

IC 24-5-8

Chapter 8. Business Opportunity Transactions

IC 24-5-8-1

Definitions

Sec. 1. As used in this chapter:

"Business opportunity" means an investment that:

- (1) involves the sale or lease or offer to sell or lease any goods or services to an investor that are to be used by the investor in beginning or operating a business;
- (2) involves an initial payment by the investor of more than five hundred dollars (\$500) and an initial cash payment of less than fifty thousand dollars (\$50,000); and
- (3) involves a solicitation of investors in which the seller represents that:
 - (A) the investor may or will earn an amount in excess of the initial payment as a result of the investment;
 - (B) a market exists for any goods to be made or services to be rendered by the investor;
 - (C) the seller may buy from the investor any goods to be made or services to be rendered by the investor;
 - (D) the seller or a person referred by the seller to the investor may or will sell, lease, or distribute the goods made or services rendered by the investor; or
 - (E) the seller may or will pay to the investor the difference between the initial payment and the investor's earnings from the investment.

"Business opportunity" does not include an investment that involves:

- (1) the sale of a franchise as defined by IC 23-2-2.5-1 or IC 23-2-2.7-5;
- (2) the sale of any assets (other than inventory) of an ongoing business by the owner of the business;
- (3) the not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of five hundred dollars (\$500) or less; or
- (4) the sale of all or substantially all of the assets of an ongoing business.

"Contract" means any agreement relating to a business opportunity.

"Goods" means any merchandise, equipment, product, supply, or material.

"Initial cash payment" means that portion of the initial payment that the investor is obligated to pay to the seller before or at the time of delivery of goods or services. The term does not include any amount financed by the seller, any amount for which financing is to be obtained by the seller, any amount that the seller assists in financing, or any amount required by the seller to be deposited as security for the performance by an investor of the operation of the business or that secures an extension of credit.

"Initial payment" means the total amount an investor is obligated to pay under the terms of the contract before or at the time of delivery of the goods or services to the investor or within six (6) months of the date that the investor commences operation of the business. If the contract states a total price for the business opportunity and provides that the total price is to be paid partially as an initial cash payment and the remainder in specific monthly payments, the term means the total price. The term does not include any amount required by the seller to be deposited as security for the performance by an investor of the operation of the business or that secures an extension of credit.

"Investor" means a person who is solicited to become obligated or does become obligated on a contract.

"Offer" includes every attempt to dispose of a business opportunity or an interest in a business opportunity for value.

"Person" means a human being, corporation, limited liability company, partnership, unincorporated association, trust, or governmental entity.

"Sale" includes every contract to sell or dispose of a business opportunity or an interest in a business opportunity for value.

"Seller" means a person, or his agent, who sells or leases or offers to sell or lease a business opportunity.

"Service" means any assistance, guidance, direction, work, labor, or such other act as may be provided by the seller in the initiation or maintenance of a business.

"Substantial seller" means a seller who has a net worth on a consolidated basis, according to current financial statements certified by an independent certified public accountant, of:

- (1) at least five million dollars (\$5,000,000); or
- (2) at least one million dollars (\$1,000,000) if the seller is at least eighty percent (80%) owned by a corporation that has a net worth on a consolidated basis, according to current financial statements certified by an independent certified public accountant, of at least five million dollars (\$5,000,000).

As added by P.L.134-1984, SEC.1. Amended by P.L.239-1985, SEC.2; P.L.12-1986, SEC.10; P.L.252-1987, SEC.1; P.L.8-1993, SEC.361.

IC 24-5-8-1.5

Substantial sellers; application of certain sections

Sec. 1.5. Sections 2, 3, 4, 13, 15, and 19 of this chapter do not apply to a substantial seller.

As added by P.L.252-1987, SEC.2.

