

*Reprinted 4/13/81*

APR 1 1981

HOUSE FILE 816

Place On Calendar

BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(Formerly Study Bill 237)

Passed House, Date 4-7-81 (p. 1105) Passed Senate, Date 4-30-81 (P. 1499)

Vote: Ayes 96 Nays 1 Vote: Ayes 43 Nays 0

Approved 5-19-81

*Amended to conform to Senate (p. 1112) 12/2 4/8 (p. 1127)*

### A BILL FOR

1 An Act regulating the offer and sale of business opportunities  
2 and providing penalties for violations.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 816

H-3494

- 1 Amend House File 816 as follows:
- 2 1. Page 5, by striking lines 10 through 12.
- 3 2. Page 5, line 16, by striking the word "one"
- 4 and inserting in lieu thereof the word "two".
- 5 3. Page 5, line 19, by inserting after the word
- 6 "amendment." the words "The administrator shall by rule
- 7 periodically revise these fees to insure that they
- 8 defray the costs of administration of this Act."
- 9 4. Page 8, lines 4 and 5, by striking the words
- 10 ", at a minimum,".
- 11 5. Page 8, line 35, by striking the word "seller"
- 12 and inserting in lieu thereof the words "vendor of a
- 13 business opportunity".
- 14 6. Page 9, line 2, by striking the word "seller"
- 15 and by inserting in lieu thereof the word "vendor".
- 16 7. Page 9, line 3, by striking the words "the
- 17 seller" and inserting in lieu thereof the words "such
- 18 a vendor".

H-3494 FILED APRIL 6, 1981

BY CONLON of Muscatine

*Adopted 4/7/81 (p. 1108)*

718

1 Section 1. NEW SECTION. DEFINITIONS. As used in this  
2 Act, unless the context otherwise requires:

3 1. a. "Business opportunity" means the sale or lease,  
4 offer for sale or lease, or advertisement for sale or lease  
5 of merchandise or services at an initial investment exceeding  
6 five hundred dollars and when the purchase or lease is for  
7 the purpose of enabling the purchaser to begin a business  
8 to be operated by the purchaser. In addition, to constitute  
9 a "business opportunity" under this Act, the seller must make  
10 one or more of the following claims, statements, or  
11 representations, either orally or in writing, either prior  
12 to or at the time of sale:

13 (1) That the seller will provide locations, assist in  
14 finding locations, or offer the assistance of a third party  
15 to the purchaser in finding locations for the use or operation  
16 of vending machines, racks, display cases, or other similar  
17 devices for the promotion and sale of merchandise or services  
18 located on premises that are not owned or leased by either  
19 the purchaser or the seller.

20 (2) That the seller offers or will offer a buy-back or  
21 secured investment for any or all goods produced, fabricated,  
22 grown, bred, or modified by the purchaser using in whole or  
23 in part, the merchandise or services sold or leased or offered  
24 for sale or lease to the purchaser by the seller.

25 (3) That the seller guarantees, expressly or by implica-  
26 tion, that the purchaser will, within one year from the date  
27 of purchase, derive income from the business opportunity which  
28 exceeds the price paid for the business opportunity.

29 (4) That the seller promises, guarantees, or represents,  
30 either orally or in writing, that the seller will refund all  
31 or part of the price paid by the purchaser for the business  
32 opportunity, or repurchase any of the products, equipment,  
33 supplies, or personal property supplied by the seller, if  
34 the purchaser is dissatisfied with the business opportunity.

35 (5) That upon payment by the purchaser to the seller,

1 or a third party designated by the seller, of a fee or sum  
2 of money which equals or exceeds five hundred dollars, the  
3 purchaser will receive a predesigned sales or marketing program  
4 that will enable the purchaser to derive income from the  
5 business opportunity. This paragraph does not apply to sale  
6 of marketing services by a marketing services provider or  
7 consultant where the underlying business is not being directly  
8 or indirectly purchased from the marketing services provider.

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

11 (1) A newspaper or magazine distribution system.

12 (2) The sale of an ongoing business. An ongoing business  
13 is a business that for at least six months prior to the sale  
14 meets all of the following qualifications:

15 (a) Has been operated from a specific location.

16 (b) Has been open for business to the general public.

17 (c) Has substantially all the equipment and supplies  
18 necessary for operating the business at a specific location.

19 The complete and total liquidation of business interests is  
20 also the sale of an ongoing business.

21 (3) The sale or lease of a marketing program made in  
22 conjunction with the licensing of a federally registered  
23 trademark or servicemark.

24 (4) A contract or agreement that grants a retailer of  
25 merchandise or services the right to sell the merchandise  
26 or services being purchased or leased within, or appurtenant  
27 to, an existing retail business establishment operated by  
28 the purchaser.

29 (5) A transaction in which the seller or a person  
30 representing the seller is licensed under, and the transaction  
31 is subject to, chapter 117. This Act does not apply to a  
32 sales or lease transaction when all or part of the business  
33 being sold or leased is the seller's own real property located  
34 within Iowa.

35 (6) A sales or lease to an existing or beginning business

1 which also sells or leases equipment, products, or supplies  
2 or performs services which are not supplied by the seller  
3 and which the purchaser does not use with the equipment,  
4 products, supplies, or services of the seller.

5 (7) The renewal or extension of a business opportunity  
6 contract or agreement made under this Act or prior to the  
7 effective date of this Act.

8 (8) The sale of a contract in the negotiation and ratifica-  
9 tion of which all purchasers are represented by attorneys  
10 or certified public accountants licensed to practice in this  
11 state, or by other business consultants the administrator  
12 by rule finds qualified to provide independent and professional  
13 advice to unsophisticated persons considering entering into  
14 business opportunity contracts.

15 (9) Other transactions that the administrator may exempt  
16 by rule.

17 2. "Purchaser" means a person who has purchased or leased  
18 or is solicited to purchase or lease a business opportunity.

19 3. "Seller" means a person who advertises, sells, leases,  
20 or offers for sale or lease a business opportunity, or an  
21 affiliate, agent, or representative of such person or an  
22 independent contractor selling or leasing under contract with  
23 such person except that "seller" does not include a person  
24 who is subject to and in compliance with the federal trade  
25 commission rule on "franchising and business opportunity  
26 ventures", 16 C.F.R. 436.

27 4. "Services" means assistance, guidance, direction, work,  
28 labor, or services provided by the seller or by a third party  
29 arranged by the seller to initiate or maintain the business  
30 opportunity. "Service" includes sales and marketing programs,  
31 instructions, directions, or other information that assists  
32 the purchaser in operating the business opportunity.

33 5. "Secured investment" means a representation, either  
34 oral or written, that implies that the purchaser's initial  
35 investment is protected from loss.

1 6. "Buy-back" means a written or oral representation that  
2 implies that the seller or a third party designated by the  
3 seller will purchase all or part of the merchandise or ser-  
4 vices provided to the purchaser under the business opportunity  
5 contract.

6 7. "Initial investment" means the total amount a purchaser  
7 is obligated to pay under the terms of the business opportunity  
8 contract either prior to or at the time of delivery of the  
9 merchandise or services or within six months of the purchaser  
10 commencing operation of the business opportunity. However,  
11 if payment is over a period of time, "initial investment"  
12 means the sum of the downpayment and the total monthly payments  
13 specified in the contract.

14 8. "Administrator" means the commissioner of insurance  
15 or the deputy appointed under section 502.601.

16 9. "Person" does not include government or governmental  
17 subdivisions or agencies.

18 Sec. 3. NEW SECTION. REGISTRATION REQUIRED.

19 1. Before placing an advertisement or making any other  
20 oral or written representation to offer, sell or solicit the  
21 sale of a business opportunity in this state, the seller shall  
22 file a copy of the disclosure statement required by section  
23 5 of this Act with the administrator. The seller shall refile  
24 the statement at least annually and whenever a material change  
25 in the required information occurs. The list of officers  
26 and principals shall be current within six months. If the  
27 seller is required by section 4 of this Act to provide a bond  
28 or establish a trust account or guaranteed letter of credit,  
29 the seller shall file with the administrator the original  
30 bond, the original formal notification by the depository that  
31 the trust account is established or the original guaranteed  
32 letter of credit.

