

Seller-Assisted Marketing Plan Act
Chapter 59, Article 17
§§59-1701 to 59-1762

59-1701

Legislative intent and findings; seller-assisted marketing plans.

(1) The Legislature finds and declares that the widespread sale of seller-assisted marketing plans, often connected with the sale of vending machines, vending racks, or work-at-home paraphernalia, has created numerous problems in Nebraska for purchasers which are inimical to good business practice. Often purchasers of seller-assisted marketing plans are individuals inexperienced in business matters who use their life savings to purchase the seller-assisted marketing plan in the hope that they will earn enough money in addition to retirement income or salary to become or remain self-sufficient. Many purchasers are the elderly who are seeking a way to supplement their fixed incomes. The initial payment is usually in the form of a purchase of overpriced equipment or products. Nebraska purchasers have suffered substantial losses when they have failed to receive full and complete information regarding the seller-assisted marketing plan, the amount of money they can reasonably expect to earn, and the previous experience of the seller-assisted marketing plan seller. Seller-assisted marketing plan sellers have a significant impact upon the economy and well-being of this state and its local communities. The provisions of the Seller-Assisted Marketing Plan Act relating to seller-assisted marketing plans are necessary for the public welfare.

(2) It is the intent of the act to provide each prospective seller-assisted marketing plan purchaser with the information necessary to make an intelligent decision regarding seller-assisted marketing plans being offered, to safeguard the public against deceit and financial hardship, to insure, foster, and encourage competition and fair dealing in the sale of seller-assisted marketing plans by requiring adequate disclosure, to prohibit representations that tend to mislead, and to prohibit or restrict unfair contract terms. The act shall be construed liberally in order to achieve such purposes.

Last amended:

Laws 1993, LB 218, § 2

~ Reissue 2010

59-1701.01

Act, how cited.

Sections 59-1701 to 59-1762 shall be known and may be cited as the Seller-Assisted Marketing Plan Act.

Last amended:

Laws 2003, LB 217, § 41

~ Reissue 2010

59-1702

Definitions; where found.

For purposes of the Seller-Assisted Marketing Plan Act, unless the context otherwise requires, the definitions found in sections 59-1703 to 59-1714.01 shall be used.

Last amended:

Laws 1993, LB 218, § 3

~ Reissue 2010

59-1703

Seller-assisted marketing plan, defined.

Seller-assisted marketing plan shall mean the sale or lease or offer for sale or lease of any product, equipment, supplies, services, license, or any combination thereof which will be used by or on behalf of the purchaser to begin or maintain a business when:

(1) The seller of the plan has advertised or in other manner solicited the purchase or lease of the plan; and

(2) The seller has represented directly or indirectly or orally or in writing that:

(a) The seller or a person recommended or specified by the seller will provide the purchaser with or assist the purchaser in finding locations for the use or operation of vending machines, vending routes, display racks, display cases, or other similar devices on premises neither owned nor leased by the seller or the purchaser;

(b) The seller or a person recommended or specified by the seller will provide the purchaser with or will assist the purchaser in finding outlets or accounts for the purchaser's products or services;

(c) The seller or a person specified by the seller will or is likely to purchase any or all of the products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(d) The purchaser will, is likely to, or can derive income from the business which exceeds the initial payment paid by the purchaser for participation in the plan;

(e) There is a market for the product, equipment, supplies, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(f) The seller will refund all or part of the initial payment paid to the seller or will repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or specified by the seller, if the purchaser is dissatisfied with the business; or

(g) The seller or a person recommended or specified by the seller will provide advice or training pertaining to the sale of any products, equipment, supplies, or services or use of any licensed material and the advice or training includes, but is not limited to, preparing or providing (i) promotional literature, brochures, pamphlets, or advertising materials, (ii) training regarding the promotion, operation, or management of the seller-assisted marketing plan, or (iii) operational, managerial, technical, or financial guidelines or assistance.

Last amended:

Laws 2003, LB 217, § 42

~ Reissue 2010

59-1704

Person, defined.

Person shall mean any individual, corporation, partnership, limited liability company, joint venture, or business entity.

Last amended:

Laws 1993, LB 121, § 379

~ Reissue 2010

59-1705

Seller, defined.

Seller shall mean a person who sells or leases or offers to sell or lease a seller-assisted marketing plan and:

(1) Has sold, leased, represents, or implies that the seller has sold or leased, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans within twenty-four months prior to a solicitation; or

(2) Intends, represents, or implies that the seller intends to sell or lease, whether in Nebraska or elsewhere, at least five seller-assisted marketing plans within twelve months following a solicitation. If the seller intends to sell four or less seller-assisted marketing plans within the time period stated in this subdivision, the seller, in order to be excluded from the provisions of the Seller-Assisted Marketing Plan Act, shall notify each purchaser in writing at the time of sale of its intention to sell only four or less seller-assisted marketing plans.

