

CF 6lr2039

By: Delegates Krysiak, Frank, Harrison, Kirk, and Kach

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Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 1996

CHAPTER ____

1 AN ACT concerning

2 **Maryland Business Opportunities Sales Act - Revision**

3 FOR the purpose of expanding the definition of a business opportunity under the
4 Maryland Business Opportunities Sales Act; altering the applicability of the
5 Maryland Business Opportunities Sales Act; requiring the Maryland Securities
6 Commissioner to follow certain procedures when passing certain summary and final
7 orders; providing exceptions to those procedures; expanding the remedies available
8 to the Maryland Securities Commissioner when a provision of the Maryland
9 Business Opportunities Sales Act has been violated; altering registration
10 requirements for sellers of business opportunities; ~~requiring certain renewals for~~
11 ~~registrations~~ altering renewal requirements for sellers of business opportunities;
12 providing procedures for the renewal of registrations; authorizing the Maryland
13 Securities Commissioner to require the filing of certain documents associated with
14 the sale of business opportunities; authorizing the Maryland Securities
15 Commissioner under certain circumstances to pass certain orders to suspend or
16 revoke the effectiveness of certain registrations, amendments to registrations, or
17 required reports; altering certain requirements relating to the provision of a certain
18 disclosure document by a seller to a prospective buyer; allowing a prospective buyer
19 a certain amount of time to review a certain disclosure document before signing a
20 certain contract or agreement; expanding the types of information that a seller must
21 include in a certain disclosure document; defining a certain term; and generally
22 relating to the Maryland Business Opportunities Sales Act.

23 BY repealing and reenacting, with amendments,

24 Article - Business Regulation

25 Section 14-101, 14-103, 14-104, 14-114, 14-117, and ~~14-118~~ 14-119

26 Annotated Code of Maryland

27 (1992 Volume and 1995 Supplement)

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1 BY repealing and reenacting, without amendments,
2 Article - Business Regulation
3 Section 14-102, 14-105 through 14-109, 14-111, 14-112, 14-115, 14-116, ~~14-119,~~
4 and 14-120 through 14-129
5 Annotated Code of Maryland
6 (1992 Volume and 1995 Supplement)

7 BY repealing
8 Article - Business Regulation
9 Section 14-110 ~~and 14-113, 14-113, and 14-118~~
10 Annotated Code of Maryland
11 (1992 Volume and 1995 Supplement)

12 BY adding to
13 Article - Business Regulation
14 Section 14-110, 14-113, 14-113.1, and ~~14-119.1~~ 14-119
15 Annotated Code of Maryland
16 (1992 Volume and 1995 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Business Regulation**

20 14-101.

21 (a) In this subtitle the following words have the meanings indicated.

22 (b) "Business opportunity" means an arrangement between a buyer and seller in
23 which;

24 (1) the seller[:

25 (1) sells or leases to the buyer products, equipment, supplies, or services to
26 enable the buyer to start a business; and

27 (2) represents that the seller:

28 (i) will provide or help the buyer to get accounts or retail outlets for
29 the use or operation of vending machines, racks, display cases, currency-operated
30 amusement machines, or other similar devices on premises neither owned nor leased by
31 the buyer or seller;

32 (ii) will buy products that the buyer makes, fabricates, grows, breeds,
33 or modifies by using, wholly or partly, the products, equipment, supplies, or services sold
34 or leased to the buyer;

35 (iii) will provide a sales or marketing program to enable the buyer to
36 get from the business income that exceeds the price paid for the business;

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1 (iv) will refund all or part of the price paid for the business or
2 repurchase the products, equipment, or supplies sold or leased by the seller, if the buyer
3 is not satisfied with the business; or

4 (v) guarantees that the buyer will get from the business income that
5 will exceed the price paid for the business.] OR A PERSON RECOMMENDED OR
6 REFERRED BY THE SELLER PROVIDES TO THE BUYER PRODUCTS, EQUIPMENT,
7 SUPPLIES, OR SERVICES THAT ENABLE THE BUYER TO START A BUSINESS; ;