IC 24-5-8-2

Disclosure document; cover sheet; contents

Sec. 2. (a) At least seventy-two (72) hours before the time the investor signs a contract, or at least seventy-two (72) hours before receipt of any consideration by the seller, whichever occurs first, the seller shall provide the investor a written disclosure document, the

cover sheet of which is entitled in at least ten (10) point bold face capital letters "DISCLOSURES REQUIRED BY INDIANA LAW". Under this title, the following statement must appear in at least ten (10) point type: "The state of Indiana has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract.". Nothing except the title and statement may appear on the cover sheet.

(b) The disclosure document must also contain the following information:

- (1) The name of the seller, whether the seller is doing business as an individual, partnership, limited liability company, or corporation, the names under which the seller has done, is doing, or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with the investor or that will take responsibility for statements made by the seller.
- (2) The names, business addresses, business telephone numbers, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the seller's business activities relating to the sale of business opportunities.
- (3) The names, business addresses, and business telephone numbers of all the seller's representatives who are soliciting business opportunities in Indiana.
- (4) The length of time the seller has:
 - (A) solicited business opportunities; and
 - (B) solicited business opportunities involving the goods or services currently being offered to the investor.
- (5) A statement of the initial payment to be paid by the investor, or when not known, a statement of the approximate initial payment to be paid.
- (6) An unexecuted copy of all contracts.
- (7) The following financial statements:
 - (A) A balance sheet of the seller as of the close of its last fiscal year.
 - (B) Income statements for each of the seller's last three (3) fiscal years or for the period of the seller's and any predecessor's existence, if the seller and any predecessor have been in existence for less than three (3) years.
- (8) A complete and detailed description of any service that the seller undertakes to perform for the investor.
- (9) A complete description of any training offered by the seller, the length of training, and a detailed itemization of all costs to be covered by any fee to be charged for the training.
- (10) A statement disclosing the names, home addresses, and home telephone numbers of all persons who have been investors in a business opportunity offered by the seller within the last two (2) year period.

(11) A statement listing the name, home address, and home telephone number of any investor who has requested within the preceding three (3) year period that the seller return his money.

(12) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives has been:

(A) held liable in a civil action for unfair, false, misleading, or deceptive practices;

(B) convicted of a crime involving fraud, embezzlement, conversion, or theft during the most recent seven (7) year period; or

(C) declared bankrupt in any judicial proceeding during the most recent seven (7) year period.

(13) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives has been a party to any legal cause of action brought by an investor within the most recent seven (7) year period.

(14) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives is currently involved in litigation alleging unfair, false, misleading, or deceptive practices.

(15) A statement containing the name of the parties, the name of the court, the cause or docket number of the lawsuit, the date the suit was filed, and the date the judgment was entered, if applicable, for each answer to subdivisions (12), (13), and (14).

(16) The following statement: "As required by Indiana law, the seller has secured a bond issued by _____ (name and address of surety), a surety company authorized to do business in Indiana. Before signing a contract to invest in this business opportunity, you should check with the surety company to determine the bond's current status."

(17) If the seller makes any statement concerning earnings or range of earnings that may be earned through the business opportunity, the seller must set forth the following:

"No guarantee of earnings or ranges of earnings can be made. The number of investors who have earned through this business opportunity an amount in excess of the amount of their initial payment is at least _____, which represents _____ percent of the total number of investors in this business opportunity."

As added by P.L.134-1984, SEC.1. Amended by P.L.8-1993, SEC.362.

IC 24-5-8-3

Surety bonds; requirements; waiver

Sec. 3. (a) A seller shall obtain a surety bond issued by a surety company authorized to do business in Indiana. The amount of the bond must be at least twenty (20) times the initial payment required for the business opportunity, but not less than seventy-five thousand

dollars (\$75,000). The bond must be in favor of the state for the use and benefit of investors.

(b) The attorney general may waive the bonding requirement under subsection (a) and accept in lieu of the bond an irrevocable letter of credit for an equivalent amount issued in the favor of the state.