Last amended:

Laws 1993, LB 218, § 5

~ Reissue 2010

59-1706

Purchaser, defined.

Purchaser shall mean a person who is solicited to become obligated or does become obligated on a seller-assisted marketing plan contract.

Last amended:

Laws 1979, LB 180, § 6
~ Reissue 2010

59-1707

Equipment, defined.

Equipment shall mean machines, all electrical devices, video or audio devices, molds, display racks, vending machines, coin-operated game machines, machines which dispense products, and display units of all kinds.

Last amended:

Laws 1979, LB 180, § 7
~ Reissue 2010

59-1708

Supplies, defined.

Supplies shall mean any and all materials used to produce, grow, breed, or make any product or item.

Last amended:

Laws 1979, LB 180, § 8
~ Reissue 2010

59-1709

Product, defined.

Product shall mean any tangible chattel, including food or living animals, which the purchaser intends to:

- (1) Sell or lease to the general public;
- (2) Use to perform a service for the general public;
- (3) Resell or attempt to resell to the seller of the seller-assisted marketing plan; or

(4) Provide or attempt to provide to the seller of the seller-assisted marketing plan so that such seller might resell the product to the general public.

Last amended:

Laws 1979, LB 180, § 9
~ Reissue 2010

59-1710***Services, defined.***

Services shall mean any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain the seller-assisted marketing plan.

Last amended:

Laws 1979, LB 180, § 10

~ Reissue 2010

59-1711***Seller-assisted marketing plan contract or contract, defined.***

Seller-assisted marketing plan contract or contract shall mean any contract or agreement which obligates a purchaser to a seller.

Last amended:

Laws 1979, LB 180, § 11

~ Reissue 2010

59-1712***Initial payment, defined.***

Initial payment shall mean the total amount a purchaser is obligated to pay under the terms of the seller-assisted marketing plan contract prior to or at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the seller-assisted marketing plan. If the contract sets forth a specific total sale price for purchase of the seller-assisted marketing plan which total price is to be paid partially as a downpayment and then in specific monthly payments, the initial payment shall mean the entire total sale price.

Last amended:

Laws 1979, LB 180, § 12

~ Reissue 2010

59-1713***Buy-back or secured investment, defined.***

Buy-back or secured investment shall mean any representation which implies in any manner that the purchaser's initial payment is protected from loss.

Last amended:

Laws 1979, LB 180, § 13

~ Reissue 2010

59-1714

Ongoing business, defined.

Ongoing business shall mean one which for at least six months previous to the sale:

(1) Has been operated from a specific given location;

(2) Has been open for business to the general public; and

(3) Has had all equipment and supplies necessary for operating the business located at the specific given location.

Last amended:

Laws 1979, LB 180, § 14

~ Reissue 2010

59-1714.01

License, defined.

License shall mean the right or permission to use (1) material or personal property, including computer programs, protected under the copyright or patent laws of the United States or any foreign government and (2) a trademark, service mark, or trade name registered under Nebraska law or the law of any other state, of the United States, or of any foreign government.

Last amended:

Laws 1993, LB 218, § 7

~ Reissue 2010

59-1715

Seller-assisted marketing plan; securities excluded.

A seller-assisted marketing plan shall not include a security as defined by subdivision (15) of section 8-1101.

Last amended:

Laws 1997, LB 335, § 13

~ Reissue 2010

59-1716

Seller-assisted marketing plan; real estate or insurance transactions; excluded.

A seller-assisted marketing plan shall not include any transaction for which either the seller, purchaser, lessor, or lessee is licensed pursuant to and the transaction is governed by the State Real Estate Commission or the Department of Insurance.

Last amended:

Laws 1979, LB 180, § 16
~ Reissue 2010

59-1717

Seller-assisted marketing plan; sales under certain license; excluded.

A seller-assisted marketing plan shall not include a license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name, or service mark when the general merchandise retailer has been doing business continuously for five years prior to the granting of the license.

Last amended:

Laws 1979, LB 180, § 17
~ Reissue 2010

59-1718

Seller-assisted marketing plan; sale or lease to ongoing business enterprises; excluded.

A seller-assisted marketing plan shall not include a sale or lease to an ongoing business enterprise 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 utilize with the equipment, products, supplies, or services of the seller.

Last amended:

Laws 1993, LB 218, § 6
~ Reissue 2010

59-1718.01

Seller-assisted marketing plan; sales under five hundred dollars; excluded.

A seller-assisted marketing plan shall not include the sale of a business opportunity for which the immediate cash payment made by the purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples for use in making sales and not for resale or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

Last amended:

Laws 1993, LB 218, § 8
~ Reissue 2010

59-1719

Seller-assisted marketing plan; sale of an ongoing business; excluded.

A seller-assisted marketing plan shall not include the sale of an ongoing business.

Last amended:

Laws 1979, LB 180, § 19
~ Reissue 2010

59-1720

Seller-assisted marketing plan; certain sale, lease, or offer; excluded.