8 (2) THE BUYER IS REQUIRED TO PAY THE SELLER OR A PERSON
9 RECOMMENDED OR REFERRED BY THE SELLER \$300 OR MORE DURING THE PERIOD
10 BEGINNING ANY TIME BEFORE COMMENCING OPERATIONS AND ENDING 6 MONTHS
11 AFTER COMMENCING OPERATIONS OF THE BUSINESS; AND

12 (3) THE SELLER REPRESENTS, DIRECTLY OR INDIRECTLY, ORALLY OR
13 IN WRITING, THAT:

14 ~~1. (I) THE SELLER OR A PERSON RECOMMENDED OR~~
15 ~~REFERRED BY THE SELLER WILL HELP THE BUYER IN FINDING LOCATIONS FOR THE~~
16 ~~USE OR OPERATION OF VENDING MACHINES, RACKS, DISPLAY CASES, OR OTHER~~
17 ~~SIMILAR DEVICES ON PREMISES THAT ARE NOT OWNED OR LEASED BY THE BUYER~~
18 ~~OR SELLER;~~

19 ~~2. (II) THE SELLER OR A PERSON RECOMMENDED OR~~
20 ~~REFERRED BY THE SELLER WILL HELP THE BUYER IN FINDING OUTLETS OR~~
21 ~~ACCOUNTS FOR THE BUYER'S PRODUCTS OR SERVICES;~~

22 ~~3. (III) THE SELLER OR A PERSON SPECIFIED BY THE~~
23 ~~SELLER WILL BUY PRODUCTS MADE, PRODUCED, FABRICATED, GROWN, BRED, OR~~
24 ~~MODIFIED BY THE BUYER;~~

25 ~~4. (IV) THE SELLER GUARANTEES THAT THE BUYER WILL~~
26 ~~RECEIVE FROM THE BUSINESS INCOME AN AMOUNT THAT EXCEEDS THE PRICE PAID~~
27 ~~TO THE SELLER;~~

28 ~~5. (V) IF THE BUYER IS NOT SATISFIED WITH THE~~
29 ~~BUSINESS, THE SELLER WILL REFUND ALL OR PART OF THE PRICE PAID TO THE~~
30 ~~SELLER, OR REPURCHASE ANY OF THE PRODUCTS, EQUIPMENT, OR SUPPLIES~~
31 ~~PROVIDED BY THE SELLER OR A PERSON RECOMMENDED OR REFERRED BY THE~~
32 ~~SELLER; OR~~

33 ~~6. (VI) THE SELLER WILL PROVIDE A MARKETING PLAN.~~

34 (C) "MARKETING PLAN" MEANS ADVICE OR TRAINING THAT A SELLER OR A
35 PERSON RECOMMENDED OR REFERRED BY THE SELLER PROVIDES TO THE BUYER,
36 RELATING TO THE SALE OF ANY PRODUCTS, EQUIPMENT, SUPPLIES, OR SERVICES,
37 AND THE ADVICE OR TRAINING INCLUDES PREPARING OR PROVIDING:

38 (1) PROMOTIONAL LITERATURE, BROCHURES, PAMPHLETS, OR
39 ADVERTISING MATERIALS;

40 (2) TRAINING REGARDING THE PROMOTION, OPERATION, OR
41 MANAGEMENT OF THE BUSINESS OPPORTUNITY; OR

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1 (3) OPERATIONAL, MANAGERIAL, OR FINANCIAL GUIDELINES OR
2 ASSISTANCE.

3 [(c)] (D) "Buyer" means a person who buys or leases products, equipment,
4 supplies, or services in connection with a business opportunity.

5 [(d)] (E) "Commissioner" means the Securities Commissioner in the office of the
6 Attorney General.

7 [(e)] (F) "Seller" means a person who sells or leases products, equipment,
8 supplies, or services in connection with a business opportunity.

9 14-102.

