CHAPTER 551A

BUSINESS OPPORTUNITY PROMOTIONS

Referred to in §669.14

[P]
Chapter transferred from ch 523B in Code 2005 pursuant to
Code editor directive; 2004 Acts, ch 1104, §30

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

(1) 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.

(2) 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.

b. For the purposes of this subsection:

(1) *"Franchisee"* means a person to whom a franchise is granted.

(2) *"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.

[81 Acts, ch 171, §1]

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, §5 – 10, 30

C2005, §551A.1

2012 Acts, ch 1023, §143

551A.2 Scope.

1. The provisions of this chapter concerning sales and offers to sell apply to persons who sell or offer to sell a business opportunity when any of the following apply:

a. An offer to sell is made in this state.

b. An offer to purchase is made and accepted in this state.

c. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

2. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when either of the following apply:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which the offer is directed or at a post office in this state in the case of a mailed offer.

3. An offer to sell is not made in this state under either of the following circumstances:

a. If the offer appears in a bona fide newspaper or other publication of general circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. If the offer is made on a radio or television program originating outside this state which is received in this state.

4. For the purpose of this section, an offer to sell is accepted in this state when both of the following occur:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state. For the purpose of this section the acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and the acceptance is received at the place to which it is directed or at a post office in this state in the case of a mailed acceptance.

91 Acts, ch 205, §10
CS91, §523B.13
94 Acts, ch 1031, §22; 2004 Acts, ch 1104, §29, 30
C2005, §551A.2

551A.3 Disclosure documents — contracts.

1. *Disclosure document required.* A person required to file an irrevocable consent to service of process with the secretary of state as a seller as provided in section 551A.7 shall not act as seller in this state unless the person provides a written disclosure document to each purchaser. The person shall deliver the written disclosure document to the purchaser at least ten business days prior to the earlier of the purchaser's execution of a contract imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

2. *Disclosure document cover sheet.*

a. The disclosure document shall have a cover sheet which shall consist of a title printed in bold and a statement. The title and statement shall be in at least ten point type and shall appear as follows:

DISCLOSURE
REQUIRED BY IOWA LAW

This business opportunity does not have the approval, recommendation, or endorsement of the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or making any payment to the seller or the seller's representative.

b. The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

3. *Disclosure document contents.* A disclosure document shall be in one of the following forms:

a. A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc.

b. A disclosure document prepared pursuant to the federal trade commission rule relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures in accordance with 16 C.F.R. § 436 or any successor regulation.

c. A form that includes all of the following:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been the subject of a criminal, civil, or administrative proceeding alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to insolvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement

necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(14) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(15) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or recision from the seller within the last twelve months and the number of those who have received the refund or recision.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(16) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all contracts proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(17) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract.

(18) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract.

(19) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date.

(20) A list of the states in which this business opportunity is registered.

(21) A list of the states in which this disclosure document is on file.

(22) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(23) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

4. *Contract provisions.*

a. A person shall not offer or sell a business opportunity unless a business opportunity contract is in writing and a copy of the contract is provided to the purchaser at the time the purchaser executes the contract.

b. A business opportunity contract shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

(1) The terms and conditions of any and all payments due to the seller.

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process.

(3) The business form of the seller, whether corporate, partnership, or otherwise.

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business.

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 551A.6.

(7) The cancellation statement appearing in section 555A.3.

(8) The rights and responsibilities of the parties regarding the marketing of a business opportunity, including but not limited to all of the following:

(a) Whether the seller assigns the purchaser a territory in which to sell a business opportunity.

(b) Whether the seller assists the purchaser in finding locations in which to sell a business opportunity.

(c) Whether the purchaser is solely responsible for marketing a business opportunity.

[81 Acts, ch 171, §2]

C83, §523B.2

91 Acts, ch 205, §2; 98 Acts, ch 1189, §12 – 14; 99 Acts, ch 166, §11; 2000 Acts, ch 1147, §21 – 24; 2004 Acts, ch 1104, §11 – 19, 30

C2005, §551A.3

2005 Acts, ch 3, §94; 2005 Acts, ch 56, §1; 2006 Acts, ch 1030, §68; 2012 Acts, ch 1023, §157

Referred to in §551A.4, 551A.8, 551A.9, 551A.10

551A.4 Exemptions from requirements — burden of proof.

1. The following business opportunities are exempt from the requirements of section 551A.3:

a. The offer or sale of a business opportunity if the purchaser is a bank, federally chartered savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. (1) An offer or sale of a business opportunity which is a franchise, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or fourteen days prior to the earlier of the execution by a purchaser of a contract imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(a) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc.

(b) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 or any successor regulation.

(2) For the purposes of this paragraph "*b*", a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

2. In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter is upon the person claiming it.

[81 Acts, ch 171, §3]

C83, §523B.3
91 Acts, ch 205, §3; 98 Acts, ch 1189, §15, 16; 99 Acts, ch 90, §2, 3; 2004 Acts, ch 1104, §21, 30
C2005, §551A.4
2005 Acts, ch 56, §2; 2012 Acts, ch 1017, §152; 2012 Acts, ch 1023, §157

551A.5 Waiver of rights.