33 2. The administrator shall issue an advertisement  
34 identification number to the seller after reviewing the  
35 disclosure statement required by section 5 of this Act, and

1 after determining that the seller has complied with any  
2 requirements imposed under this Act. A seller is not  
3 registered under this Act and shall not advertise, offer for  
4 sale or lease, or sell or lease until the advertisement  
5 identification number is issued. If the administrator's  
6 review is not completed within thirty days of filing of the  
7 disclosure statement, a temporary identification number shall  
8 be issued and the applicant is considered registered until  
9 the review is completed.

10 3. The seller shall disclose the advertisement identifica-  
11 tion number to each person with whom the seller places ad-  
12 vertising.

13 4. The seller shall disclose the advertising identification  
14 number to each person with whom the seller places advertising  
15 and the number shall be included in all advertisements.

16 5. The seller shall pay a one hundred dollar filing fee  
17 with the initial disclosure statement filed under subsection  
18 1. A twenty-five dollar fee shall be charged for each  
19 amendment.

20 Sec. 4. NEW SECTION. BOND, TRUST ACCOUNT OR GUARANTEED  
21 LETTER OF CREDIT.

22 1. The administrator may adopt rules requiring sellers  
23 to either obtain a surety bond or guaranteed letter of credit  
24 or to establish a trust account before the seller may do  
25 business in this state. For the purposes of this section,  
26 "seller" includes a person who would be a seller but for being  
27 subject to and in compliance with the federal trade commission  
28 rule on "franchising and business opportunity ventures".

29 2. The bond, trust account, or guaranteed letter of credit  
30 shall be by a company licensed to do business in Iowa, in  
31 favor of the state of Iowa for the benefit of any person who  
32 is damaged by a violation of this Act or by the seller's  
33 breach of a contract subject to this Act or of an obligation  
34 arising from a contract subject to this Act or by a violation  
35 of section 714.16.

1 3. The amount of the bond, trust account, or guaranteed  
2 letter of credit shall be determined by the administrator  
3 based upon guidelines which the administrator shall establish  
4 by rule. In determining the amount, the administrator shall  
5 consider the financial condition of the business, the period  
6 of time the business has operated in the state, and the  
7 existence of capital or real property investment in the state.

8 4. Any person claiming against the bond, trust account,  
9 or guaranteed letter of credit may maintain an action at law  
10 against the seller and the surety, trustee or depository  
11 institution, except that the surety, trustee or depository  
12 institution is liable only for actual damages and not for  
13 punitive damages permitted under section 8 of this Act. The  
14 aggregate liability of the surety or trustee to all persons  
15 damaged by a seller's violation of this Act shall not exceed  
16 the amount of the bond, trust account, or guaranteed letter  
17 of credit.

18 Sec. 5. NEW SECTION. DISCLOSURE STATEMENT.

19 1. The seller shall provide a prospective purchaser with  
20 a written document as required by this section either during  
21 the first personal contact between the purchaser and the  
22 seller or at least ten business days before the purchaser  
23 signs a business opportunity contract or pays any consideration  
24 to the seller, whichever occurs first. First personal contact  
25 does not include general informational activity in a public  
26 setting where a specific business relationship is not  
27 discussed.

28 2. The cover sheet of the disclosure document shall include  
29 the words DISCLOSURE REQUIRED BY IOWA LAW in boldface capital  
30 letters. Under the title shall appear the statement: "The  
31 state of Iowa has not reviewed and does not approve, recommend,  
32 endorse, or sponsor any business opportunity. The information  
33 contained in this disclosure has not been checked by the  
34 state. If you have any questions about this purchase, see  
35 an attorney or other financial advisor before you sign a

1 contract or agreement." The cover sheet shall include only  
2 the title and the statement required by this section.

3 3. The disclosure document shall contain the following  
4 information:

5 a. The complete name and address of the seller, all other  
6 names under which the seller is doing or intends to do  
7 business, the names under which the seller has done business  
8 in the past, and the names and addresses of all parent or  
9 affiliated companies that will engage in business transactions  
10 with the purchaser or who take responsibility for statements  
11 made by the seller. If the seller is a corporation, the  
12 document shall include the state where the articles of  
13 incorporation are filed, the date of incorporation, and the  
14 name and address of the registered agent.

15 b. The names, addresses, and titles of the seller's of-  
16 ficers, directors, and other persons charged with the  
17 responsibility for the seller's business activities relating  
18 to the sale of business opportunities.

19 c. Current samples of all contracts and other documents  
20 used in the sale or lease of the business opportunity.

21 d. A copy of the most recent financial statement of the  
22 seller, which shall not be more than one hundred twenty days  
23 old, updated to reflect material changes in the seller's  
24 financial condition.

25 e. Either of the following statements as applicable:

26 (1) "As required by Iowa law, the seller has secured a  
27 bond issued by (name and address of surety).....  
28 ....., a surety company authorized to do  
29 business in this state. Before signing a contract to purchase  
30 this business opportunity, you should confirm the bond's  
31 status with the surety company."

32 (2) "As required by Iowa law, the seller has established  
33 a trust account or guaranteed letter of credit .....  
34 (no. of acct.)..... with (name and address  
35 of bank or savings inst.)..... Before signing

1 a contract to purchase this business opportunity, you should  
2 confirm with the bank or savings institution the current  
3 status of the trust account or guaranteed letter of credit."

4 f. If earnings claims are made, the seller must, at a  
5 minimum, disclose all of the following:

6 (1) The number and percentage the number represents of  
7 the total number of purchasers who form the basis for the  
8 income or earning potential representation.

9 (2) The number of purchasers known to the seller to have  
10 made at least the same sales, income or profits as those  
11 represented.

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

14 g. The business experience during the past five years,  
15 stated individually, of each person named in subsection 3,  
16 paragraph b. Each person's principal occupations and employers  
17 must be included.

18 h. A statement disclosing whether the seller or any person  
19 named in subsection 3, paragraph b:

20 (1) Has during the most recent seven-year period been  
21 held liable in a civil action by final judgment, convicted  
22 of a felony or plead nolo contendere to a felony charge if  
23 the felony or civil action involved fraud, embezzlement,  
24 fraudulent conversion or misappropriation of property.

25 (2) Is subject to any currently effective state or federal  
26 injunctive or restrictive order, or is party to a proceeding  
27 currently pending in which such an order is sought, relating  
28 to or affecting business opportunity activities or the business  
29 opportunity seller-purchaser relationship or involving fraud.

30 (3) Has during the most recent seven-year period filed  
31 bankruptcy or has been associated as a director or officer  
32 of any company that has filed bankruptcy or reorganization  
33 proceedings.

34 (4) Has been a party to any cause of action brought by  
35 purchasers against the seller during the most recent seven-

1 year period which resulted in an out-of-court settlement or  
2 a judgment against the seller, or is presently a party to  
3 any cause of action brought by a purchaser against the seller.

4 The statement shall set forth the identity and location  
5 of the court, date of conviction or judgment, and penalty  
6 imposed or damages assessed, and the date, nature, and issuer  
7 of each the order or ruling.

8 i. Such other information as the administrator requires.

9 Sec. 6. NEW SECTION. CONTRACTS.

10 1. A contract for the sale or lease by a seller of a  
11 business opportunity in this state shall be in writing and  
12 is subject to this Act and section 714.16. A copy of the  
13 contract and all other documents the seller requires the  
14 purchaser to sign shall be given to the purchaser at least  
15 ten business days prior to the time the purchaser signs the  
16 contract and signed copies shall be provided to the purchaser  
17 at the time the contract and documents are signed.