A seller-assisted marketing plan shall not include a sale, lease, or offer to sell or lease to a purchaser: (1) Who has for a period of at least six months previously bought products, supplies, services, or equipment which were sold under the same trademark or trade name or which were produced by the seller; and (2) who has received on resale of such product, supplies, services, or equipment an amount which is at least equal to the amount of the initial payment.

Last amended:

Laws 1979, LB 180, § 20
~ Reissue 2010

59-1721

Seller-assisted marketing plan; renewal or extension of existing plan; excluded.

A seller-assisted marketing plan shall not include the renewal or extension of an existing seller-assisted marketing plan contract.

Last amended:

Laws 1979, LB 180, § 21
~ Reissue 2010

59-1722

Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.

(1) Any transaction in which the seller has complied with the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The seller uses a disclosure document prepared in accordance with either the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, or the then current guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

(2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

(3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

Last amended:

Laws 2013, LB214, § 11

~ Cum. Supp. 2016

59-1722.01

Transaction; exemption from act; provisions applicable.

Any transaction in which the purchaser makes or will become obligated to make a total initial payment of an amount not exceeding five hundred dollars shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to section 59-1751, to subdivision (1)(d) of section 59-1757, and to those provisions in the act regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728.

Last amended:

Laws 2003, LB 217, § 44

~ Reissue 2010

59-1723

Seller-assisted marketing plan; sale, lease, or offer; occurs; when.

(1) An offer to sell or offer to lease a seller-assisted marketing plan shall occur in this state whenever:

(a) The offer to sell or offer to lease is made in this state;

(b) The purchaser resides in this state at the time of the offer; or

(c) The offer to sell or offer to lease either originates from this state or is directed by the seller or lessor to this state and received at the place to which it is directed.

(2) A sale or lease of a seller-assisted marketing plan shall occur in this state whenever:

(a) The offer to sell or offer to lease is accepted in this state;

(b) The purchaser resides in this state at the time of the sale; or

(c) The acceptance is communicated to a seller situated in this state.

Last amended:

Laws 1979, LB 180, § 23

~ Reissue 2010

59-1724

Marketing plan; seller; disclosure document; contents; list of sellers; file; update; fees.

(1)(a) Before placing any advertisement, making any other solicitation, making any sale, or making any representations to any prospective purchaser in Nebraska, the seller shall file with the Department of Banking and Finance a copy of a disclosure document prepared pursuant to sections 59-1733 to 59-1740 and pay a filing fee of one hundred dollars.

(b) The seller shall file an amended document with the department whenever a material change in the information occurs and shall pay a fee of fifty dollars for filing each such document.

(c) If the seller continues to solicit seller-assisted marketing plans in Nebraska, he or she shall annually file an updated disclosure document and pay a renewal fee of fifty dollars on or before the anniversary date of the initial filing for the particular seller-assisted marketing plan. In addition to the updated disclosure document, if a seller requires a purchaser to enter into a noncompete agreement in a side agreement or ancillary agreement, the seller shall include a disclosure of the existence of such side agreement or ancillary agreement in the updated disclosure document.

(d) In addition to the disclosure document, the seller shall file a list of the names and resident addresses of those individuals who sell the seller-assisted marketing plan on behalf of the seller. The list of sales representatives shall be updated through a new filing every six months. No fee shall be required to be paid for any filing which includes only an updated list of sales representatives.

(2) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

Last amended:

Laws 2016, LB942, § 1

Operative Date: April 8, 2016

~ Cum. Supp. 2016

59-1725

Marketing plan; violations; investigations; director; powers.

(1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director or to aid in the enforcement of the act or in the adoption or promulgation of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2)(a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) The request for order of compliance may be addressed to either (i) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce if the person is within this state or (ii) the appropriate district court of this state having jurisdiction over the person refusing to testify or produce if the person is outside this state.

Last amended:

Laws 1993, LB 218, § 11

~ Reissue 2010

59-1725.01

Seller-assisted marketing plan; cease and desist order; fine; injunction; procedures; appeal.

(1) The Director of Banking and Finance may summarily order a seller or any officer, director, employee, or agent of such seller to cease and desist from the further offer or sale of any seller-assisted marketing plan by the seller if the director finds:

(a) There has been a substantial failure to comply with any of the provisions of the Seller-Assisted Marketing Plan Act;

(b) The offer or sale of the plan would constitute misrepresentation to or deceit or fraud upon the purchasers; or

(c) Any person identified in the required disclosure document has been convicted of an offense described in subdivision (2)(a) of section 59-1735 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(b) or (c) of section 59-1735, and the involvement of such person in the sale or management of the seller-assisted marketing plan creates an unreasonable risk to prospective purchasers.

(2) If the director believes, whether or not based upon an investigation conducted under section 59-1725, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed five thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the Seller-Assisted Marketing Plan Act or any order under the act.

