except that it does not include a government or governmental subdivision or agency.

10. "*Purchaser*" means a person who enters into a contract for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. "*Record*" means the same as defined in section 516E.1.

12. "*Sale*" or "*sell*" includes every contract for sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

13. "*Seller*" means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. "*Seller*" does not include the media in or by which an advertisement appears or is disseminated.

C83, §523B.1

91 Acts, ch 205, §1; 98 Acts, ch 1189, §11; 99 Acts, ch 90, §1, 3; 2000 Acts, ch 1147, §20; 2004 Acts, ch 1104, §510, 30

C2005, §551A.1