

## LEGISLATIVE BILL 180

Approved by the Governor May 21, 1979

Introduced by Simon, 31

AN ACT relating to business; to provide controls for the selling of seller-assisted marketing plans; to prescribe duties; to define terms; to provide a penalty; and to provide severability.  
Be it enacted by the people of the State of Nebraska,

Section 1. (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 this act relating to seller-assisted marketing plans are necessary for the public welfare.

(2) It is the intent of this 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. This act shall be construed liberally in order to achieve such purposes.

Sec. 2. For purposes of this act, unless the context otherwise requires, the definitions found in sections 3 to 14 of this act shall be used.

Sec. 3. Seller-assisted marketing plan shall mean any sale or lease or offer to sell or lease any product, equipment, supplies, or services 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 the seller of the plan has advertised or in other manner solicited the purchase or lease of the plan 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. 4. Person shall mean an individual, corporation, partnership, joint venture, or any business entity.

Sec. 5. 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.

Sec. 6. Purchaser shall mean a person who is solicited to become obligated or does become obligated on a seller-assisted marketing plan contract.

Sec. 7. 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.

Sec. 8. Supplies shall mean any and all materials used to produce, grow, breed, or make any product or item.

Sec. 9. 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.

Sec. 10. Services shall mean any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain the seller-assisted marketing plan.

Sec. 11. Seller-assisted marketing plan contract or contract shall mean any contract or agreement which obligates a purchaser to a seller.

Sec. 12. 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.

Sec. 13. Buy-back or secured investment shall mean any representation which implies in any manner that the purchaser's initial payment is protected from loss.

Sec. 14. 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.

Sec. 15. A seller-assisted marketing plan shall not include a security as defined by subdivision (12) of section 8-1101, Revised Statutes Supplement, 1978.

Sec. 16. 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.

Sec. 17. 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 retailers 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.

Sec. 18. A seller-assisted marketing plan shall not include a sale or lease to an existing or beginning 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. 19. A seller-assisted marketing plan shall not include the sale of an ongoing business.

Sec. 20. 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.

Sec. 21. A seller-assisted marketing plan shall not include the renewal or extension of an existing seller-assisted marketing plan contract.

Sec. 22. Any transaction in which the seller has complied with the F.T.C. rule, titled Disclosure

Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16CFR 436, shall be exempt from this act, except that such transactions shall be subject to those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 26, 27, 28, and 31, of this act and all sections which provide for their enforcement.

Sec. 23. (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.

Sec. 24. 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 32 to 40 of this act, 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.

Sec. 25. (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 this act;

(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 35 of this act 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 35 of this act, 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.

Sec. 26. 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.

Sec. 27. Upon invocation of the buy-back or security investment provision under section 26 of this act, 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.

Sec. 28. 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 subdivision (2) of section 26 and section 27 of this act, either obtained a surety bond issued by a surety company admitted to do business in this state or established a trust account.

Sec. 29. 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.

Sec. 30. 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.

Sec. 31. 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.

Sec. 32. 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 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.

Sec. 33. The disclosure document required by section 32 of this act 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 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.

Sec. 34. At least forty-eight hours prior to the execution of a seller-assisted marketing contract or agreement or at least forty-eight hours prior to the receipt of any consideration, whichever occurs first, the seller shall provide to the prospective purchaser in writing a document entitled SELLER-ASSISTED MARKETING PLAN INFORMATION SHEET. The seller may combine the information required under this section with the information required under section 33 of this act and, if done, shall utilize the single title DISCLOSURES REQUIRED BY NEBRASKA LAW, and the title page required by section 32 of this act. If a combined document is used, it shall be given at the time required by section 32 of this act. Such time shall meet the forty-eight hour requirement provided by this section.

Sec. 35. The information sheet required by section 34 of this act 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.

Sec. 36. The statements required by subdivision (2) of section 35 of this act 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.

Sec. 37. The information sheet required by section 34 of this act 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. 38. If the seller is required to secure a bond or establish a trust account pursuant to the requirements of sections 26 to 28 of this act, the information sheet required by section 34 of this act 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. 39. The information sheet required by section 34 of this act 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. 40. The information sheet required by section 34 of this act shall contain an unexecuted copy of the entire seller-assisted marketing plan contract.

Sec. 41. 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 this 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. 42. 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 corporate, partnership, 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 52 to 55 of this act.

Sec. 43. 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 44 of this act. The notice of the right to cancel and the procedures to be followed when a contract is canceled shall comply with sections 43 and 44 of this act.

Sec. 44. 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.

Sec. 45. 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.

Sec. 46. If the contract referred to in section 41 of this act provides for a downpayment to be paid to the seller, the downpayment shall not exceed twenty per cent of the initial payment amount. In no event shall the contract payment schedule provide for the seller to

receive more than twenty per cent 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 per cent 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.

Sec. 47. 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.

Sec. 48. No seller shall make or authorize the making of any reference to its compliance with this act.

Sec. 49. Every seller 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.

Sec. 50. Every seller of seller-assisted marketing plans other than a Nebraska corporation shall file with the Secretary of State an irrevocable consent appointing the Secretary of State or his or her successor in office to act as his or her attorney to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor, executor, or administrator, which may arise under this act. When such service is made upon the Secretary of State, it shall have the same force and validity as if served personally on the seller. Service may be made by leaving a copy of the process in the office of the Secretary of State, but such service shall not be effective unless:

(1) The plaintiff forthwith sends by first-class mail a notice of the service upon the Secretary of State and a copy of the process to the defendant or respondent at his or her last address on file with the Secretary of State; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

Sec. 51. If, pursuant to section 23 of this act, 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; 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 this act or by the seller's breach of a contract subject to this 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 this 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 this 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.

Sec. 52. If a seller (1) uses any untrue or misleading statements relating to a seller-assisted marketing plan, (2) fails to provide the disclosure documents or disclose any of the information required by sections 32 to 40 of this act, or (3) the contract does not comply with the requirements of this 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. 53. If the seller inadvertently has failed to make any of the disclosures required by sections 32 to 40 of this act or the contract inadvertently fails to comply with the requirements of this act, the seller may cure such inadvertent defect by providing the purchaser with the correct disclosure statements 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 52, 54, and 55 of this act due to such noncompliance with the disclosure or contract requirements of this act.

Sec. 54. 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.

Sec. 55. The rights of the purchaser set forth in sections 52 to 54 of this act shall be cumulative to all other rights under this act or otherwise.



Sec. 56. Any waiver by a purchaser of the provisions of this 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 this act shall be a violation of this act.

Sec. 57. Any person, including, but not limited to, the seller, a salesman, 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 this act or any order issued pursuant to section 25 of this act, 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.

Sec. 58. Any purchaser injured by a violation of this act or by the seller's breach of a contract subject to this 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, plus reasonable attorney's fees and costs, 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. When such complete return cannot be made, the minimum award shall be not 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.

Sec. 59. The provisions of this act are not exclusive. The remedies provided for violation of any section of this act or for conduct prescribed by any section of this act shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Sec. 60. Nothing in this 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 this 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

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other law.

Sec. 61. Actions and transaction prohibited by this act shall be subject to section 59-1602, Revised Statutes Supplement, 1978, and all statutes which provide for the implementation and enforcement of such section.

Sec. 62. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.