(3) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fine and costs imposed under this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the Department of Banking and Finance and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall, in writing, promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days after the issuance of the order. Upon receipt of such written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Last amended:

Laws 2001, LB 53, § 109
~ Reissue 2010

59-1726

Marketing plan; seller; use of certain phrases; prohibited.

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not:

(1) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan if the security is the value of the equipment, supplies, products, or services supplied by the seller to the purchaser; or

(2) Use the phrase buy-back or secured investment or similar phrase orally or in writing when soliciting, offering, leasing, or selling a seller-assisted marketing plan unless there are no restrictions or qualifications whatsoever preventing or limiting a purchaser from being able to invoke the buy-back or secured portion of the seller-assisted marketing plan contract at any time the purchaser desires during the one-year period following the contract date.

Last amended:

Laws 1979, LB 180, § 26
~ Reissue 2010

59-1727

Marketing plan; buy-back or security investment provision; invoked; entitlement.

Upon invocation of the buy-back or security investment provision under section 59-1726, the minimum amount a purchaser shall be entitled to have returned to him or her is the full amount of his or her initial payment, less the money actually received by him or her from the operation of the seller-assisted marketing plan. The amount actually received shall be either the amount the purchaser actually obtained from the seller for any product resold to the seller or the amount of money the general public pays for use of the purchaser's product, equipment, supplies, or services, less any amount the purchaser has paid the owner or manager of the location at which the purchaser's products, equipment, supplies, or services are placed.

Last amended:

Laws 1979, LB 180, § 27

~ Reissue 2010

59-1728

Marketing plan; payment secured; buy-back arrangement; representations; prohibited; exception.

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that a purchaser's initial payment is secured in any manner or to any degree or that the seller provides a buy-back arrangement unless the seller has, in conformity with section 59-1751, either obtained a surety bond issued by a surety company admitted to do business in this state or established a trust account.

Last amended:

Laws 1995, LB 599, § 17

~ Reissue 2010

59-1729

Marketing plan; earning potential claim; substantiated by data.

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that the seller-assisted marketing plan provides income or earning potential of any kind unless the seller has data to substantiate the claims of income or earning potential and discloses this data to the purchaser at the time the claim is made, if made in person, or if made through written or telephonic communication, at the first in-person communication thereafter and, when disclosed, the data is left with the purchaser. A mathematical computation of the number of sales, multiplied by the amount of profit per sale to reach a projected income figure is not sufficient data to substantiate an income or earning potential claim. The data left by the seller must at least disclose:

(1) The length of time the seller has been selling the particular seller-assisted marketing plan being offered;

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

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

Last amended:

Laws 1979, LB 180, § 29

~ Reissue 2010

59-1730

Marketing plan; advertising; commercial symbol; requirements.

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the seller-assisted marketing plan, unless the nature of the seller's relationship to such other business entity is set forth immediately adjacent to and in type size equal to or larger than that used to depict the commercial symbol of such other business. If a member of a trade association, the seller may use the logo or registration mark of the trade association in advertisements and materials without regard to this section.

Last amended:

Laws 1979, LB 180, § 30

~ Reissue 2010

59-1731

Marketing plan; advertisement; name and address of seller; required.

In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not place or cause to be placed any advertisement for a seller-assisted marketing plan which does not include the actual business name of the seller, and if it differs, the name under which the seller-assisted marketing plan is operated and the street address of the principal place of business of the seller.

Last amended:

Laws 1979, LB 180, § 31

~ Reissue 2010

59-1732

Seller-assisted marketing plan; potential purchaser; seller provide disclosure document.

In the first in-person communication with a potential purchaser or in the first written response to an inquiry by a potential purchaser wherein the seller-assisted marketing plan is described, the seller shall provide the prospective purchaser a written disclosure document which contains the disclosure information required by sections 59-1733 to 59-1740. Such disclosure document shall contain a cover sheet entitled in at least sixteen-point boldface capital letters DISCLOSURE REQUIRED BY NEBRASKA LAW. Under the title shall appear, in boldface of at least ten-point

type, the statement: The State of Nebraska has not reviewed and does not approve, recommend, endorse, or sponsor any seller-assisted marketing plan. 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.

Nothing shall appear on the cover sheet except the title and the statement required by this section. A disclosure document prepared pursuant to sections 59-1733 to 59-1740 shall include a statement which either positively or negatively responds to each disclosure item required by sections 59-1733 and 59-1735 by use of a statement which fully incorporates the information required by the item. This disclosure document shall be given to the potential purchaser and held by the potential purchaser for at least forty-eight hours prior to the execution of a seller-assisted marketing contract or at least forty-eight hours prior to the receipt of any consideration.

Last amended:

Laws 1995, LB 599, § 18

~ Reissue 2010

59-1733

Disclosure document; information; requirements.