18 2. A contract by a seller for the sale or lease of a  
19 business opportunity shall set forth all of the following:

20 a. The terms and conditions of payment, including the  
21 total financial obligation of the purchaser to the seller.

22 b. A full and detailed listing and description of the  
23 acts and services that the seller will perform or deliver  
24 to the purchaser.

25 c. A detailed listing of merchandise or services the pur-  
26 chaser will receive.

27 d. The delivery date or, when the contract provides for  
28 a staggered delivery of items to the purchaser, the approxi-  
29 mate delivery dates of merchandise or services the seller  
30 will deliver to the purchaser to enable the purchaser to begin  
31 or maintain the business and the specific location where the  
32 merchandise or services will be delivered or provided.

33 e. A complete description of the nature of any guarantee,  
34 buy-back, or secured investment, if the seller has represented  
35 or promised orally or in writing when advertising, selling,

1 leasing, soliciting, or offering the business opportunity  
2 that there is a guarantee, buy-back, or secured investment.

3 f. A statement that accurately states the purchaser's  
4 right to void the contract under the circumstances and in  
5 the manner set forth in section 7 of this Act.

6 g. The cancellation statement appearing in section 82.2.

7 h. The seller's principal business address and the name  
8 and the address of its registered agent in the state of Iowa  
9 authorized to receive service of process.

10 i. The business form of the seller, whether corporate,  
11 partnership, or otherwise.

12 Sec. 7. NEW SECTION. CANCELLATION OF CONTRACT. The pur-  
13 chaser has the right to cancel a contract with a seller for  
14 a business opportunity for any reason at any time within three  
15 business days of the date the purchaser signs the contract  
16 or the date the contract is accepted by the seller whichever  
17 is later. The notice of the right to cancel, the seller's  
18 obligation to provide the purchaser with cancellation forms,  
19 and the procedures to be followed when a contract is canceled  
20 shall be the same as the procedures in chapter 82 for door-  
21 to-door sales.

22 Sec. 8. NEW SECTION. REMEDIES. A person injured by a  
23 violation of this Act or by a seller's breach of contract  
24 is entitled to actual damages and reasonable attorneys' fees  
25 and may be awarded punitive damages when appropriate.

26 Sec. 9. NEW SECTION. POWERS OF ADMINISTRATOR.

27 1. If it appears to the administrator that a person has  
28 engaged, is engaging, or is about to engage in any act or  
29 practice constituting a violation of this Act or a rule or  
30 order adopted or issued under this Act, the administrator  
31 may issue an order directed at the person requiring the person  
32 to cease and desist from engaging in the act or practice.

33 The person named in the order may, within fourteen days after  
34 receipt of the order, file a written request for a hearing.

35 The hearing shall be held in accordance with chapter 17A.

1 Any consent agreement between the administrator and the  
2 seller may be filed in the miscellaneous docket of the clerk  
3 of the district court.

4 2. The administrator may impose a penalty not to exceed  
5 one thousand dollars per violation against a seller or person  
6 found to have violated this Act or a rule or order adopted  
7 under this Act. If a penalty imposed under this subsection  
8 remains unpaid, the district court shall enter judgment to  
9 enforce its collection.

10 3. Judicial review of a decision of the administrator  
11 may be sought under chapter 17A.

12 4. If it appears to the administrator that a person has  
13 engaged, is engaged, or is about to engage in any act or  
14 practice constituting a violation of this Act or of a rule  
15 or order adopted or issued under this Act the administrator  
16 may take either or both of the following actions:

17 a. Notify the attorney general who shall bring an action  
18 in the district court to enjoin the acts or practices  
19 constituting the violation and to enforce compliance with  
20 this Act or any rule or order adopted or issued pursuant  
21 to this Act. Upon a proper showing a permanent or temporary  
22 injunction shall be granted and a receiver or conservator  
23 may be appointed for the defendant or the defendant's assets.

24 b. Sue on behalf of a purchaser to enforce the purchasers'  
25 rights.

26 Sec. 10. NEW SECTION. WAIVER OF RIGHTS. A waiver of  
27 this Act by a purchaser prior to or at the time of sale is  
28 contrary to public policy and is void and unenforceable.  
29 An attempt by a seller to have a purchaser waive any rights  
30 given in this Act is a violation of this Act.

31 Sec. 11. NEW SECTION. RULES. The administrator may adopt  
32 rules according to chapter 17A as necessary or appropriate  
33 for the protection of purchasers and to implement the purposes  
34 of this Act, including but not limited to rules governing  
35 registrations, applications, disclosure statements, and

1 reports. In adopting rules the administrator shall cooperate  
2 with agency administrators of other states and the federal  
3 trade commission to achieve uniformity in the form and content  
4 of registrations, applications and reports as practicable.

5 Sec. 12. NEW SECTION. PENALTIES.

6 1. A seller who fails to file a disclosure statement,  
7 pay a registration fee, and obtain an advertisement  
8 identification number as required under section 3 of this  
9 Act, or who fails to properly provide a disclosure statement  
10 as required in section 5 of this Act, is, upon conviction,  
11 guilty of an aggravated misdemeanor.

12 2. A seller who willfully uses any device or scheme to  
13 defraud a person in connection with the advertisement, offer  
14 to sell or lease, sale, or lease of a business opportunity,  
15 or who willfully violates any other provision of this Act,  
16 except as provided in subsections 1 and 3, is, upon conviction,  
17 guilty of a fraudulent practice.

18 3. A seller who violates a rule or order adopted or issued  
19 under this Act is, upon conviction, guilty of an aggravated  
20 misdemeanor.

21 4. The administrator may refer available evidence concern-  
22 ing a possible violation of this Act or of a rule or order  
23 issued under this Act to the attorney general. The attorney  
24 general, with or without such a referral, may institute appro-  
25 priate criminal proceedings or may direct the case to the  
26 appropriate county attorney to institute appropriate criminal  
27 proceedings.

28 EXPLANATION

29 This bill provides for regulation of the offer and sale  
30 of business opportunities. "Business opportunities" are  
31 defined in section 1, which also provides specific exemptions  
32 for ongoing businesses, most franchises, and real estate  
33 transactions. In the definition of a "seller" persons who  
34 are subject to and in compliance with federal trade commission  
35 rules on business opportunities are exempt from the bill.

1 Persons seeking to offer a business opportunity are required  
2 to register with the commissioner of insurance. Before a  
3 person can offer or sell a business opportunity the person  
4 must file a disclosure statement and in most cases post a  
5 bond with the securities commissioner. Section 5 sets forth  
6 the specific information that is to be included in a disclosure  
7 statement. An advertising number is issued to every registered  
8 person which must be provided to each person with whom the  
9 business opportunity seller places advertising.

10 This bill also provides that a disclosure statement must  
11 be given to a prospective purchaser ten days prior to the  
12 time any contract is entered into. In addition all contracts  
13 must be in writing and include certain information as set  
14 forth in section 6. Purchasers will have the right to cancel  
15 a contract for any reason within three days of signing, within  
16 30 days for misrepresentation and within one year if the  
17 contract is not in compliance with this bill.

18 The commissioner of insurance has the power to adopt rules  
19 as necessary to implement and enforce this bill while the  
20 power to act on any violation is with the commissioner or  
21 the attorney general at the direction of the commissioner.  
22 Prohibited acts are set forth in section 12. Civil and  
23 criminal penalties are provided for violations. The bill  
24 is effective July 1 following enactment.

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FISCAL NOTE  
House File 816  
Requested by Representative Shimanek  
March 25, 1981

In compliance with a written request there is hereby submitted a Fiscal Note for H. F. 816 pursuant to Joint Rule 16.

House File 816, An Act regulating the offer and sale of business opportunities and providing penalties for violations.

