

## INVENTION DEVELOPMENT SERVICES

### Footnotes

Legislative findings; 92 Acts, ch 1114, § 1

#### **523G.1 Short title.**

This chapter shall be known and may be cited as the "*Invention Development Services Act*".

92 Acts, ch 1114, § 2

#### **523G.2 Purpose of the chapter.**

The general assembly declares that the purpose of this chapter is to safeguard the public against fraud, deceit, imposition, and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of invention development services by prohibiting or restricting deceptive practices, misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, or discriminatory practices which threaten the public welfare.

92 Acts, ch 1114, § 3

#### **523G.3 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Business record*" means a record maintained by an invention developer relating to invention development services, including but not limited to contracts, files, accounts, books, papers, photographs, and audio or visual tapes.
2. "*Commissioner*" means the commissioner of insurance or a person designated by the commissioner to act on the commissioner's behalf.
3. "*Contract*" means an agreement between an invention developer and a customer under which the invention developer promises to perform invention development services for the customer.
4. "*Customer*" means a person who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer.
5. "*Deceptive practice*" means communicating a false or fraudulent statement, providing false pretense, making a false promise or misleading statement, misrepresenting a fact, omitting a material fact, or failing to make all disclosures required by this chapter.
6. "*Fee*" means a payment made by a customer to an invention developer, including reimbursements for expenditures made or costs incurred by the invention developer. However, "*fee*" does not include a payment made from a portion of the income received by the customer which resulted from invention development services performed by the invention developer.
7. "*Invention*" means an original concept which may be rendered into an artistic, educational, or technological expression, including works, compositions, designs, machines, manufacturing or engineering techniques, analyses, or processes.
8. "*Invention developer*" means a person who performs invention development services in this state or offers,

through any means of communication, to perform invention development services in this state. However, an invention developer does not include the following:

*a.* A person licensed by a state or the United States to render legal advice, if the person acts within the scope of the license. However, if the person is a corporation, all of its stockholders or members must be licensed. If the person is a partnership, all of its partners must be licensed.

*b.* A department or agency of a federal or state government.

*c.* A political subdivision.

*d.* A nonprofit organization registered pursuant to state law.

*e.* A charitable, scientific, educational, or religious organization registered pursuant to state law.

*f.* A person who does not charge a fee for invention development services.

*g.* A person who provides researching, marketing, surveying, or other kinds of consulting services to professional manufacturers, marketers, publishers, or others purchasing such services as an adjunct to their traditional commercial enterprises.

9. "*Invention development services*" or "*services*" means acts required, promised to be performed, or actually performed by an invention developer for a customer pursuant to a contract which involves facilitating the development, promotion, licensing, publishing, exhibiting, or marketing of an invention.

92 Acts, ch 1114, § 4

#### **523G.4 Initial disclosures.**

1. If an invention developer contemplates entering into a contract or if the invention developer contemplates performance of a phase covered in a contract, the invention developer shall notify the customer by a written statement. The invention developer shall deliver to the customer the written notice together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer first executes the contract.

2. The invention developer shall make a written disclosure to the customer of the information required in this section. The disclosure shall be made in either the first written communication from the invention developer to a specific customer or at the first meeting between the invention developer and a customer. The written disclosure shall contain all of the following:

*a.* The median fee based on fees charged to all customers who have executed contracts with the invention developer in the preceding six months, excluding customers who have executed a contract in the preceding thirty days.

*b.* A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have executed contracts within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract.

The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

c. A notice appearing in substantially the following form: WARNING

The following disclosure is required by section 523G.4 of the Iowa Code:

The person you are dealing with is an invention developer regulated under chapter 523G of the Iowa Code. Unless an invention developer is an attorney licensed to practice in this state, the invention developer is prohibited from providing you legal advice concerning patent, copyright, or trademark law or to advise you of whether your creation, idea, or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection cannot be acquired for you by the invention developer. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your creation, idea, or invention may also trigger a one-year statutory deadline for filing a patent application in the United States, after which you would be banned from receiving any patent protection in the United States, and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure.

Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your creation, idea, or invention.

If you assign even a partial interest in the invention to the invention developer, the invention developer may have the right to assign or license its interest in the invention, or make, use, and sell the creation, idea, or invention without your consent and may not have to share the profits with you.

92 Acts, ch 1114, § 5; 99 Acts, ch 96, §48

### **523G.5 Contracts.**

1. A contract shall set forth information required in this section in at least ten point type.
2. The contract shall describe fully and in detail the services that the invention developer contracts to perform for the customer.
3. The contract shall state the following information:
  - a. If the invention developer contracts to construct one or more prototypes, models, or devices embodying the invention of the customer, the total number of prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.
  - b. If an oral or written estimate of customer earnings is made, the estimate and the data upon which it is based.
  - c. A single statement setting forth both of the following:
    - (1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include payments for services performed by the invention developer involving the development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to their contract.

*d.* The expected date of completion of the invention development services.

*e.* The extent to which the terms of the contract effectuate or make possible the purchase by the invention developer of an interest in the title to an invention.

*f.* A statement explaining that the invention developer is required to maintain all records and correspondence relating to the invention development services performed for that customer for a period not less than three years after expiration of the contract.

*g.* A statement explaining that the records and correspondence required to be maintained pursuant to section 523G.8 shall be made available to the customer or representative for review and copying at the expense of the customer on the premises of the invention developer during normal business hours upon seven days' written notice from the date of delivery sent by certified mail.

*h.* The name of the person contracting to perform the invention development services, all names under which the person is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary entities to the person, and the names of all entities that have a contractual obligation to perform invention development services for the person.

*i.* The principal business address of the invention developer and the name and address of its agent in this state authorized to receive service of process in this state.

4. *a.* The customer has an unconditional right to cancel a contract for invention development services at any time before the third business day following the date the customer receives an executed copy of the contract.

*b.* The customer must notify the invention developer of a cancellation by written notice delivered personally or by certified mail. A notice delivered personally must be delivered to the invention developer's place of business by the end of the third business day following the date that the contract was executed, and the cancellation shall take effect upon delivery. Upon delivery of the personal notice, the invention developer shall return a receipt to the customer acknowledging receipt of the cancellation. A notice delivered by certified mail must be mailed by midnight of the third day following the date that the contract was executed, and the cancellation shall become effective upon the date the receipt is signed. A notice of cancellation may take any form which indicates that the customer no longer intends to be bound by the contract.

*c.* Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by certified mail, all moneys paid, any note or other evidence of indebtedness, and all materials provided by the customer. The invention developer may condition payment upon a receipt by the customer acknowledging personal delivery.

5. The following shall be included in the contract:

*a.* A disclosure statement in substantially the following form shall appear in boldface type and be located conspicuously on a cover sheet that contains no other writing: **NOTICE**

The following disclosure is required by section 523G.5 of the Iowa Code and is expressly made a part of this contract:

You have the right to cancel this contract for any reason at any time within three (3) business days from the date you and the invention developer sign the contract and you receive a fully executed copy. To exercise this option you may use certified mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. The invention developer must return by certified mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party on your behalf.

Unless the invention developer is an attorney, the invention developer is prohibited from giving you legal advice concerning patent, copyright, or trademark law, whether your creation, idea, or invention may be patentable, or protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection will not be acquired for you by the invention developer or by this contract. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your idea or invention may also trigger certain statutory deadlines for filing a patent application in the United States and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your idea or invention.