As added by P.L.134-1984, SEC.1. Amended by P.L.12-1986, SEC.11.

IC 24-5-8-4

Requirements before advertising; amendment of filings; renewal fee; record of filings

Sec. 4. (a) Before placing any advertisement or making any other representations to any investor in Indiana, the seller shall:

(1) file a copy of the disclosure statement required by section 2 of this chapter and the bond required by section 3 of this chapter with the consumer protection division of the office of the attorney general; and

(2) pay an initial filing fee of fifty dollars (\$50).

(b) The seller shall amend these filings when any material change in the information occurs and shall pay a fee of ten dollars (\$10) for filing the amendment.

(c) If the seller continues to solicit business opportunities in Indiana, he shall pay annually a renewal fee of ten dollars (\$10) on or before the anniversary date of the initial filing for the particular business opportunity.

(d) The director of the consumer protection division of the office of the attorney general or his designate shall maintain a record of all filings made under this chapter and shall assign a registration number to each of them. The seller shall be advised in writing of the assigned number. Any advertisements, pamphlets, brochures, or any other materials used in the solicitation of a business opportunity must include the assigned registration number in the following manner: "C.P.D. Reg. No. ____."

As added by P.L.134-1984, SEC.1.

IC 24-5-8-5

Representations of business opportunity; copy to investor, contents

Sec. 5. (a) If the seller represents that the business opportunity provides earning potential of any kind, the seller shall have data to substantiate the claims of earning potential and shall give to the investor at the first in person communication by the seller a copy of this data or a copy of any statement of estimated or projected earning potential prepared for presentation to prospective investors, together with an explanation of the statement. A mathematical computation of the number of sales multiplied by the amount of profit per sale to reach a projected earnings figure is not sufficient data to substantiate an earnings potential claim for the purposes of this section.

(b) The earning potential data given to the investor by a seller, except a substantial seller, must disclose:

- (1) the length of time the seller has been soliciting the particular business opportunity;
- (2) the number of investors in the particular business opportunity that were solicited by the seller and known to the seller to have made at least the same sales, earnings, or profits as those represented;
- (3) the percentage the number in subdivision (2) represents of the total number of investors in the particular business opportunity that were solicited by the seller; and
- (4) the current address of any person named by the seller as having profited from the particular business opportunity, a description of the circumstances under which the profit was earned, and a description of any interest held by the named person in the business opportunity being offered to the investor.

As added by P.L.134-1984, SEC.1. Amended by P.L.252-1987, SEC.3.

IC 24-5-8-6

Contracts; contents

Sec. 6. (a) The seller shall put every contract in writing and shall give the investor a copy of the contract at the time the investor signs the contract.

(b) The seller shall include in every contract the following:

- (1) The seller's business address and the name and business address of the seller's agent in this state authorized to receive service of process.
- (2) The terms and conditions of payment.
- (3) A detailed description of any services that the seller undertakes to perform for the investor.
- (4) A detailed description of any training that the seller undertakes to provide to the investor.
- (5) The approximate delivery date of any goods the seller is to deliver to the investor.
- (6) A statement of the investor's right to cancel that must:
 - (A) appear under the conspicuous caption, "INVESTOR'S RIGHT TO CANCEL WITHIN 30 DAYS"; and
 - (B) contain the following statement in no smaller type than the body portion of the contract: "THE INVESTOR IN THIS BUSINESS OPPORTUNITY HAS THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON AT ANY TIME BEFORE MIDNIGHT OF THE 30TH CALENDAR DAY AFTER THIS CONTRACT IS ENTERED INTO. YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE THAT YOU DO NOT WANT THE BUSINESS OPPORTUNITY TO THE SELLER BEFORE _____, 20__ AT 12:00 MIDNIGHT AT _____."

(c) Subsection (b)(6) does not apply to a contract entered into by a substantial seller, unless required by the consumer protection division of the office of the attorney general for good cause shown

after notice.

