

CHAPTER 171  
BUSINESS OPPORTUNITY SALES

H. F. 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.

(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.

i. 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.

Approved May 19, 1981

---

## CHAPTER 172

### BANKING DEPARTMENT EMPLOYEES GIFTS

H. F. 438

AN ACT relating to laws which restrict the receipt of gifts by employees of the department of banking.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 524.211, subsection 1, Code 1981, is amended to read as follows:

1. ~~Ne-sum~~ A loan of money or property, ~~as a gift or loan, -- or -- otherwise,~~ shall not be ~~given or granted,~~ made directly or indirectly by a state bank, or by persons subject to chapters 533A, 533B, 536, 536A, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or of such persons, to the superintendent, or deputy superintendent, or to an assistant or examiner, ~~nor shall the.~~ The superintendent, or deputy superintendent, or an assistant or examiner receive shall not accept from a state bank or from persons subject to chapters 533A, 533B, 536, and 536A, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or