The disclosure document required by section 59-1732 shall contain the following information:

(1) The name of the seller, the name under which the seller is doing or intends to do business, the seller's principal business address, the seller's business form, including identification of the state under whose laws the seller is organized or incorporated, and the name, principal business address, and business form of any parent or affiliated company that will engage in business transactions with purchasers or accept responsibility for statements made by the seller;

(2) A statement of the initial payment charged or, when not known, a statement of approximate initial payment charged, and a statement of the amount of the initial payment to be paid to a person inducing, directly or indirectly, a purchaser to contract for the seller-assisted marketing plan;

(3) A full and detailed description of the actual services the seller will or may undertake to perform for the purchaser;

(4) The following legend shall be included in the disclosure document when the seller makes any statement concerning earnings or range of earnings that may be made through the seller-assisted marketing plan:

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least, which represents percent of the total number of purchasers of this seller-assisted marketing plan;

(5) A complete description of any training provided by or through the seller or any person recommended or specified by the seller, including the length of the training and a statement of any costs associated with the training which the purchaser will be responsible for paying;

(6) A complete description of any services to be performed by the seller or any person recommended or specified by the seller in connection with the placement of the equipment, product, or supplies at a location from which they will be sold or used, the full nature of those services, including a statement identifying any third party the seller may hire for such services and the nature of any agreement between the seller and the third party, as well as the nature of the agreements to be made with the owner or manager of the location at which the purchaser's equipment, product, or supplies will be placed and any costs associated with such placement services which the purchaser will be responsible for paying;

(7) A statement completely and clearly disclosing the entire and precise nature of any arrangement (a) whereby the seller agrees to buy back the product, supplies, or equipment initially sold or (b) whereby the initial payment is secured, that the seller represented orally or in writing to exist when soliciting or offering for sale or lease or selling or leasing a seller-assisted marketing plan;

(8) A statement setting forth (a) the total number of seller-assisted marketing plans, which are the same as the plan described in the disclosure document, that have been set up or organized by the seller, (b) the number of such seller-assisted marketing plans in existence at the end of the preceding year, (c) the names, addresses, and telephone numbers of the ten seller-assisted marketing plan purchasers nearest the prospective purchaser's intended location. If less than ten seller-assisted marketing plan purchasers exist, the total number of purchasers shall be used, and (d) the total number of seller-assisted marketing plans the seller intends to set up in Nebraska and across the nation within the next twelve months; and

(9) Any other information which the Department of Banking and Finance may require by rule, regulation, or order, to be disclosed for the protection of purchasers.

Last amended:

Laws 2001, LB 53, § 110

~ Reissue 2010

59-1734

Repealed. Laws 1983, LB 461, § 10.

~ Reissue 2010

59-1735

Disclosure document; contents; requirements.

The disclosure document required by section 59-1732 shall contain the following:

(1) The name of and the office held by the seller's officers, directors, trustees, general or limited partners, and limited liability company members, as the case may be, and the names of those

individuals who have management responsibilities in connection with the seller's business activities;

(2) A statement whether the seller or any person identified in subdivision (1) of this section:

(a) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(b) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices; or

(c) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license; and

(3) With respect to persons identified in subdivision (1) of this section:

(a) A description of their work experience for the past five years, including a list of principal occupations and employers during such time. Such five-year period shall run from the date of the disclosure filed with the Department of Banking and Finance; and

(b) A listing of each such person's educational background, including the names and addresses of schools attended, dates of attendance, and degrees received.

Last amended:

Laws 1995, LB 599, § 20

~ Reissue 2010

59-1736

Seller; officers, directors, partners, managers; conviction or judgment; disclosure.

The statements required by subdivision (2) of section 59-1735 shall set forth the court, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that brought the action resulting in the conviction or judgment.

Last amended:

Laws 1979, LB 180, § 36

~ Reissue 2010

59-1737

Disclosure document; disclose period of time plan sold or offered.

The disclosure document required by section 59-1732 shall contain the length of time the seller of the plan has sold seller-assisted marketing plans, and the length of time the seller has sold the specific seller-assisted marketing plan being offered to the purchaser.

Last amended:

Laws 1983, LB 461, § 6

~ Reissue 2010

59-1738

Disclosure document; disclose existence of bond or trust account.

If the seller is required to secure a bond or establish a trust account pursuant to the requirements of sections 59-1726 to 59-1728, the disclosure document required by section 59-1732 shall state either:

(1) Seller has secured a bond issued by, (name and address of surety company) a surety company admitted to do business in this state. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the surety company to determine the bond's current status; or

(2) Seller has deposited with the Department of Banking and Finance information regarding its trust account. Before signing a contract to purchase this seller-assisted marketing plan, you should check with the Department of Banking and Finance to determine the current status of the trust account.

Last amended:

Laws 1983, LB 461, § 7

~ Reissue 2010

59-1739

Disclosure document; contain financial information; verification.