Estimated Revenues:

Increased revenues from the legislation are projected from an indication of the Attorney General's office that roughly 400 inquiries were received last year. If one-half of such parties registered, and filed two amendments, revenues would be .....\$ 30,000

Estimated Expenditures:

Personal services.....\$ 40,000

Estimated Net Additional Cost \$ 10,000

Source: Insurance Department  
FILED APRIL 7, 1981

BY GERRY D. RANKIN  
Legislative Fiscal Bureau

FISCAL NOTE  
Amendment H-3494 to House File 816  
Requested by Representative Conlon  
April 7, 1981

In compliance with a written request there is hereby submitted a Fiscal Note for Amendment H-3494 to H. F. 816 pursuant to Joint Rule 16.

Amendment H-3494 to House File 816

This amendment states that the seller shall pay a two hundred dollar filing fee with the initial disclosure state filed under subsection 1.

H.F. 816 as amended by H-3494:

Estimated Revenues:

Increased revenues from the legislation are projected from an indication of the Attorney General's office that roughly 400 inquiries were received last year. If one-half of such parties registered, and filed two amendments, revenues would be ..... \$ 50,000

Estimated expenditures:

Personal Services..... \$ 40,000

Estimated Net Additional Revenue \$ 10,000

Source: Insurance Department  
FILED APRIL 7, 1981

BY GERRY D. RANKIN  
Legislative Fiscal Bureau

Sen. Judiciary 4/13/81  
D. Pass. 4/16 (p. 1514)

HOUSE FILE 816

Judiciary  
Ramsey, Chairperson  
Rush  
Doyle  
Murray  
DeKoster

HOUSE FILE 816

BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(As Amended and Passed by the House)

Passed House, Date 5-6-81 (p. 1691) Passed Senate, Date 4-30-81 (p. 1499)

Vote: Ayes 97 Nays 0 Vote: Ayes 43 Nays 0

Approved May 19 1981  
*Motion to reconsider 1499. w/d 5/1 (p. 1530)*

### A BILL FOR

1 An Act regulating the offer and sale of business opportunities  
2 and providing penalties for violations.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

HOUSE FILE 816

S-3527

- 1 Amend House File 816 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, lines 25 and 26, by striking the words
- 4 ", expressly or by implication,".
- 5 2. Page 3, line 24, by striking the words "is
- 6 subject to" and inserting in lieu thereof the words
- 7 "offers or sells a package franchise or a product
- 8 franchise as defined in".
- 9 3. Page 3, line 26, by inserting after the number
- 10 "436" the words "if such person does not make any
- 11 representations described in subsection 1, paragraph
- 12 a, subparagraphs 2, 3 and 4".
- 13 4. Page 4, line 22, by striking the word "the"
- 14 and inserting in lieu thereof the word "a".
- 15 5. Page 4, line 23, by striking the number "5"
- 16 and inserting in lieu thereof the number "4".
- 17 6. Page 5, by striking lines 24 through 27 and
- 18 inserting in lieu thereof the words "business in this
- 19 state."
- 20 7. Page 9, by inserting after line 8 the following:
- 21 "4. In lieu of the disclosure required by
- 22 subsection 3, paragraphs a, b, c, d, f, g, and h,
- 23 the seller may file the disclosure documents authorized
- 24 by the federal trade commission and in compliance
- 25 with 16 C.F.R. 436 et seq."

S-3527 FILED

APRIL 21, 1981

*Adopted 4/30/81 (p. 1499)*

BY DICK RAMSEY  
LUCAS DeKOSTER  
JOE BROWN  
PATRICK DELUHERY

1 Section 1. NEW SECTION. DEFINITIONS. As used in this  
2 Act, unless the context otherwise requires:

3 1. a. "Business opportunity" means the sale or lease,  
4 offer for sale or lease, or advertisement for sale or lease  
5 of merchandise or services at an initial investment exceeding  
6 five hundred dollars and when the purchase or lease is for  
7 the purpose of enabling the purchaser to begin a business  
8 to be operated by the purchaser. In addition, to constitute  
9 a "business opportunity" under this Act, the seller must make  
10 one or more of the following claims, statements, or  
11 representations, either orally or in writing, either prior  
12 to or at the time of sale:

13 (1) That the seller will provide locations, assist in  
14 finding locations, or offer the assistance of a third party  
15 to the purchaser in finding locations for the use or operation  
16 of vending machines, racks, display cases, or other similar  
17 devices for the promotion and sale of merchandise or services  
18 located on premises that are not owned or leased by either  
19 the purchaser or the seller.

20 (2) That the seller offers or will offer a buy-back or  
21 secured investment for any or all goods produced, fabricated,  
22 grown, bred, or modified by the purchaser using in whole or  
23 in part, the merchandise or services sold or leased or offered  
24 for sale or lease to the purchaser by the seller.

25 (3) That the seller guarantees, expressly or by implica-  
26 tion, that the purchaser will, within one year from the date  
27 of purchase, derive income from the business opportunity which  
28 exceeds the price paid for the business opportunity.

29 (4) That the seller promises, guarantees, or represents,  
30 either orally or in writing, that the seller will refund all  
31 or part of the price paid by the purchaser for the business  
32 opportunity, or repurchase any of the products, equipment,  
33 supplies, or personal property supplied by the seller, if  
34 the purchaser is dissatisfied with the business opportunity.

35 (5) That upon payment by the purchaser to the seller,

1 or a third party designated by the seller, of a fee or sum  
2 of money which equals or exceeds five hundred dollars, the  
3 purchaser will receive a predesigned sales or marketing program  
4 that will enable the purchaser to derive income from the  
5 business opportunity. This paragraph does not apply to sale  
6 of marketing services by a marketing services provider or  
7 consultant where the underlying business is not being directly  
8 or indirectly purchased from the marketing services provider.

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

11 (1) A newspaper or magazine distribution system.

12 (2) The sale of an ongoing business. An ongoing business  
13 is a business that for at least six months prior to the sale  
14 meets all of the following qualifications:

15 (a) Has been operated from a specific location.

16 (b) Has been open for business to the general public.

17 (c) Has substantially all the equipment and supplies  
18 necessary for operating the business at a specific location.

19 The complete and total liquidation of business interests is  
20 also the sale of an ongoing business.

21 (3) The sale or lease of a marketing program made in  
22 conjunction with the licensing of a federally registered  
23 trademark or servicemark.

24 (4) A contract or agreement that grants a retailer of  
25 merchandise or services the right to sell the merchandise  
26 or services being purchased or leased within, or appurtenant  
27 to, an existing retail business establishment operated by  
28 the purchaser.

29 (5) A transaction in which the seller or a person  
30 representing the seller is licensed under, and the transaction  
31 is subject to, chapter 117. This Act does not apply to a  
32 sales or lease transaction when all or part of the business  
33 being sold or leased is the seller's own real property located  
34 within Iowa.

35 (6) A sales or lease to an existing or beginning business

1 which also sells or leases equipment, products, or supplies  
2 or performs services which are not supplied by the seller  
3 and which the purchaser does not use with the equipment,  
4 products, supplies, or services of the seller.

5 (7) The renewal or extension of a business opportunity  
6 contract or agreement made under this Act or prior to the  
7 effective date of this Act.

8 (8) The sale of a contract in the negotiation and ratifica-  
9 tion of which all purchasers are represented by attorneys  
10 or certified public accountants licensed to practice in this  
11 state, or by other business consultants the administrator  
12 by rule finds qualified to provide independent and professional  
13 advice to unsophisticated persons considering entering into  
14 business opportunity contracts.

15 (9) Other transactions that the administrator may exempt  
16 by rule.

17 2. "Purchaser" means a person who has purchased or leased  
18 or is solicited to purchase or lease a business opportunity.

35-19 3. "Seller" means a person who advertises, sells, leases,  
20 or offers for sale or lease a business opportunity, or an  
21 affiliate, agent, or representative of such person or an  
22 independent contractor selling or leasing under contract with  
23 such person except that "seller" does not include a person  
24 who is subject to and in compliance with the federal trade  
25 commission rule on "franchising and business opportunity  
26 ventures", 16 C.F.R. 436.