A waiver of this chapter by a purchaser prior to or at the time of sale is contrary to public policy and is void and unenforceable. An attempt by a seller to have a purchaser waive any rights given in this chapter is a violation of this chapter.
[81 Acts, ch 171, §9]
C83, §523B.9
2004 Acts, ch 1104, §30
C2005, §551A.5

551A.6 Cancellation of contract.

The purchaser has the right to cancel a contract with a seller for a business opportunity for any reason at any time within three business days of the date the purchaser signs the contract or the date the contract is accepted by the seller whichever is later. The notice of the right to cancel, the seller's obligation to provide the purchaser with cancellation forms, and the procedures to be followed when a contract is canceled shall be the same as the procedures in chapter 555A for door-to-door sales.
[81 Acts, ch 171, §6]
C83, §523B.6
2004 Acts, ch 1104, §30
C2005, §551A.6
Referred to in §551A.3

551A.7 Service of process — irrevocable consent.

A seller shall file an irrevocable consent with the secretary of state. The seller shall file the irrevocable consent prior to executing a business opportunity contract or engaging in the sale of a business opportunity in this state. The irrevocable consent shall appoint the secretary of state to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the irrevocable consent has been filed. The irrevocable consent shall have the same force and validity as if the seller were served service of process personally.
2004 Acts, ch 1104, §20, 30
Referred to in §551A.3

551A.8 Liability — remedies.

1. A person who violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 551A.3 is liable to the purchaser in an action for recision of the contract, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney fees, and court costs.

2. Every person who directly or indirectly controls a party liable under this section, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status in, or performing similar functions for, and every employee of, a party so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the party, unless the person liable as a result of the person's relationship with the liable party as defined under this section proves that the person did not know, and in the exercise of reasonable care could not have known of the existence of the facts giving rise to the alleged liability. Among the persons held liable, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

3. An action shall not be maintained under this section unless commenced within three

years after the act or transaction constituting the violation, or within one year after the discovery of the facts constituting the violation, whichever period later expires.

4. In addition to any remedies provided by law, a person injured by a violation of this chapter may bring a civil action and recover damages or obtain other appropriate relief including injunctive or other equitable relief. If the person is the prevailing party, the person shall be awarded court costs, reasonable attorney fees, and expert fees which shall be taxed as part of the costs of the action.

[81 Acts, ch 171, §7]
C83, §523B.7
91 Acts, ch 205, §6; 98 Acts, ch 1189, §17; 2004 Acts, ch 1104, §22 – 24, 30
C2005, §551A.8

551A.9 Fraudulent practices.

1. *Misleading statements.* A person shall not make or cause to be made a misleading statement in a disclosure document required pursuant to section 551A.3 or in a proceeding under this chapter. The statement shall be deemed to be misleading if any of the following apply:

a. At the time and in the light of the circumstances under which it is made, the statement is false or misleading in a material respect.

b. An omission of a material fact is necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

2. *Advertising.* A seller shall not, in connection with the offer or sale of a business opportunity in this state, publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

3. *Misrepresentations, omissions, and misleading conduct.* A seller of a business opportunity shall not do any of the following:

a. Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

b. Misrepresent or fail to disclose efforts to sell or establish more business opportunities than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

c. Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

d. Misrepresent the training and management assistance available to the purchaser.

e. Misrepresent the amount of profits, net or gross, which the purchaser can expect from the operation of the business opportunity.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity contract.

g. Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

h. Assign a so-called exclusive territory encompassing the same area to more than one purchaser.

i. Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the seller.

k. Fail to provide the purchaser a written contract.

l. Misrepresent the ability of a person or entity providing services to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

m. Misrepresent or omit to state a material fact or create a false or misleading impression in the sale of a business opportunity.

91 Acts, ch 205, §9
CS91, §523B.12

98 Acts, ch 1189, §20; 2004 Acts, ch 1104, §26 – 28, 30
C2005, §551A.9
2005 Acts, ch 19, §116
Referred to in §551A.10

551A.10 Penalties.

1. A seller who willfully violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 551A.3, who provides misleading advertising as provided in section 551A.9, who willfully violates a rule under this chapter, or who willfully violates an order of which the person has notice, upon conviction, is guilty of a class "D" felony. Otherwise, a person who violates a rule adopted or order issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A violation of this chapter is an unlawful practice pursuant to section 714.16.

3. A seller who willfully uses any device or scheme to defraud a person in connection with an advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsection 1, is, upon conviction, guilty of a fraudulent practice as provided in chapter 714.

[81 Acts, ch 171, §11]
C83, §523B.11
91 Acts, ch 205, §8; 98 Acts, ch 1189, §19; 2004 Acts, ch 1104, §25, 30
C2005, §551A.10
2013 Acts, ch 38, §1
[T] Subsection 2 amended