The disclosure document required by section 59-1732 shall contain a copy of a financial statement of the seller, not more than twelve months old, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be signed under penalty of perjury by one of the seller's officers, directors, trustees, general or limited partners, or limited liability company members. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate. If a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the information required by this section may be submitted in the same manner for the parent corporation if the corresponding financial statement of the seller is also provided and the parent corporation absolutely and irrevocably has agreed to guarantee all obligations of the seller.

Last amended:

Laws 1994, LB 884, § 78
~ Reissue 2010

59-1740

Disclosure document; contain unexecuted copy of marketing plan contract.

The disclosure document required by section 59-1732 shall contain an unexecuted copy of the entire seller-assisted marketing plan contract.

Last amended:

Laws 1983, LB 461, § 9
~ Reissue 2010

59-1741

Seller-assisted marketing plan; contract for sale or lease; written; copy to purchaser.

Every contract for sale or lease of a seller-assisted marketing plan in this state shall be in writing and shall be subject to the provisions of the Seller-Assisted Marketing Plan Act. A copy of the fully completed contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time such documents are signed.

Last amended:

Laws 1993, LB 218, § 16
~ Reissue 2010

59-1742

Marketing plan contract; contents; requirements.

Every seller-assisted marketing plan contract shall set forth in at least ten-point type or equivalent size if handwritten, the following:

- (1) The terms and conditions of payment including the initial payment, additional payments, and downpayment required;
- (2) A full and detailed description of the acts or services the seller will undertake to perform for the purchaser;
- (3) The seller's principal business address and the name and address of its agent in the State of Nebraska authorized to receive service of process;
- (4) The business form of the seller, whether a corporation, partnership, limited liability company, or otherwise;
- (5) The delivery date or, when the contract provides for a staggered delivery of items to the purchaser, the approximate delivery date of those products, equipment, or supplies the seller is to

deliver to the purchaser to enable the purchaser to begin or maintain his or her business and whether the products, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser;

(6) A complete description of the nature of the buy-back or security arrangement, if the seller has represented orally or in writing when selling or leasing, soliciting, or offering a seller-assisted marketing plan that there is a buy-back or that the initial payment is secured; and

(7) A statement which accurately sets forth a purchaser's right to void the contract under the circumstances and in the manner set forth in sections 59-1752 to 59-1755.

Last amended:

Laws 1993, LB 121, § 382

~ Reissue 2010

59-1743

Marketing plan contract; purchaser; right to cancel; when.

The purchaser shall have the right to cancel a seller-assisted marketing plan contract for any reason at any time within three business days of the date the purchaser and the seller sign the contract pursuant to section 59-1744. The notice of the right to cancel and the procedures to be followed when a contract is canceled shall comply with sections 59-1743 and 59-1744.

Last amended:

Laws 1979, LB 180, § 43

~ Reissue 2010

59-1744

Marketing plan contract; contain notice of right to cancel.

Every seller-assisted marketing plan contract shall set forth immediately above the place at which the purchaser signs the contract in at least ten-point type the following:

You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller-assisted marketing plan seller. The three business days shall expire on, (last date to mail or deliver notice) and notice of cancellation should be mailed to, (seller-assisted marketing plan seller's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him or her by the end of his or her normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his or her address or at the place at which they were caused to be located, all equipment, products, and supplies provided to the purchaser pursuant to this

contract. Upon demand of the seller, such equipment, products, and supplies shall be made available at the time the purchaser receives full repayment by cash, money order, or certified check.

Last amended:

Laws 1979, LB 180, § 44.

~ Reissue 2010

59-1745

Marketing plan contract; execution of certain notes prohibited.

No seller-assisted marketing plan contract shall require or entail the execution of any note or series of notes by the purchaser which, when separately negotiated, will cut off as to third parties any right of action or defense which the purchaser may have against the seller.

Last amended:

Laws 1979, LB 180, § 45

~ Reissue 2010

59-1746

Marketing plan contract; downpayment; conditions.

If the contract referred to in section 59-1741 provides for a downpayment to be paid to the seller, the downpayment shall not exceed twenty percent of the initial payment amount. In no event shall the contract payment schedule provide for the seller to receive more than twenty percent of the initial payment before delivery to the purchaser, or to the place at which they are to be located, the equipment, supplies, or products, unless all sums in excess of twenty percent are placed in an escrow account which cannot be released until the purchaser notifies the escrow agent in writing of the delivery of such equipment, supplies, or products. Notification of delivery by the purchaser to the escrow agent shall not be unreasonably withheld.

Last amended:

Laws 1979, LB 180, § 46

~ Reissue 2010

59-1747

Marketing plan contract; assignee; rights, defenses.

Any assignee of the seller-assisted marketing plan contract or the seller's rights is subject to all equities, rights, and defenses of the purchaser against the seller.

Last amended:

Laws 1979, LB 180, § 47

~ Reissue 2010

59-1748

Reference to compliance with act; prohibited.

No seller shall make or authorize the making of any reference to its compliance with the Seller-Assisted Marketing Plan Act.

Last amended:

Laws 1993, LB 218, § 17
~ Reissue 2010

59-1749

Marketing plan; seller; records required.