27 4. "Services" means assistance, guidance, direction, work,  
28 labor, or services provided by the seller or by a third party  
29 arranged by the seller to initiate or maintain the business  
30 opportunity. "Service" includes sales and marketing programs,  
31 instructions, directions, or other information that assists  
32 the purchaser in operating the business opportunity.

33 5. "Secured investment" means a representation, either  
34 oral or written, that implies that the purchaser's initial  
35 investment is protected from loss.

1 6. "Buy-back" means a written or oral representation that  
2 implies that the seller or a third party designated by the  
3 seller will purchase all or part of the merchandise or ser-  
4 vices provided to the purchaser under the business opportunity  
5 contract.

6 7. "Initial investment" means the total amount a purchaser  
7 is obligated to pay under the terms of the business opportunity  
8 contract either prior to or at the time of delivery of the  
9 merchandise or services or within six months of the purchaser  
10 commencing operation of the business opportunity. However,  
11 if payment is over a period of time, "initial investment"  
12 means the sum of the downpayment and the total monthly payments  
13 specified in the contract.

14 8. "Administrator" means the commissioner of insurance  
15 or the deputy appointed under section 502.601.

16 9. "Person" does not include government or governmental  
17 subdivisions or agencies.

18 Sec. 2. NEW SECTION. REGISTRATION REQUIRED.

19 1. Before placing an advertisement or making any other  
20 oral or written representation to offer, sell or solicit the  
21 sale of a business opportunity in this state, the seller shall  
22 file a copy of the disclosure statement required by section  
23 5 of this Act with the administrator. The seller shall refile  
24 the statement at least annually and whenever a material change  
25 in the required information occurs. The list of officers  
26 and principals shall be current within six months. If the  
27 seller is required by section 3 of this Act to provide a bond  
28 or establish a trust account or guaranteed letter of credit,  
29 the seller shall file with the administrator the original  
30 bond, the original formal notification by the depository that  
31 the trust account is established or the original guaranteed  
32 letter of credit.

33 2. The administrator shall issue an advertisement  
34 identification number to the seller after reviewing the  
35 disclosure statement required by section 4 of this Act, and

1 after determining that the seller has complied with any  
2 requirements imposed under this Act. A seller is not  
3 registered under this Act and shall not advertise, offer for  
4 sale or lease, or sell or lease until the advertisement  
5 identification number is issued. If the administrator's  
6 review is not completed within thirty days of filing of the  
7 disclosure statement, a temporary identification number shall  
8 be issued and the applicant is considered registered until  
9 the review is completed.

\* 10 3. The seller shall disclose the advertising identification  
11 number to each person with whom the seller places advertising  
12 and the number shall be included in all advertisements.

13 4. The seller shall pay a two hundred dollar filing fee  
14 with the initial disclosure statement filed under subsection  
15 1. A twenty-five dollar fee shall be charged for each  
16 amendment. The administrator shall by rule periodically  
17 revise these fees to insure that they defray the costs of  
18 administration of this Act.

19 Sec. 3. NEW SECTION. BOND, TRUST ACCOUNT OR GUARANTEED  
20 LETTER OF CREDIT.

21 1. The administrator may adopt rules requiring sellers  
22 to either obtain a surety bond or guaranteed letter of credit  
23 or to establish a trust account before the seller may do  
24 business in this state. For the purposes of this section,  
25 "seller" includes a person who would be a seller but for being  
26 subject to and in compliance with the federal trade commission  
27 rule on "franchising and business opportunity ventures".

28 2. The bond, trust account, or guaranteed letter of credit  
29 shall be by a company licensed to do business in Iowa, in  
30 favor of the state of Iowa for the benefit of any person who  
31 is damaged by a violation of this Act or by the seller's  
32 breach of a contract subject to this Act or of an obligation  
33 arising from a contract subject to this Act or by a violation  
34 of section 714.16.

35 3. The amount of the bond, trust account, or guaranteed

1 letter of credit shall be determined by the administrator  
2 based upon guidelines which the administrator shall establish  
3 by rule. In determining the amount, the administrator shall  
4 consider the financial condition of the business, the period  
5 of time the business has operated in the state, and the  
6 existence of capital or real property investment in the state.

7 4. Any person claiming against the bond, trust account,  
8 or guaranteed letter of credit may maintain an action at law  
9 against the seller and the surety, trustee or depository  
10 institution, except that the surety, trustee or depository  
11 institution is liable only for actual damages and not for  
12 punitive damages permitted under section 7 of this Act. The  
13 aggregate liability of the surety or trustee to all persons  
14 damaged by a seller's violation of this Act shall not exceed  
15 the amount of the bond, trust account, or guaranteed letter  
16 of credit.

17 Sec. 4. NEW SECTION. DISCLOSURE STATEMENT.

18 1. The seller shall provide a prospective purchaser with  
19 a written document as required by this section either during  
20 the first personal contact between the purchaser and the  
21 seller or at least ten business days before the purchaser  
22 signs a business opportunity contract or pays any consideration  
23 to the seller, whichever occurs first. First personal contact  
24 does not include general informational activity in a public  
25 setting where a specific business relationship is not  
26 discussed.

27 2. The cover sheet of the disclosure document shall include  
28 the words DISCLOSURE REQUIRED BY IOWA LAW in boldface capital  
29 letters. Under the title shall appear the statement: "The  
30 state of Iowa has not reviewed and does not approve, recommend,  
31 endorse, or sponsor any business opportunity. The information  
32 contained in this disclosure has not been checked by the  
33 state. If you have any questions about this purchase, see  
34 an attorney or other financial advisor before you sign a  
35 contract or agreement." The cover sheet shall include only

1 the title and the statement required by this section.

2 3. The disclosure document shall contain the following  
3 information:

4 a. The complete name and address of the seller, all other  
5 names under which the seller is doing or intends to do  
6 business, the names under which the seller has done business  
7 in the past, and the names and addresses of all parent or  
8 affiliated companies that will engage in business transactions  
9 with the purchaser or who take responsibility for statements  
10 made by the seller. If the seller is a corporation, the  
11 document shall include the state where the articles of  
12 incorporation are filed, the date of incorporation, and the  
13 name and address of the registered agent.

14 b. The names, addresses, and titles of the seller's of-  
15 ficers, directors, and other persons charged with the  
16 responsibility for the seller's business activities relating  
17 to the sale of business opportunities.

18 c. Current samples of all contracts and other documents  
19 used in the sale or lease of the business opportunity.

20 d. A copy of the most recent financial statement of the  
21 seller, which shall not be more than one hundred twenty days  
22 old, updated to reflect material changes in the seller's  
23 financial condition.

24 e. Either of the following statements as applicable:

25 (1) "As required by Iowa law, the seller has secured a  
26 bond issued by (name and address of surety).....  
27 ....., a surety company authorized to do  
28 business in this state. Before signing a contract to purchase  
29 this business opportunity, you should confirm the bond's  
30 status with the surety company."

31 (2) "As required by Iowa law, the seller has established  
32 a trust account or guaranteed letter of credit .....  
33 (no. of acct.)..... with (name and address  
34 of bank or savings inst.)..... Before signing  
35 a contract to purchase this business opportunity, you should

1 confirm with the bank or savings institution the current  
2 status of the trust account or guaranteed letter of credit."

\* 3 f. If earnings claims are made, the seller must disclose  
4 all of the following:

5 (1) The number and percentage the number represents of  
6 the total number of purchasers who form the basis for the  
7 income or earning potential representation.

8 (2) The number of purchasers known to the seller to have  
9 made at least the same sales, income or profits as those  
10 represented.

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

13 g. The business experience during the past five years,  
14 stated individually, of each person named in subsection 3,  
15 paragraph b. Each person's principal occupations and employers  
16 must be included.