10 The General Assembly finds that:

11 (1) the sale of business opportunities is a field in which investment problems
12 and deceptive practices are common; and

13 (2) this subtitle is needed to regulate this field adequately and prevent these
14 deceptive practices.

15 14-103.

16 (a) This subtitle applies to an offer to sell or sale of a business opportunity if:

17 (1) [the buyer must:

18 (i) pay an initial consideration of at least \$200; or

19 (ii) pay to the seller a fee of at least \$200 for a sales or marketing
20 program; and

21 (2) (i) the offeree or buyer is a resident of the State;

22 [(ii)] (2) the business opportunity will be or is operated in the State;

23 [(iii)] (3) the offer to sell is made in the State; or

24 [(iv)] (4) the offer to buy is accepted in the State.

25 (b) (1) For purposes of this section, an offer to sell is made in the State,
26 whether or not either party is then present in the State, if the offer:

27 (i) originates from the State; or

28 (ii) is directed by the offeror to the State and is received at:

29 1. the place to which it is directed; or

30 2. a post office in the State.

31 (2) For purposes of this section, an offer to sell is not made in the State only
32 because the publisher circulates or there is circulated on the publisher's behalf in the
33 State:

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1 (i) a newspaper or other publication of general, regular, and paid
2 circulation that:

3 1. is not published in the State; or

4 2. is published in the State but has had more than two-thirds of
5 its circulation outside the State during the past 12 months; or

6 (ii) a radio or television program that originates outside the State and
7 is received in the State.

8 (3) For purposes of this section, an offer to buy is accepted in the State if
9 acceptance:

10 (i) is communicated to the offeror in the State; and

11 (ii) has not been communicated previously to the offeror, orally or in
12 writing, outside the State.

13 (4) For purposes of this section, acceptance is communicated to the offeror
14 in the State, whether or not either party is then present in the State, if:

15 (i) the offeree directs acceptance to the offeror in the State
16 reasonably believing the offeror to be in the State; and

17 (ii) the acceptance is received at:

18 1. the place to which it is directed; or

19 2. a post office in the State.

20 14-104.

21 (A) This subtitle does not apply to:

22 (1) a sale of an ongoing business if the owner of the business sells and
23 intends to sell only that one business opportunity;

24 (2) a not-for-profit sale, for less than \$500, of sales demonstration
25 equipment, materials, or samples;

26 (3) an offer to sell or sale of a franchise registered OR EXEMPT FROM
27 REGISTRATION under Subtitle 2 of this title;

28 (4) an offer to sell or sale of a business if the offer or sale is regulated under
29 the Maryland Gasohol and Gasoline Products Marketing Act or the federal Petroleum
30 Marketing Practices Act;

31 (5) an offer to sell or sale of a business opportunity with a [sales or]
32 marketing [program] PLAN made in conjunction with the licensing of a FEDERALLY
33 registered trademark or service mark[; or], PROVIDED THAT THE SELLER HAS A
34 MINIMUM NET WORTH OF \$1,000,000 AS DETERMINED ON THE BASIS OF THE SELLER'S
35 MOST RECENT AUDITED FINANCIAL STATEMENT PREPARED WITHIN 13 MONTHS OF
36 THE FIRST OFFER THAT THE SELLER MAKES IN THE STATE; OR

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1 ~~(6) AN OFFER TO SELL OR THE SALE OF A BUSINESS OPPORTUNITY FOR~~
2 ~~WHICH THE BUYER IS REQUIRED TO PAY THE SELLER OR A PERSON~~
3 ~~RECOMMENDED OR REFERRED BY THE SELLER LESS THAN \$200 FROM ANY TIME~~
4 ~~BEFORE COMMENCING OPERATIONS TO 6 MONTHS AFTER COMMENCING~~
5 ~~OPERATION OF THE BUSINESS OPPORTUNITY; OR~~

6 ~~{(6)}~~ (7) any other sale or transaction if the Commissioner:

7 (i) exempts the sale or transaction, by regulation or order, as not
8 being within the purposes of this subtitle; and

9 (ii) finds the registration of the sale or transaction to be unnecessary,
10 inappropriate, not in the public interest, or not for the protection of investors.