Every seller subject to the Seller-Assisted Marketing Plan Act shall at all times keep and maintain a complete set of books, records, and accounts of seller-assisted marketing plan sales made by the seller. All documents relating to each specific seller-assisted marketing plan sold or leased shall be maintained for four years after the date of the seller-assisted marketing plan contract.

Last amended:

Laws 2003, LB 217, § 43
~ Reissue 2010

59-1750

Seller-assisted marketing plan; service of process.

Selling or offering to sell a seller-assisted marketing plan in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the seller in any action arising under the Seller-Assisted Marketing Plan Act.

Last amended:

Laws 1993, LB 218, § 18
~ Reissue 2010

59-1751

Seller; surety bond or trust account; establish; procedures.

If, pursuant to section 59-1728, a seller must obtain a surety bond or establish a trust account, the following procedures shall apply:

(1) If a bond is obtained, a copy of it shall be filed with the Department of Banking and Finance, and if a trust account is established, notification of the depository, the trustee, and the account number shall be filed with the Department of Banking and Finance;

(2) The bond or trust account required shall run in favor of the State of Nebraska for the benefit of any person who is damaged by any violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act or of any obligation arising therefrom. The bond or trust account shall also run in favor of any person damaged by such practices;

(3) Any person claiming against the bond or trust account for a violation of the act may maintain an action at law against the seller and the surety or trustee. The aggregate liability of the surety or trustee to all persons damaged by a seller's violation of the act shall in no event exceed the amount of the bond or trust account; and

(4) The bond or the trust account shall be in an amount equal to the total amount of the initial payment of all seller-assisted marketing plan contracts which the seller has entered into during the previous year or three hundred thousand dollars, whichever is less, but in no case shall the amount be less than fifty thousand dollars. The amount required shall be adjusted twice a year. Such adjustment shall occur no later than the tenth day of the first month of the seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller need only establish a bond or trust account in the amount of fifty thousand dollars at the commencement of business and during the first six months the seller is in business. By the tenth day of the seller's seventh month in business, the amount of the bond shall be established as provided for in this section as if the seller had been in business for a year.

Last amended:

Laws 1993, LB 218, § 19

~ Reissue 2010

59-1752

Seller; noncompliance with act; contract; voidable; purchaser; remedies.

If (1) a seller uses any untrue or misleading statements relating to a seller-assisted marketing plan, (2) a seller fails to provide the disclosure documents or disclose any of the information required by sections 59-1732 to 59-1740, or (3) the contract does not comply with the requirements of the Seller-Assisted Marketing Plan Act, then within one year of the date of the contract at the election of the purchaser upon written notice to the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee as contrary to public policy and the purchaser shall be entitled to receive from the seller all sums paid to the seller when the purchaser is able to return all equipment, supplies, or products delivered by the seller. When such complete return cannot be made, the purchaser shall be entitled to receive from the seller all sums paid to the seller less the fair market value at the time of delivery of the equipment, supplies, or products not returned by the purchaser, but delivered by the seller. Upon the receipt of such sums, the purchaser shall make available to the seller, at the purchaser's address or at the places at which they are located at the time the purchaser gives notice pursuant to this section, the products, equipment, or supplies received by the purchaser from the seller.

Last amended:

Laws 1993, LB 218, § 20

~ Reissue 2010

59-1753

Seller; inadvertent defects; cure; purchaser; rights.

If the seller inadvertently has failed to make any of the disclosures required by sections 59-1732 to 59-1740 or the contract inadvertently fails to comply with the requirements of the Seller-Assisted Marketing Plan Act, the seller may cure such inadvertent defect by providing the purchaser with the correct disclosure documents or contract if at the time of providing such correct disclosures or contract the seller also informs the purchaser in writing that because of the seller's error, the purchaser shall have an additional fifteen-day period after receipt of the correct disclosures or contract within which to cancel the contract and receive a full return of all money paid in exchange for return of whatever equipment, supplies, or products the purchaser has. If the purchaser does not cancel the contract within fifteen days after receipt of the correct disclosures or contract, he or she may not in the future exercise his or her right to void the contract under this section and sections 59-1752, 59-1754, and 59-1755 due to such noncompliance with the disclosure or contract requirements of the act.

Last amended:

Laws 1993, LB 218, § 21
~ Reissue 2010

59-1754

Seller; failure to deliver products; contract voidable.

If a seller fails to deliver the equipment, supplies, or products within thirty days of the delivery date stated in the contract, unless such delivery delay is beyond the control of the seller, then at any time prior to delivery or within thirty days after delivery, at the election of the purchaser upon written notice to the seller, the contract shall be voidable by the purchaser and unenforceable by the seller or his or her assignee.

Last amended:

Laws 1979, LB 180, § 54
~ Reissue 2010

59-1755

Purchaser rights; cumulative.

