

LEGISLATIVE BILL 218

Approved by the Governor June 10, 1993

Introduced by Landis, 46

AN ACT relating to seller-assisted marketing plans; to amend sections 59-1701 to 59-1703, 59-1705, 59-1718, 59-1722, 59-1724, 59-1725, 59-1732, 59-1733, 59-1735, 59-1741, 59-1748, 59-1750 to 59-1753, and 59-1755 to 59-1761, Reissue Revised Statutes of Nebraska, 1943; to name the Seller-Assisted Marketing Plan Act; to define and redefine terms; to provide an exemption; to change disclosure document filing and disclosure requirements as prescribed; to change powers and duties of the Director of Banking and Finance as prescribed; to eliminate and provide for certain filing requirements as prescribed; to provide fees; to provide for fines; to provide for a hearing; to change the contents of a disclosure document as prescribed; to provide for referral to the county attorney or Attorney General; to provide for limitation of actions; to provide for proof of an exemption; to provide for rules and regulations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 59-1701 to 59-1761, this section, and sections 7, 8, 12, 26, and 27 of this act shall be known and may be cited as the Seller-Assisted Marketing Plan Act.

Sec. 2. That section 59-1701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1701. (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 ~~sections 59-1701 to 59-1761~~ 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 sections 59-1701 to 59-1761~~ 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. ~~Sections 59-1701 to 59-1761~~ The act shall be construed liberally in order to achieve such purposes.

Sec. 3. That section 59-1702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1702. For purposes of ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act, unless the context otherwise requires, the definitions found in sections 59-1703 to 59-1714 and section 7 of this act shall be used.

Sec. 4. That section 59-1703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1703. Seller-assisted marketing plan shall mean any ~~the~~ sale or lease or offer ~~to sell~~ for sale or lease of any product, equipment, supplies, ~~or~~ services, license, or any combination thereof ~~requiring a total initial payment of an amount exceeding five hundred dollars~~ which will be used by or on behalf of the purchaser to begin or maintain a business when:

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

(2) The purchaser makes or will become obligated to make a total initial payment of an amount exceeding five hundred dollars; and

(3) 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 racks, display cases, or other similar devices on premises neither owner 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, and done any of the following acts:

(1) Represented that such purchaser will earn, is likely to earn, or can earn a net profit in excess of the initial payment paid by the purchaser for participation in the plan;

(2) Represented that there is a market for the product, equipment, supplies, or services; or

(3) Represented that the seller will buy back or is likely to buy back any product made, produced, fabricated, grown, or bred 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 plan seller.

Sec. 5. That section 59-1705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1705. 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 ~~sections 59-1701 to 59-1761~~ 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.

Sec. 6. That section 59-1718, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1718. A seller-assisted marketing plan shall not include a sale or lease to an ~~existing or beginning~~ 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.

Sec. 7. 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.

Sec. 8. 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.

Sec. 9. That section 59-1722, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1722. (1) Any transaction in which the seller has complied with the ~~F.T.C. rules;~~ Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. 436, shall be exempt from ~~sections 59-1701 to 59-1761~~ 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 Prohibition Concerning Franchises and Business Opportunity Ventures, 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 Administration 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) Any seller which offers its exempt plans for sale in Nebraska on the effective date of this act shall file a notice with the department no later than November 1, 1993.

(3) 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.

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

Sec. 10. That section 59-1724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~59-1724. The seller of any seller-assisted marketing plan shall file with the Department of Banking and Finance a copy of the disclosure statements required under sections 59-1732 to 59-1740, as well as a list of the names and resident addresses of those individuals who sell the seller-assisted marketing plan on behalf of the seller, prior to placing any advertisement or making any other representations to the purchaser. The disclosure statements on file shall be updated through a new filing whenever material changes occur, but at least once a year. The list of sales people shall be updated through a new filing every six months.~~ (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.

(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.

Sec. 11. That section 59-1725, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~59-1725. (1) The Director of Banking and Finance may summarily order a seller to cease and desist from further offer or sale of any seller-assisted marketing plan by the seller if he or she finds:~~

~~(a) There has been a substantial failure to comply with any of the provisions of sections 59-1701 to 59-1761;~~

~~(b) The offer or sale of the seller-assisted marketing plan would constitute misrepresentation to or deceit or fraud of the purchasers;~~
or

~~(e) Any person identified in the required filing documents 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 (2)(c) of section 59-1735, and the involvement of such person in the sale or management of the franchise creates an unreasonable risk to prospective purchasers.~~

~~(2) Upon entry of a cease and desist order, the director shall promptly notify the seller that it has been entered and of the reasons for such order and that upon receipt of written request the matter will be set down for hearing to commence within fifteen business days after the receipt unless the seller consents to a later date. If a hearing is not requested and none is ordered by the director, the order 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 may modify or vacate the order or extend it until its final determination.~~

~~(3) 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.~~

(4) (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, sections 59-1701 to 59-1761, 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.