As added by P.L.134-1984, SEC.1. Amended by P.L.252-1987, SEC.4; P.L.2-2005, SEC.62.

IC 24-5-8-7

Books, records, and accounts; documents

Sec. 7. (a) Every seller shall keep and maintain a complete set of books, records, and accounts of business opportunity transactions made by the seller.

(b) The seller shall keep all documents relating to each contract entered into by the seller for four (4) years after the date of the contract.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-8

Validity of waiver of provisions by investor

Sec. 8. Any waiver by an investor of the provisions of this chapter is deemed contrary to public policy and is void and unenforceable.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-9

Attempts to have investor waive rights

Sec. 9. A seller may not attempt to have an investor waive rights given to the investor by this chapter.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-10

Cutting off right or defense of investor against seller

Sec. 10. A seller may not require the investor to execute any note that will cut off a right or defense that the investor or a third party may have against the seller.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-11

Initial cash payment

Sec. 11. A seller may not require an initial cash payment that exceeds twenty percent (20%) of the initial payment.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-12

Escrow accounts

Sec. 12. A seller may not require a payment before the delivery of any goods that exceeds twenty percent (20%) of the initial payment unless the amount in excess of the twenty percent (20%) payment is placed in an escrow account which provides that the money can not be released until:

- (1) the investor notifies the escrow agent in writing of the receipt of the goods; or
- (2) the seller presents to the escrow agent a bill of lading that proves shipment of the goods as required by the contract.

Notification of receipt by the investor to the escrow agent may not be unreasonably withheld.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-13

Reference to compliance with chapter in advertisement

Sec. 13. A seller may not make any reference to its compliance with this chapter in any advertisement or other contact with an investor other than by setting forth the registration number as provided in section 4 of this chapter.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-14

Use of commercial symbols

Sec. 14. A seller may not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business that 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 is not involved in the business opportunity.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-15

Cancellation of contract for seller's failure to comply

Sec. 15. If a seller fails to comply with section 2 of this chapter, the investor may cancel any contract by notifying the seller in any manner.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-16

Voiding contracts

Sec. 16. (a) If a seller:

- (1) uses any untrue, misleading, or deceptive statements in a business opportunity transaction;
- (2) fails to deliver the goods or services necessary to begin substantial operation of the business within forty-five (45) days of the delivery date stated in the contract; or
- (3) fails to comply with section 6 of this chapter;

the investor may void the contract within one (1) year of the date of the contract by giving written notice to the seller and is entitled to a return from the seller of all consideration paid to the seller.

(b) Upon receipt by the investor of the consideration paid to the seller, the investor shall make available to the seller, at a reasonable time and place, the goods received by the investor. However, the investor is not entitled to unjust enrichment by exercising the rights provided by this section.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-17

Recovery of actual damages for seller's failure to comply with chapter or breach of contract

Sec. 17. Notwithstanding any other section of this chapter, a person who is damaged by a seller's failure to comply with this chapter or by a seller's breach of a contract may:

- (1) bring an action for recovery of his actual damage including attorney fees; and
- (2) bring an action against the bond required by section 3 of this chapter;

to recover an amount equal to his actual damages. However, the liability of the seller under this section may not exceed the amount of the bond.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-18

Injunction

Sec. 18. Upon complaint by any person that a seller has failed to comply with this chapter, the circuit or superior court of the county of residence of the complainant may enjoin the seller from further violations.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-19

Failure to comply; Class D felony

Sec. 19. A person who fails to comply with section 4 of this chapter commits a Class D felony.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-20

Failure to comply; deceptive act

Sec. 20. A person who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties enumerated in IC 24-5-0.5.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-21

Construction

Sec. 21. Nothing in this chapter shall be construed as relieving a person from complying with IC 23-2-2.5, IC 23-2-2.7, and IC 23-19.

As added by P.L.134-1984, SEC.1. Amended by P.L.27-2007, SEC.24.