The rights of the purchaser set forth in sections 59-1752 to 59-1754 shall be cumulative to all other rights under the Seller-Assisted Marketing Plan Act or otherwise.

Last amended:

Laws 1993, LB 218, § 22
~ Reissue 2010

59-1756

Purchaser; waiver of rights; unenforceable.

Any waiver by a purchaser of the provisions of the Seller-Assisted Marketing Plan Act shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a seller to have a purchaser waive rights given by the act shall be a violation of the act.

Last amended:

Laws 1993, LB 218, § 23

~ Reissue 2010

59-1757

Prohibited acts; violation; penalty; enforcement.

(1) No person shall, in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan:

(a) Use the trademark, service mark, trade name, logotype, or advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity unless it is clear from the circumstances that the owner of the commercial symbol has knowledge of and consents to such use and is not involved in the sale of the business opportunity;

(b) Make any claim or representation in advertising or promotional material or in any oral sales presentation, solicitation, or discussion between the seller and a prospective purchaser which is inconsistent with the information required to be disclosed by the Seller-Assisted Marketing Plan Act;

(c) Make or cause to be made any representation to any prospective purchaser that the Department of Banking and Finance has found any document filed under the act to be true, complete, and not misleading or has passed in any way upon the merits of or recommended or given approval to any seller-assisted marketing plan; or

(d) Directly or indirectly (i) employ any device, scheme, or artifice to defraud, (ii) make any untrue statement of a material fact or omit to state a material fact, or (iii) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) Any person, including, but not limited to, the seller, a salesperson, agent, or representative of the seller, or an independent contractor who attempts to sell or lease or sells or leases a seller-assisted marketing plan, who willfully violates any provision of the act or any order issued pursuant to section 59-1725.01 in connection with the offer, purchase, lease, or sale of any seller-assisted marketing plan shall be guilty of a Class IV felony.

(3) The Director of Banking and Finance may refer such evidence as is available concerning violations of the Seller-Assisted Marketing Plan Act or any order of the director to the Attorney General or county attorney who may, with or without reference from the director, initiate criminal proceedings pursuant to the act.

Last amended:

Laws 1993, LB 218, § 24

~ Reissue 2010

59-1758

Violation; action for recovery of damages; award; statute of limitations.

(1) Any purchaser injured by a violation of the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act or of any obligation arising from the sale or lease of the seller-assisted marketing plan may bring an action for recovery of damages. Judgment shall be entered for actual damages suffered by the purchaser, plus reasonable attorney's fees and costs. When the purchaser is able to return all the equipment, supplies, or products delivered by the seller, the actual damages awarded shall not be less than the amount of the initial payment. When such complete return cannot be made, the actual damages awarded shall not be less than the amount of the initial payment less the fair market value at the time of delivery of the equipment, supplies, or products that cannot be returned but were actually delivered by the seller.

(2) Any action brought pursuant to this section shall be commenced within five years of the date of the sale of the seller-assisted marketing plan.

Last amended:

Laws 1993, LB 218, § 25

~ Reissue 2010

59-1758.01

Burden of proof.

In any proceeding under the provisions of the Seller-Assisted Marketing Plan Act, the burden of proving an exemption or an exclusion from a definition or from the provisions of the act shall be upon the person claiming it.

Last amended:

Laws 2003, LB 217, § 45

~ Reissue 2010

59-1759

Remedies; not exclusive.

The provisions of the Seller-Assisted Marketing Plan Act are not exclusive. The remedies provided for violation of any provision of the act or for conduct prescribed by any provision of the act shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Last amended:

Laws 1993, LB 218, § 28

~ Reissue 2010

59-1760

Statutory or common-law rights; available.

Nothing in the Seller-Assisted Marketing Plan Act shall limit any statutory or common-law rights of the Attorney General, any county attorney, or any city attorney, or any other person. If any act or practice prescribed under the Seller-Assisted Marketing Plan Act also constitutes a cause of action in common law or a violation of another statute, the purchaser may assert such common-law or statutory cause of action under the procedures and with the remedies provided for in such other law.

Last amended:

Laws 1993, LB 218, § 29

~ Reissue 2010

59-1761

Unfair competition and deceptive practices statutes; applicable.

Actions and transaction prohibited by the Seller-Assisted Marketing Plan Act shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of such section.

Last amended:

Laws 1993, LB 218, § 30

~ Reissue 2010

59-1762

Director of Banking and Finance; powers; rules and regulations.

In addition to specific authority granted elsewhere in the Seller-Assisted Marketing Plan Act, the Director of Banking and Finance may adopt and promulgate rules, regulations, orders, or forms as are necessary to carry out the act. No rule, regulation, order, or form may be adopted unless the director finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and potential purchasers and is consistent with the purposes fairly intended by the policy and provisions of the act. All rules, regulations, orders, and forms of the director and the Department of Banking and Finance shall be published.

Last amended:

Laws 1993, LB 218, § 27

~ Reissue 2010