11 (B) NET WORTH MAY BE DETERMINED ON A CONSOLIDATED BASIS IF:

12 (1) AT LEAST 80% OF THE SELLER IS OWNED BY ONE PERSON; AND

13 (2) THE PERSON THAT OWNS AT LEAST 80% OF THE SELLER EXPRESSLY
14 GUARANTEES THE OBLIGATIONS OF THE SELLER WITH REGARD TO THE OFFER OR
15 SALE OF A BUSINESS OPPORTUNITY THAT THE SELLER SEEKS TO EXCLUDE UNDER
16 THIS PARAGRAPH.

17 14-105.

18 The Commissioner may delegate any power or duty of the Commissioner under this
19 subtitle.

20 14-106.

21 To enforce this subtitle, the Commissioner may pass orders and adopt regulations
22 and forms.

23 14-107.

24 The Commissioner may:

25 (1) publish information about violations of this subtitle and of regulations
26 adopted and orders passed under it;

27 (2) report to the appropriate law enforcement officer information about
28 violations of this subtitle; and

29 (3) help, develop, and hold programs of public education and information
30 about this subtitle.

31 14-108.

32 The Commissioner may investigate in or outside the State to:

33 (1) determine if a person has violated this subtitle;

34 (2) adopt regulations or forms under this subtitle; or

35 (3) enforce this subtitle.

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1 14-109.

2 (a) The Commissioner may hold public hearings in connection with an
3 investigation under this subtitle.

4 (b) Unless otherwise provided in this subtitle or in regulations adopted under it,
5 the Commissioner shall hold hearings authorized by this subtitle in accordance with Title
6 10 of the State Government Article.

7 [14-110.

8 (a) The Commissioner may pass a cease and desist order to stop any act or
9 practice found by the Commissioner to be a violation of this subtitle.

10 (b) Whenever the Commissioner finds that a person has violated or is about to
11 violate this subtitle or a regulation adopted or order passed under it, the Commissioner
12 may sue to:

13 (1) enforce this subtitle or the regulation or order; or

14 (2) enjoin the act or practice constituting the violation.

15 (c) (1) On a proper showing, a court may:

16 (i) issue a permanent or preliminary injunction or pass a restraining
17 order; and

18 (ii) appoint a receiver or conservator for the defendant or the
19 defendant's assets.

20 (2) The court may not require the Commissioner to post bond.]

21 14-110.

22 (A) (1) WHENEVER THE COMMISSIONER DETERMINES THAT A PERSON HAS
23 ENGAGED OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE THAT CONSTITUTES A
24 VIOLATION OF THIS SUBTITLE OR A VIOLATION OF A REGULATION ADOPTED OR
25 ORDER PASSED UNDER THIS SUBTITLE, THE COMMISSIONER MAY, WITHOUT A
26 PRIOR HEARING, PASS A SUMMARY ORDER DIRECTING THE PERSON TO CEASE AND
27 DESIST FROM ENGAGING IN THE ACTIVITY THAT CONSTITUTES A VIOLATION.

28 (2) THE SUMMARY ORDER SHALL PROVIDE:

29 (I) NOTICE OF THE OPPORTUNITY FOR A HEARING BEFORE THE
30 COMMISSIONER TO DETERMINE WHETHER THE CEASE AND DESIST ORDER SHOULD
31 BE VACATED, MODIFIED, OR ENTERED AS FINAL; AND

32 (II) NOTICE THAT THE COMMISSIONER SHALL ENTER THE ORDER
33 AS FINAL IF THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER FAILS TO
34 REQUEST A HEARING WITHIN 15 DAYS AFTER THE RECEIPT OF THE CEASE AND
35 DESIST ORDER.