Sec. 12. (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 fifteen business days after the receipt unless the person requesting the hearing consents to a later date. 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.

Sec. 13. That section 59-1732, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1732. 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, the which either contains the disclosure information required by sections 59-1733 to 59-1740 or which has been prepared pursuant to the Federal Trade Commission rule, 16 C.F.R. 436, or the guidelines adopted by the North American Securities Administrators Association. Such disclosure document shall contain a cover sheet of which is 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.

Sec. 14. That section 59-1733, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1733. The A disclosure document required by section 59-1732 which does not comply with the Federal Trade Commission rule, 16 C.F.R. 436, or the guidelines adopted by the North

American Securities Administrators Association 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 ~~and the name~~ 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) ~~When~~ 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; ~~he or she must set forth in complete form in this disclosure statement the following:~~

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) ~~If training of any type is promised by the seller, a~~ A complete description of the any training and 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) ~~If the seller promises~~ 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; ~~must be set forth~~ and any costs associated with such placement services which the purchaser will be responsible for paying;

(7) ~~If the seller represents orally or in writing when soliciting or offering for sale or lease or selling or leasing a seller-assisted marketing plan that there is a buy back arrangement or that the initial payment is secured, the entire and precise nature of the buy back or security arrangement shall be completely and clearly disclosed~~ 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; and

~~(8) The seller shall disclose: A statement setting forth (a) The~~ 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 (e) (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.~~

Sec. 15. That section 59-1735, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1735. 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, and general or limited partners, 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, or misappropriation of property or 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.

Sec. 16. That section 59-1741, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1741. 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 ~~sections 59-1701 to 59-1761~~ 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.

Sec. 17. That section 59-1748, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1748. No seller shall make or authorize the making of any reference to its compliance with ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act.

Sec. 18. That section 59-1750, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1750. 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 ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act.

Sec. 19. That section 59-1751, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1751. 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 ~~sections 59-1701 to 59-1761~~ or by the seller's breach of a contract subject to the act ~~sections 59-1701 to 59-1761~~ 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 ~~sections 59-1701 to 59-1761~~ 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 ~~sections 59-1701 to 59-1761~~ 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.

Sec. 20. That section 59-1752, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1752. 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 ~~sections 59-1701 to 59-1761~~ 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.

Sec. 21. That section 59-1753, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1753. 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 ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act, the seller may cure such inadvertent defect by providing the purchaser with the correct disclosure ~~statements~~ 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 ~~sections 59-1701 to 59-1761~~ the act.

Sec. 22. That section 59-1755, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1755. The rights of the purchaser set forth in sections 59-1752 to 59-1754 shall be cumulative to all other rights under ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act or otherwise.

Sec. 23. That section 59-1756, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1756. Any waiver by a purchaser of the provisions of ~~sections 59-1701 to 59-1761~~ 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 ~~sections 59-1701 to 59-1761~~ shall be a violation of the act. ~~sections 59-1701 to 59-1761~~.

Sec. 24. That section 59-1757, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1757. (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 salesman ~~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 ~~sections 59-1701 to 59-1761~~ or any order issued pursuant to section 12 of this act ~~59-1725~~, or employs, directly or indirectly, any device, scheme, or artifice to deceive in connection with the offer or sale of any seller-assisted marketing plan, or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate

as a fraud or deceit upon any person 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.

Sec. 25. That section 59-1758, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1758. (1) Any purchaser injured by a violation of ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act or by the seller's breach of a contract subject to the act ~~sections 59-1701 to 59-1761~~ 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 , but in no case shall the award of damages be less than the amount of the initial payment 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 ~~minimum award~~ actual damages awarded shall be 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.

Sec. 26. 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 shall be upon the person claiming it.

Sec. 27. 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.

Sec. 28. That section 59-1759, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1759. The provisions of ~~sections 59-1701 to 59-1761~~ the Seller-Assisted Marketing Plan Act are not exclusive. The remedies provided for violation of any provision of the act ~~section of sections 59-1701 to 59-1761~~ or for conduct prescribed by any provision of the act ~~section of sections 59-1701 to 59-1761~~ shall be in addition to any

other procedures or remedies for any violation or conduct provided for in any other law.

Sec. 29. That section 59-1760, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1760. Nothing in ~~sections 59-1701 to 59-1761~~ 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 ~~sections 59-1701 to 59-1761~~ 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.

Sec. 30. That section 59-1761, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1761. Actions and transaction prohibited by ~~sections 59-1701 to 59-1761~~ 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.

Sec. 31. That original sections 59-1701 to 59-1703, 59-1705, 59-1718, 59-1722, 59-1724, 59-1725, 59-1732, 59-1733, 59-1735, 59-1741, 59-1748, 59-1750 to 59-1753, and 59-1755 to 59-1761, Reissue Revised Statutes of Nebraska, 1943, are repealed.