

LEGISLATIVE BILL 461

Approved by the Governor April 22, 1983

Introduced by R. Johnson, 34

AN ACT to amend sections 59-1705, 59-1725, 59-1732, 59-1733, 59-1735, and 59-1737 to 59-1740, Revised Statutes Supplement, 1982, relating to seller-assisted marketing plans; to eliminate information sheets and require disclosure documents; to redefine sellers; to change the powers of the Director of Banking and Finance; to repeal the original sections, and also section 59-1734, Revised Statutes Supplement, 1982.

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

Section 1. That section 59-1705, Revised Statutes Supplement, 1982, 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, 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. 2. That section 59-1725, Revised Statutes Supplement, 1982, 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

(c) 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) For the purpose of any investigation or proceeding under 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.

Sec. 3. That section 59-1732, Revised Statutes Supplement, 1982, 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 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. 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. 4. That section 59-1733, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1733. 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 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; 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 undertake to perform for the purchaser;

(4) 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 ..... per cent of the total number of purchasers of this seller-assisted marketing plan.

(5) If training of any type is promised by the seller, a complete description of the training and the length of the training;

(6) If the seller promises services to be performed 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 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~~

(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; and

(8) The seller shall disclose: (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 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 (c) 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. 5. That section 59-1735, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1735. The disclosure document information sheet required by section ~~59-1734~~ 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; and

(2) A statement whether 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 of schools attended and

degrees received.

Sec. 6. That section 59-1737, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1737. The information sheet disclosure document required by section 59-1734 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.

Sec. 7. That section 59-1738, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1738. 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 information sheet disclosure document required by section 59-1734 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.

Sec. 8. That section 59-1739, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1739. The information sheet disclosure document required by section 59-1734 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, or general or limited partners. 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.

Sec. 9. That section 59-1740, Revised Statutes Supplement, 1982, be amended to read as follows:

59-1740. The ~~information sheet~~ disclosure document required by section ~~59-1734~~ 59-1732 shall contain an unexecuted copy of the entire seller-assisted marketing plan contract.

Sec. 10. That original sections 59-1705, 59-1725, 59-1732, 59-1733, 59-1735, and 59-1737 to 59-1740, Revised Statutes Supplement, 1982, and also section 59-1734, Revised Statutes Supplement, 1982, are repealed.