36 (3) ~~UNLESS THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER~~
37 ~~WAIVES THE RIGHT TO A HEARING,~~ WHENEVER THE COMMISSIONER DETERMINES
38 AFTER NOTICE AND A HEARING THAT A PERSON HAS ENGAGED IN ANY ACT OR

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1 PRACTICE CONSTITUTING A VIOLATION OF THIS SUBTITLE, THE COMMISSIONER
2 MAY IN THE DISCRETION OF THE COMMISSIONER AND IN ADDITION TO TAKING ANY
3 OTHER ACTION AUTHORIZED UNDER THIS SUBTITLE:

4 (I) PASS A FINAL CEASE AND DESIST ORDER AGAINST THE
5 PERSON;

6 (II) BAR THE PERSON FROM ENGAGING IN THE OFFER AND SALE
7 OF BUSINESS OPPORTUNITIES IN THE STATE; OR

8 (III) TAKE ANY COMBINATION OF THE ACTIONS SPECIFIED IN THIS
9 SECTION.

10 (B) (1) THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER MAY
11 WAIVE THE RIGHT TO A HEARING.

12 (2) IF A PERSON SUBJECT TO A CEASE AND DESIST ORDER WAIVES THE
13 RIGHT TO A HEARING, THE COMMISSIONER IS NOT REQUIRED TO HOLD A HEARING
14 TO TAKE ANY ACTION UNDER SUBSECTION (A)(3) OF THIS SECTION.

15 (C) (1) WHENEVER THE COMMISSIONER DETERMINES THAT ANY PERSON
16 HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING
17 A VIOLATION OF THIS SUBTITLE OR A VIOLATION OF A REGULATION OR ORDER
18 UNDER THIS SUBTITLE, THE COMMISSIONER MAY SUE IN THE CIRCUIT COURT TO
19 OBTAIN ONE OR MORE OF THE FOLLOWING REMEDIES:

20 (I) A TEMPORARY RESTRAINING ORDER;

21 (II) A TEMPORARY OR PERMANENT INJUNCTION;

22 (III) A DECLARATORY JUDGMENT;

23 (IV) THE APPOINTMENT OF A RECEIVER OR CONSERVATOR FOR
24 THE DEFENDANT OR THE DEFENDANT'S ASSETS;

25 (V) A FREEZE OF THE DEFENDANT'S ASSETS;

26 (VI) A CIVIL PENALTY UP TO A MAXIMUM AMOUNT OF \$5,000 FOR
27 ANY SINGLE VIOLATION OF THIS SUBTITLE;

28 (VII) RESTITUTION;

29 (VIII) RESCISSION; OR

30 (IX) ANY OTHER RELIEF AS THE COURT FINDS JUST.

31 (2) THE COMMISSIONER MAY NOT BE REQUIRED TO POST A BOND IN
32 ANY ACTION UNDER THIS SECTION.

33 14-111.

34 In connection with a hearing, investigation, or other proceeding under this subtitle,
35 the Commissioner may:

36 (1) administer oaths;

9

1 (2) receive evidence; and

2 (3) issue subpoenas for the attendance of witnesses to testify or to produce
3 evidence.

4 14-112.

5 (a) A person is not excused from attending, testifying, or producing evidence
6 before the Commissioner, in a proceeding brought by the Commissioner, or in obedience
7 to a subpoena of the Commissioner on the ground that the testimony or evidence may:

8 (1) tend to incriminate the person; or

9 (2) subject the person to a penalty or forfeiture.

10 (b) (1) If a person claims the privilege against self-incrimination as to a specific
11 subject, and is then compelled to testify or produce evidence on that subject, the person
12 may not be prosecuted or subjected to a penalty or forfeiture in connection with that
13 subject.

14 (2) A person who testifies is not exempt from prosecution and punishment
15 for perjury or contempt committed while testifying.

16 [14-113.

17 Before a seller places an advertisement or makes any other representation about a
18 business opportunity to a prospective buyer in the State, the seller shall:

19 (1) file with the Commissioner:

20 (i) a copy of the disclosure statement required by this subtitle or the
21 documents that the Federal Trade Commission requires for sales of business
22 opportunities; and

23 (ii) if required under § 14-115 of this subtitle, the bond or a copy of
24 the formal notification from the depository of the establishment of the trust account; and

25 (2) pay a fee of \$250.]