17 h. A statement disclosing whether the seller or any person  
18 named in subsection 3, paragraph b:

19 (1) Has during the most recent seven-year period been  
20 held liable in a civil action by final judgment, convicted  
21 of a felony or plead nolo contendere to a felony charge if  
22 the felony or civil action involved fraud, embezzlement,  
23 fraudulent conversion or misappropriation of property.

24 (2) Is subject to any currently effective state or federal  
25 injunctive or restrictive order, or is party to a proceeding  
26 currently pending in which such an order is sought, relating  
27 to or affecting business opportunity activities or the business  
28 opportunity seller-purchaser relationship or involving fraud.

29 (3) Has during the most recent seven-year period filed  
30 bankruptcy or has been associated as a director or officer  
31 of any company that has filed bankruptcy or reorganization  
32 proceedings.

33 (4) Has been a party to any cause of action brought by  
34 purchasers against the vendor of a business opportunity during  
35 the most recent seven-year period which resulted in an out-

1 of-court settlement or a judgment against the vendor, or is  
2 presently a party to any cause of action brought by a purchaser  
3 against such a vendor.

4 The statement shall set forth the identity and location  
5 of the court, date of conviction or judgment, and penalty  
6 imposed or damages assessed, and the date, nature, and issuer  
7 of each the order or ruling.

8 i. Such other information as the administrator requires.

9 Sec. 5. NEW SECTION. CONTRACTS.

10 1. A contract for the sale or lease by a seller of a  
11 business opportunity in this state shall be in writing and  
12 is subject to this Act and section 714.16. A copy of the  
13 contract and all other documents the seller requires the  
14 purchaser to sign shall be given to the purchaser at least  
15 ten business days prior to the time the purchaser signs the  
16 contract and signed copies shall be provided to the purchaser  
17 at the time the contract and documents are signed.

18 2. A contract by a seller for the sale or lease of a  
19 business opportunity shall set forth all of the following:

20 a. The terms and conditions of payment, including the  
21 total financial obligation of the purchaser to the seller.

22 b. A full and detailed listing and description of the  
23 acts and services that the seller will perform or deliver  
24 to the purchaser.

25 c. A detailed listing of merchandise or services the pur-  
26 chaser will receive.

27 d. The delivery date or, when the contract provides for  
28 a staggered delivery of items to the purchaser, the approxi-  
29 mate delivery dates of merchandise or services the seller  
30 will deliver to the purchaser to enable the purchaser to begin  
31 or maintain the business and the specific location where the  
32 merchandise or services will be delivered or provided.

33 e. A complete description of the nature of any guarantee,  
34 buy-back, or secured investment, if the seller has represented  
35 or promised orally or in writing when advertising, selling,

1 leasing, soliciting, or offering the business opportunity  
2 that there is a guarantee, buy-back, or secured investment.

3 f. A statement that accurately states the purchaser's  
4 right to void the contract under the circumstances and in  
5 the manner set forth in section 6 of this Act.

6 g. The cancellation statement appearing in section 82.2.

7 h. The seller's principal business address and the name  
8 and the address of its registered agent in the state of Iowa  
9 authorized to receive service of process.

10 i. The business form of the seller, whether corporate,  
11 partnership, or otherwise.

12 Sec. 6. NEW SECTION. CANCELLATION OF CONTRACT. The pur-  
13 chaser has the right to cancel a contract with a seller for  
14 a business opportunity for any reason at any time within three  
15 business days of the date the purchaser signs the contract  
16 or the date the contract is accepted by the seller whichever  
17 is later. The notice of the right to cancel, the seller's  
18 obligation to provide the purchaser with cancellation forms,  
19 and the procedures to be followed when a contract is canceled  
20 shall be the same as the procedures in chapter 82 for door-  
21 to-door sales.

22 Sec. 7. NEW SECTION. REMEDIES. A person injured by a  
23 violation of this Act or by a seller's breach of contract  
24 is entitled to actual damages and reasonable attorneys' fees  
25 and may be awarded punitive damages when appropriate.

26 Sec. 8. NEW SECTION. POWERS OF ADMINISTRATOR.

27 1. If it appears to the administrator that a person has  
28 engaged, is engaging, or is about to engage in any act or  
29 practice constituting a violation of this Act or a rule or  
30 order adopted or issued under this Act, the administrator  
31 may issue an order directed at the person requiring the person  
32 to cease and desist from engaging in the act or practice.

33 The person named in the order may, within fourteen days after  
34 receipt of the order, file a written request for a hearing.

35 The hearing shall be held in accordance with chapter 17A.

1 Any consent agreement between the administrator and the  
2 seller may be filed in the miscellaneous docket of the clerk  
3 of the district court.

4 2. The administrator may impose a penalty not to exceed  
5 one thousand dollars per violation against a seller or person  
6 found to have violated this Act or a rule or order adopted  
7 under this Act. If a penalty imposed under this subsection  
8 remains unpaid, the district court shall enter judgment to  
9 enforce its collection.

10 3. Judicial review of a decision of the administrator  
11 may be sought under chapter 17A.

12 4. If it appears to the administrator that a person has  
13 engaged, is engaged, or is about to engage in any act or  
14 practice constituting a violation of this Act or of a rule  
15 or order adopted or issued under this Act the administrator  
16 may take either or both of the following actions:

17 a. Notify the attorney general who shall bring an action  
18 in the district court to enjoin the acts or practices  
19 constituting the violation and to enforce compliance with  
20 this Act or any rule or order adopted or issued pursuant to  
21 this Act. Upon a proper showing a permanent or temporary  
22 injunction shall be granted and a receiver or conservator  
23 may be appointed for the defendant or the defendant's assets.

24 b. Sue on behalf of a purchaser to enforce the purchasers'  
25 rights.

26 Sec. 9. NEW SECTION. WAIVER OF RIGHTS. A waiver of this  
27 Act by a purchaser prior to or at the time of sale is contrary  
28 to public policy and is void and unenforceable. An attempt  
29 by a seller to have a purchaser waive any rights given in  
30 this Act is a violation of this Act.

31 Sec. 10. NEW SECTION. RULES. The administrator may adopt  
32 rules according to chapter 17A as necessary or appropriate  
33 for the protection of purchasers and to implement the purposes  
34 of this Act, including but not limited to rules governing  
35 registrations, applications, disclosure statements, and

1 reports. In adopting rules the administrator shall cooperate  
2 with agency administrators of other states and the federal  
3 trade commission to achieve uniformity in the form and content  
4 of registrations, applications and reports as practicable.

5 Sec. 11. NEW SECTION. PENALTIES.

6 1. A seller who fails to file a disclosure statement,  
7 pay a registration fee, and obtain an advertisement  
8 identification number as required under section 2 of this  
9 Act, or who fails to properly provide a disclosure statement  
10 as required in section 4 of this Act, is, upon conviction,  
11 guilty of an aggravated misdemeanor.

12 2. A seller who willfully uses any device or scheme to  
13 defraud a person in connection with the advertisement, offer  
14 to sell or lease, sale, or lease of a business opportunity,  
15 or who willfully violates any other provision of this Act,  
16 except as provided in subsections 1 and 3, is, upon conviction,  
17 guilty of a fraudulent practice.

18 3. A seller who violates a rule or order adopted or issued  
19 under this Act is, upon conviction, guilty of an aggravated  
20 misdemeanor.

21 4. The administrator may refer available evidence concern-  
22 ing a possible violation of this Act or of a rule or order  
23 issued under this Act to the attorney general. The attorney  
24 general, with or without such a referral, may institute appro-  
25 priate criminal proceedings or may direct the case to the  
26 appropriate county attorney to institute appropriate criminal  
27 proceedings.