*b.* A disclosure statement in substantially the following form shall appear in ten point boldface type immediately above the place where the customer is to sign: **ATTENTION! (READ CAREFULLY)**

You have three (3) business days during which you may cancel this contract for any reason. You must deliver written notice of the cancellation by certified mail or personally to the invention developer. This opportunity to cancel the contract will expire on the last date that you are allowed to mail or deliver notice. If you choose to use certified mail to deliver your notice, it must be placed in the United States mail addressed to (insert name of invention developer), at (insert address of invention developer's place of business) with first class postage prepaid before midnight of (insert proper date). If you choose to personally deliver your notice to the invention developer, it must be delivered by the end of the normal business day on (insert proper date). You are advised to obtain a written statement from the invention developer acknowledging receipt.

92 Acts, ch 1114, § 6

### **523G.6 Evidence of financial responsibility.**

1. An invention developer shall maintain as security evidence of financial responsibility as approved by the commissioner. The security shall be either a bond or cash deposit in an amount which is equal to the greater of either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or twenty-five thousand dollars. The commissioner shall approve the security before the invention developer renders or offers to render invention development services in this state. The invention developer shall have ninety days beginning on the first day of the invention developer's new fiscal year to change the security as necessary to conform to the requirements of this subsection.

2. A surety who issues a bond must be approved by the commissioner. A copy of the bond shall be filed in a manner and according to procedures approved by the commissioner. A cash deposit shall be filed with the treasurer of state in a manner and according to procedures approved by the treasurer of state in consultation with the commissioner. The treasurer of state shall not refund a deposit until sixty days following either the date that the invention developer has ceased doing business in the state or a bond has been filed with the commissioner in compliance with this section.

3. The security shall be in favor of the state for the benefit of any person entering into a contract with and damaged by an invention developer, if the damages are caused by one of the following:

- a. A failure by the invention developer to perform the terms of the contract.
- b. The insolvency of the invention developer or the cessation of the invention developer's business.
- c. The intentional violation of a provision of this chapter by the invention developer.

A person claiming against the security may maintain an action at law against the invention developer. An action against a bond may also include the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

92 Acts, ch 1114, § 7, 13

Implementation contingent upon appropriation; 92 Acts, ch 1114, § 13; 94 Acts, ch 1031, §21

### **523G.7 Negotiable instruments.**

An invention developer shall not take a negotiable instrument from a customer as part of a contract, unless the negotiable instrument is a check constituting evidence of the customer's obligation. A person in possession of a negotiable instrument is not a holder in due course as defined in section 554.3302, if the person takes a negotiable instrument from a customer in violation of this section.

92 Acts, ch 1114, § 8

### **523G.8 Records and correspondence.**

An invention developer shall maintain all records and correspondence relating to performance of each invention development contract for not less than three years after expiration of the contract.

92 Acts, ch 1114, § 9

### **523G.9 Compliance with other laws, violations and penalties.**

1. The provisions of this chapter are not exclusive and do not relieve persons or a contract from compliance with other applicable law.
2. A contract which fails to comply with the applicable provisions of this chapter is unenforceable against the customer as contrary to public policy, unless the invention developer proves all of the following:
  - a. The noncompliance resulted from an error.
  - b. The invention developer followed reasonable procedures adopted to avoid such errors.
  - c. The invention developer promptly made an appropriate correction upon discovery of the noncompliance.
3. A contract executed by an invention developer is unenforceable against the customer, if the invention developer used deceptive practices, with an intent to cause reliance, regardless of whether the customer was actually misled, deceived, or damaged.
4. A provision of a contract which waives a provision of this chapter is contrary to public policy and is void and unenforceable.

5. A person may bring a civil action against an invention developer that uses a deceptive practice. The person may be awarded damages together with costs and disbursements, including reasonable attorney fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages or two thousand five hundred dollars, whichever is greater.

6. Failure to make an initial disclosure required by section 523G.4 shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

7. A violation of this chapter or a rule adopted by the commissioner pursuant to this chapter is a violation of section 714.16. The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to violations of this chapter.

92 Acts, ch 1114, § 10

**523G.10 Registration statement.** Repealed by 98 Acts, ch 1119, §6.

**523G.11 Powers and duties of the commissioner.** Repealed by 98 Acts, ch 1119, §6.