

## HOUSE BILL No. 2250

By Committee on Commerce and Labor

1-26

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9 AN ACT enacting the Kansas vending machine business opportunity act;  
10 prohibiting certain acts with respect to sales of certain vending ma-  
11 chine business opportunities; providing penalties and remedies for  
12 violations.

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

15 Section 1. This act may be cited as the Kansas vending machine busi-  
16 ness opportunity act.

17 Sec. 2. As used in this act:

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

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

27 (A) The seller or a person or entity affiliated with or referred by the  
28 seller will provide locations or assist the purchaser in finding locations for  
29 the use or operation of vending machines on premises neither owned nor  
30 leased by the purchaser or the seller;

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

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

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

- 1 (2) "Business opportunity" does not include the not-for-profit sale of  
2 sales demonstration equipment, materials or samples for a price that does  
3 not exceed \$500 or any sales training course offered by the seller, the cost  
4 of which does not exceed \$500.
- 5 (c) "Purchaser" means a purchaser or lessee of a business  
6 opportunity.
- 7 (d) "Seller" means a seller or lessor of a business opportunity.
- 8 (e) "Vending machine" means a machine that dispenses merchandise  
9 or service through the means of currency, coin, token, credit card or other  
10 nonpersonal means of accepting payment for merchandise or services  
11 received.
- 12 Sec. 3. (a) A seller shall not:
- 13 (1) Misrepresent, by failure to disclose or otherwise, the known re-  
14 quired total investment for such business opportunity;
- 15 (2) misrepresent or fail to disclose efforts to sell or establish more  
16 business opportunities than it is reasonable to expect the market or mar-  
17 ket area for the particular business opportunity to sustain;
- 18 (3) misrepresent the quantity or the quality of the products to be sold  
19 or distributed through the business opportunity;
- 20 (4) misrepresent the training and management assistance available to  
21 the purchaser;
- 22 (5) misrepresent the amount of profits, net or gross, which the pur-  
23 chaser can expect from the operation of the business opportunity;
- 24 (6) misrepresent, by failure to disclose or otherwise, the termination,  
25 transfer or renewal provision of a business opportunity agreement;
- 26 (7) falsely claim or imply that a primary marketer or trademark of  
27 products or services sponsors or participates directly or indirectly in the  
28 business opportunity;
- 29 (8) assign a so-called exclusive territory encompassing the same area  
30 to more than one purchaser;
- 31 (9) provide machines or displays of a brand or kind substantially dif-  
32 ferent from and inferior to those promised by the seller;
- 33 (10) fail to provide the purchaser a written contract;
- 34 (11) misrepresent the seller's ability or the ability of a person or entity  
35 providing services described in subsection (b) of section 2, and amend-  
36 ments thereto, to provide locations or assist the purchaser in finding lo-  
37 cations expected to have a positive impact on the success of the business  
38 opportunity; or
- 39 (12) misrepresent a material fact or create a false or misleading im-  
40 pression in the sale of a business opportunity.
- 41 (b) Violation of any provision of this section is a class A misdemeanor.
- 42 Sec. 4. (a) If a seller uses untrue or misleading statements in the sale  
43 of a business opportunity, fails to give the proper disclosures or fails to

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

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

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

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

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