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SENATE AMENDMENT TO HOUSE FILE 816

H-3965

- 1 Amend House File 816 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, lines 25 and 26, by striking the words
- 4 ", expressly or by implication,".
- 5 2. Page 3, line 24, by striking the words "is
- 6 subject to" and inserting in lieu thereof the words
- 7 "offers or sells a package franchise or a product
- 8 franchise as defined in".
- 9 3. Page 3, line 26, by inserting after the number
- 10 "436" the words "if such person does not make any
- 11 representations described in subsection 1, paragraph
- 12 a, subparagraphs 2, 3 and 4".
- 13 4. Page 4, line 22, by striking the word "the"
- 14 and inserting in lieu thereof the word "a".
- 15 5. Page 4, line 23, by striking the number "5"
- 16 and inserting in lieu thereof the number "4".
- 17 6. Page 5, by striking lines 24 through 27 and
- 18 inserting in lieu thereof the words "business in this
- 19 state."
- 20 7. Page 9, by inserting after line 8 the following:
- 21 "4. In lieu of the disclosure required by
- 22 subsection 3, paragraphs a, b, c, d, f, g, and h,
- 23 the seller may file the disclosure documents authorized
- 24 by the federal trade commission and in compliance
- 25 with 16 C.F.R. 436 et seq."

H-3965 FILED MAY 4, 1981

RECEIVED FROM THE SENATE

*House concurs 5/6/81 (p. 1691)*

HOUSE FILE 816

AN ACT  
REGULATING THE OFFER AND SALE OF BUSINESS OPPORTUNITIES AND  
PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. a. "Business opportunity" means the sale or lease, offer for sale or lease, or advertisement for sale or lease of merchandise or services at an initial investment exceeding five hundred dollars and when the purchase or lease is for the purpose of enabling the purchaser to begin a business to be operated by the purchaser. In addition, to constitute a "business opportunity" under this Act, the seller must make one or more of the following claims, statements, or representations, either orally or in writing, either prior to or at the time of sale:

(1) That the seller will provide locations, assist in finding locations, or offer the assistance of a third party to the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices for the promotion and sale of merchandise or services located on premises that are not owned or leased by either the purchaser or the seller.

(2) That the seller offers or will offer a buy-back or secured investment for any or all goods produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part, the merchandise or services sold or leased or offered for sale or lease to the purchaser by the seller.

(3) That the seller guarantees that the purchaser will, within one year from the date of purchase, derive income from the business opportunity which exceeds the price paid for the business opportunity.

(4) That the seller promises, guarantees, or represents, either orally or in writing, that the seller will refund all or part of the price paid by the purchaser for the business opportunity, or repurchase any of the products, equipment, supplies, or personal property supplied by the seller, if the purchaser is dissatisfied with the business opportunity.

(5) That upon payment by the purchaser to the seller, or a third party designated by the seller, of a fee or sum of money which equals or exceeds five hundred dollars, the purchaser will receive a predesigned sales or marketing program that will enable the purchaser to derive income from the business opportunity. This paragraph does not apply to sale of marketing services by a marketing services provider or consultant where the underlying business is not being directly or indirectly purchased from the marketing services provider.

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

(1) A newspaper or magazine distribution system.

(2) The sale of an ongoing business. An ongoing business is a business that for at least six months prior to the sale meets all of the following qualifications:

(a) Has been operated from a specific location.

(b) Has been open for business to the general public.

(c) Has substantially all the equipment and supplies necessary for operating the business at a specific location. The complete and total liquidation of business interests is also the sale of an ongoing business.

(3) The sale or lease of a marketing program made in conjunction with the licensing of a federally registered trademark or servicemark.

(4) A contract or agreement that grants a retailer of merchandise or services the right to sell the merchandise or services being purchased or leased within, or appurtenant to, an existing retail business establishment operated by the purchaser.

H.F. 816

(5) A transaction in which the seller or a person representing the seller is licensed under, and the transaction is subject to, chapter 117. This Act does not apply to a sales or lease transaction when all or part of the business being sold or leased is the seller's own real property located within Iowa.

(6) A sales or lease to an existing or beginning business which also sells or leases equipment, products, or supplies or performs services which are not supplied by the seller and which the purchaser does not use with the equipment, products, supplies, or services of the seller.

(7) The renewal or extension of a business opportunity contract or agreement made under this Act or prior to the effective date of this Act.

(8) The sale of a contract in the negotiation and ratification of which all purchasers are represented by attorneys or certified public accountants licensed to practice in this state, or by other business consultants the administrator by rule finds qualified to provide independent and professional advice to unsophisticated persons considering entering into business opportunity contracts.

(9) Other transactions that the administrator may exempt by rule.

2. "Purchaser" means a person who has purchased or leased or is solicited to purchase or lease a business opportunity.

3. "Seller" means a person who advertises, sells, leases, or offers for sale or lease a business opportunity, or an affiliate, agent, or representative of such person or an independent contractor selling or leasing under contract with such person except that "seller" does not include a person who offers or sells a package franchise or a product franchise as defined in and in compliance with the federal trade commission rule on "franchising and business opportunity ventures", 16 C.F.R. 436 if such person does not make any representations described in subsection 1, paragraph a, subparagraphs 2, 3 and 4.

4. "Services" means assistance, guidance, direction, work, labor, or services provided by the seller or by a third party arranged by the seller to initiate or maintain the business opportunity. "Service" includes sales and marketing programs, instructions, directions, or other information that assists the purchaser in operating the business opportunity.

5. "Secured investment" means a representation, either oral or written, that implies that the purchaser's initial investment is protected from loss.

6. "Buy-back" means a written or oral representation that implies that the seller or a third party designated by the seller will purchase all or part of the merchandise or services provided to the purchaser under the business opportunity contract.

7. "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 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 downpayment and the total monthly payments specified in the contract.

8. "Administrator" means the commissioner of insurance or the deputy appointed under section 502.601.

9. "Person" does not include government or governmental subdivisions or agencies.

Sec. 2. NEW SECTION. REGISTRATION REQUIRED.

1. Before placing an advertisement or making any other oral or written representation to offer, sell or solicit the sale of a business opportunity in this state, the seller shall file a copy of a disclosure statement required by section 4 of this Act with the administrator. The seller shall refile the statement at least annually and whenever a material change in the required information occurs. The list of officers and principals shall be current within six months. If the

seller is required by section 3 of this Act to provide a bond or establish a trust account or guaranteed letter of credit, the seller shall file with the administrator the original bond, the original formal notification by the depository that the trust account is established or the original guaranteed letter of credit.

2. The administrator shall issue an advertisement identification number to the seller after reviewing the disclosure statement required by section 4 of this Act, and after determining that the seller has complied with any requirements imposed under this Act. A seller is not registered under this Act and shall not advertise, offer for sale or lease, or sell or lease until the advertisement identification number is issued. If the administrator's review is not completed within thirty days of filing of the disclosure statement, a temporary identification number shall be issued and the applicant is considered registered until the review is completed.

3. The seller shall disclose the advertising identification number to each person with whom the seller places advertising and the number shall be included in all advertisements.

4. The seller shall pay a two hundred dollar filing fee with the initial disclosure statement filed under subsection

1. A twenty-five dollar fee shall be charged for each amendment. The administrator shall by rule periodically revise these fees to insure that they defray the costs of administration of this Act.

Sec. 3. NEW SECTION. BOND, TRUST ACCOUNT OR GUARANTEED LETTER OF CREDIT.

1. The administrator may adopt rules requiring sellers to either obtain a surety bond or guaranteed letter of credit or to establish a trust account before the seller may do business in this state.

2. The bond, trust account, or guaranteed letter of credit shall be by a company licensed to do business in Iowa, in

favor of the state of Iowa for the benefit of any person who is damaged by a violation of this Act or by the seller's breach of a contract subject to this Act or of an obligation arising from a contract subject to this Act or by a violation of section 714.16.

3. The amount of the bond, trust account, or guaranteed letter of credit shall be determined by the administrator based upon guidelines which the administrator shall establish by rule. In determining the amount, the administrator shall consider the financial condition of the business, the period of time the business has operated in the state, and the existence of capital or real property investment in the state.

