

HOUSE BILL No. 2441

By Committee on Federal and State Affairs

2-10

9 AN ACT enacting the Kansas blue sky act; prohibiting certain acts with
10 respect to sales of certain business opportunities; providing penalties
11 and remedies for violations.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act may be cited as the Kansas blue sky act.

15 Sec. 2. As used in this act:

16 (a) “Assist the purchaser in finding locations”, includes, but is not
17 limited to, supplying the purchaser with names of locator companies,
18 contracting with the purchaser to provide assistance or supply names or
19 collecting a fee on behalf of or for a locator company.

20 (b) (1) “Business opportunity” means the sale or lease of any prod-
21 uct, equipment, supplies or services which are sold or leased to a pur-
22 chaser to enable the purchaser to start a business and for which the pur-
23 chaser is required to pay an initial fee or sum of money in excess of \$500
24 to the seller, if the seller represents that:

25 (A) The seller or a person or entity affiliated with or referred by the
26 seller will provide locations or assist the purchaser in finding locations for
27 the use or operation of vending machines, racks, display cases or other
28 similar devices or currency-operated amusement machines or devices on
29 premises neither owned nor leased by the purchaser or the seller;

30 (B) the seller or its affiliate or designee will refund all or a substantial
31 part of the purchaser’s initial payment if the purchaser is unsuccessful or
32 dissatisfied with the business opportunity;

33 (C) the seller guarantees in writing that the purchaser will derive
34 income from the business opportunity which exceeds the price paid or
35 rent charged for the business opportunity or that the seller will refund
36 all or part of the price paid or rent charged for the business opportunity
37 or will repurchase any of the products, equipment, supplies or chattels
38 supplied by the seller, if the purchaser is not satisfied with the business
39 opportunity; or

40 (D) the business opportunity is free from risk or certain to produce
41 profits, which representation may arise from all of the assurances taken
42 as a whole.

43 (2) “Business opportunity” does not include:

- 1 (A) The sale of ongoing businesses when the owner of those busi-
2 nesses sells and intends to sell only those business opportunities so long
3 as those business opportunities to be sold are no more than five in num-
4 ber; or
- 5 (B) the not-for-profit sale of sales demonstration equipment, mate-
6 rials or samples for a price that does not exceed \$500 or any sales training
7 course offered by the seller, the cost of which does not exceed \$500.
- 8 (c) “Purchaser” means a purchaser or lessee of a business
9 opportunity.
- 10 (d) “Seller” means a seller or lessor of a business opportunity.
- 11 Sec. 3. (a) A seller shall not:
- 12 (1) Misrepresent, by failure to disclose or otherwise, the known re-
13 quired total investment for such business opportunity;
- 14 (2) misrepresent or fail to disclose efforts to sell or establish more
15 business opportunities than it is reasonable to expect the market or mar-
16 ket area for the particular business opportunity to sustain;
- 17 (3) misrepresent the quantity or the quality of the products to be sold
18 or distributed through the business opportunity;
- 19 (4) misrepresent the training and management assistance available to
20 the purchaser;
- 21 (5) misrepresent the amount of profits, net or gross, which the pur-
22 chaser can expect from the operation of the business opportunity;
- 23 (6) misrepresent, by failure to disclose or otherwise, the termination,
24 transfer or renewal provision of a business opportunity agreement;
- 25 (7) falsely claim or imply that a primary marketer or trademark of
26 products or services sponsors or participates directly or indirectly in the
27 business opportunity;
- 28 (8) assign a so-called exclusive territory encompassing the same area
29 to more than one purchaser;
- 30 (9) provide machines or displays of a brand or kind substantially dif-
31 ferent from and inferior to those promised by the seller;
- 32 (10) fail to provide the purchaser a written contract;
- 33 (11) misrepresent the seller’s ability or the ability of a person or entity
34 providing services described in subsection (b) of section 2, and amend-
35 ments thereto, to provide locations or assist the purchaser in finding lo-
36 cations expected to have a positive impact on the success of the business
37 opportunity; or
- 38 (12) misrepresent a material fact or create a false or misleading im-
39 pression in the sale of a business opportunity.
- 40 (b) Violation of any provision of this section is a class A misdemeanor.
- 41 Sec. 4. (a) If a seller uses untrue or misleading statements in the sale
42 of a business opportunity, fails to give the proper disclosures or fails to
43 deliver the equipment, supplies or products necessary to begin substantial

1 operation of the business within 45 days after the delivery date stated in
2 the business opportunity contract, the purchaser, within one year after
3 the date of execution of the contract and upon written notice to the seller,
4 may rescind the contract and the purchaser shall be entitled to receive
5 from the seller all sums paid to the seller. Upon receipt of such sums,
6 the purchaser shall make available to the seller at the purchaser's address,
7 or at the places at which the purchaser is located at the time notice is
8 given, all products, equipment or supplies received by the purchaser from
9 the seller. The purchaser shall not be entitled to unjust enrichment by
10 exercising the remedies provided in this subsection.

11 (b) Any purchaser injured by a violation of any provision of this act
12 or by the seller's breach of a contract subject to the provisions of this act,
13 or any obligation arising therefrom, may bring an action for recovery of
14 damages, including reasonable attorney fees.

15 (c) Upon complaint of any person that a seller has violated any pro-
16 vision of this act, the district court shall have jurisdiction to enjoin the
17 defendant from any further violations.

18 (d) The remedies provided in this section shall be in addition to any
19 other remedies provided by law or in equity.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.