4. Any person claiming against the bond, trust account, or guaranteed letter of credit may maintain an action at law against the seller and the surety, trustee or depository institution, except that the surety, trustee or depository institution is liable only for actual damages and not for punitive damages permitted under section 7 of this Act. The aggregate liability of the surety or trustee to all persons damaged by a seller's violation of this Act shall not exceed the amount of the bond, trust account, or guaranteed letter of credit.

Sec. 4. NEW SECTION. DISCLOSURE STATEMENT.

1. The seller shall provide a prospective purchaser with a written document as required by this section either during the first personal contact between the purchaser and the seller or at least ten business days before the purchaser signs a business opportunity contract or pays any consideration to the seller, whichever occurs first. First personal contact does not include general informational activity in a public setting where a specific business relationship is not discussed.

2. The cover sheet of the disclosure document shall include the words **DISCLOSURE REQUIRED BY IOWA LAW** in boldface capital letters. Under the title shall appear the statement: "The

state of Iowa has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been checked by the state. If you have any questions about this purchase, see an attorney or other financial advisor before you sign a contract or agreement." The cover sheet shall include only the title and the statement required by this section.

3. The disclosure document shall contain the following information:

a. The complete name and address of the seller, all other names under which the seller is doing or intends to do business, the names under which the seller has done business in the past, and the names and addresses of all parent or affiliated companies that will engage in business transactions with the purchaser or who take responsibility for statements made by the seller. If the seller is a corporation, the document shall include the state where the articles of incorporation are filed, the date of incorporation, and the name and address of the registered agent.

b. The names, addresses, and titles of the seller's officers, directors, and other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities.

c. Current samples of all contracts and other documents used in the sale or lease of the business opportunity.

d. A copy of the most recent financial statement of the seller, which shall not be more than one hundred twenty days old, updated to reflect material changes in the seller's financial condition.

e. Either of the following statements as applicable:

(1) "As required by Iowa law, the seller has secured a bond issued by (name and address of surety)....., a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's

status with the surety company."

(2) "As required by Iowa law, the seller has established a trust account or guaranteed letter of credit ..... (no. of acct.)..... with (name and address of bank or savings inst.)..... Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account or guaranteed letter of credit."

f. If earnings claims are made, the seller must disclose all of the following:

(1) The number and percentage the number represents of the total number of purchasers who form the basis for the income or earning potential representation.

(2) The number of purchasers known to the seller to have made at least the same sales, income or profits as those represented.

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

g. The business experience during the past five years, stated individually, of each person named in subsection 3, paragraph b. Each person's principal occupations and employers must be included.

h. A statement disclosing whether the seller or any person named in subsection 3, paragraph b:

(1) Has during the most recent seven-year period been held liable in a civil action by final judgment, convicted of a felony or plead nolo contendere to a felony charge if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Is subject to any currently effective state or federal injunctive or restrictive order, or is party to a proceeding currently pending in which such an order is sought, relating to or affecting business opportunity activities or the business opportunity seller-purchaser relationship or involving fraud.

(3) Has during the most recent seven-year period filed

bankruptcy or has been associated as a director or officer of any company that has filed bankruptcy or reorganization proceedings.

(4) Has been a party to any cause of action brought by purchasers against the vendor of a business opportunity during the most recent seven-year period which resulted in an out-of-court settlement or a judgment against the vendor, or is presently a party to any cause of action brought by a purchaser against such a vendor.

The statement shall set forth the identity and location of the court, date of conviction or judgment, and penalty imposed or damages assessed, and the date, nature, and issuer of each the order or ruling.

1. Such other information as the administrator requires.

4. In lieu of the disclosure required by subsection 3, paragraphs a, b, c, d, f, g, and h, the seller may file the disclosure documents authorized by the federal trade commission and in compliance with 16 C.F.R. 436 et seq.

Sec. 5. NEW SECTION. CONTRACTS.

1. A contract for the sale or lease by a seller of a business opportunity in this state shall be in writing and is subject to this Act and section 714.16. A copy of the contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at least ten business days prior to the time the purchaser signs the contract and signed copies shall be provided to the purchaser at the time the contract and documents are signed.

2. A contract by a seller for the sale or lease of a business opportunity shall set forth all of the following:

a. The terms and conditions of payment, including the total financial obligation of the purchaser to the seller.

b. A full and detailed listing and description of the acts and services that the seller will perform or deliver to the purchaser.

c. A detailed listing of merchandise or services the purchaser will receive.

d. The delivery date or, when the contract provides for a staggered delivery of items to the purchaser, the approximate delivery dates of merchandise or services the seller will deliver to the purchaser to enable the purchaser to begin or maintain the business and the specific location where the merchandise or services will be delivered or provided.

e. A complete description of the nature of any guarantee, buy-back, or secured investment, if the seller has represented or promised orally or in writing when advertising, selling, leasing, soliciting, or offering the business opportunity that there is a guarantee, buy-back, or secured investment.

f. A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 6 of this Act.

g. The cancellation statement appearing in section 82.2.

h. The seller's principal business address and the name and the address of its registered agent in the state of Iowa authorized to receive service of process.

i. The business form of the seller, whether corporate, partnership, or otherwise.

Sec. 6. NEW SECTION. 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 82 for door-to-door sales.

Sec. 7. NEW SECTION. REMEDIES. A person injured by a violation of this Act or by a seller's breach of contract is entitled to actual damages and reasonable attorneys' fees and may be awarded punitive damages when appropriate.

Sec. 8. NEW SECTION. POWERS OF ADMINISTRATOR.

1. If it appears to the administrator that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this Act or a rule or order adopted or issued under this Act, the administrator may issue an order directed at the person requiring the person to cease and desist from engaging in the act or practice. The person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. The hearing shall be held in accordance with chapter 17A.

Any consent agreement between the administrator and the seller may be filed in the miscellaneous docket of the clerk of the district court.

2. The administrator may impose a penalty not to exceed one thousand dollars per violation against a seller or person found to have violated this Act or a rule or order adopted under this Act. If a penalty imposed under this subsection remains unpaid, the district court shall enter judgment to enforce its collection.

3. Judicial review of a decision of the administrator may be sought under chapter 17A.

4. If it appears to the administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this Act or of a rule or order adopted or issued under this Act the administrator may take either or both of the following actions:

a. Notify the attorney general who shall bring an action in the district court to enjoin the acts or practices constituting the violation and to enforce compliance with this Act or any rule or order adopted or issued pursuant to this Act. Upon a proper showing a permanent or temporary injunction shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

b. Sue on behalf of a purchaser to enforce the purchasers' rights.

Sec. 9. NEW SECTION. WAIVER OF RIGHTS. A waiver of this Act 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 Act is a violation of this Act.

Sec. 10. NEW SECTION. RULES. The administrator may adopt rules according to chapter 17A as necessary or appropriate for the protection of purchasers and to implement the purposes of this Act, including but not limited to rules governing registrations, applications, disclosure statements, and reports. In adopting rules the administrator shall cooperate with agency administrators of other states and the federal trade commission to achieve uniformity in the form and content of registrations, applications and reports as practicable.

Sec. 11. NEW SECTION. PENALTIES.

1. A seller who fails to file a disclosure statement, pay a registration fee, and obtain an advertisement identification number as required under section 2 of this Act, or who fails to properly provide a disclosure statement as required in section 4 of this Act, is, upon conviction, guilty of an aggravated misdemeanor.

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

3. A seller who violates a rule or order adopted or issued under this Act is, upon conviction, guilty of an aggravated misdemeanor.

4. The administrator may refer available evidence concerning a possible violation of this Act or of a rule or order issued under this Act to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the

appropriate county attorney to institute appropriate criminal proceedings.

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DELWYN STROMER  
Speaker of the House

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TERRY E. BRANSTAD  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 816, Sixty-ninth General Assembly.

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PAT H. HARPER  
Chief Clerk of the House

Approved 5/19, 1981

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ROBERT D. RAY  
Governor