26 14-113.

27 A PERSON MAY NOT SELL OR OFFER TO SELL ANY BUSINESS OPPORTUNITY IN
28 THE STATE OR TO ANY PROSPECTIVE BUYER IN THE STATE UNLESS THE BUSINESS
29 OPPORTUNITY IS REGISTERED UNDER THIS SUBTITLE.

30 14-113.1.

31 (A) IN ORDER TO REGISTER A BUSINESS OPPORTUNITY, THE SELLER SHALL
32 FILE WITH THE COMMISSIONER ONE OF THE FOLLOWING DISCLOSURE DOCUMENTS:

33 (1) A UNIFORM FRANCHISE OFFERING CIRCULAR PREPARED IN
34 ACCORDANCE WITH THE GUIDELINES ADOPTED BY THE NORTH AMERICAN
35 SECURITIES ADMINISTRATORS ASSOCIATION, INC., AS AMENDED THROUGH
36 JANUARY 1, 1996;

10

1 (2) A DISCLOSURE DOCUMENT PREPARED IN ACCORDANCE WITH THE
2 FEDERAL TRADE COMMISSION RULE ENTITLED "DISCLOSURE REQUIREMENTS AND
3 PROHIBITIONS CONCERNING FRANCHISING AND BUSINESS OPPORTUNITY
4 VENTURES" UNDER 16 C.F.R. § 436 (1979);

5 (3) A DISCLOSURE DOCUMENT PREPARED IN ACCORDANCE WITH §
6 ~~14-114(B)~~ § 14-114 OF THIS SUBTITLE; OR

7 (4) ANY OTHER DOCUMENT THAT THE COMMISSIONER SPECIFIES BY
8 REGULATION OR ORDER.

9 (B) THE SELLER SHALL ATTACH TO THE DISCLOSURE DOCUMENT FILED IN
10 ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION:

11 (1) THE COVER SHEET REQUIRED UNDER § 14-114(B) OF THIS SUBTITLE;

12 (2) THE CONSENT TO SERVICE OF PROCESS REQUIRED UNDER
13 SUBSECTION (C) OF THIS SECTION; AND

14 (3) THE FILING FEE REQUIRED UNDER SUBSECTION (D) OF THIS
15 SECTION.

16 (C) (1) EVERY SELLER SHALL FILE, IN A FORM THAT THE COMMISSIONER
17 REQUIRES, AN IRREVOCABLE CONSENT APPOINTING THE COMMISSIONER AS THE
18 SELLER'S REGISTERED AGENT IN ANY NONCRIMINAL SUIT, ACTION, OR
19 PROCEEDING AGAINST THE SELLER OR THE SUCCESSOR OR PERSONAL
20 REPRESENTATIVE OF THE SELLER THAT ARISES UNDER THIS SUBTITLE.

21 (2) AFTER THE CONSENT HAS BEEN FILED, THE CONSENT HAS THE
22 SAME FORCE AND VALIDITY AS IF SERVED PERSONALLY ON THE PERSON FILING
23 THE CONSENT.

24 (3) SERVICE MAY BE MADE BY DELIVERING A COPY OF THE PROCESS
25 TO THE OFFICE OF THE COMMISSIONER.

26 (4) SERVICE MADE UNDER PARAGRAPH (3) OF THIS SUBSECTION IS NOT
27 EFFECTIVE UNLESS:

28 (I) THE PLAINTIFF OR PETITIONER, WHO MAY BE THE
29 COMMISSIONER, PROMPTLY SENDS NOTICE OF THE SERVICE AND A COPY OF THE
30 PROCESS BY REGISTERED OR CERTIFIED MAIL TO THE DEFENDANT OR
31 RESPONDENT, AT THE ADDRESS ON FILE WITH THE COMMISSIONER; AND

32 (II) THE PLAINTIFF'S AFFIDAVIT OF COMPLIANCE UNDER THIS
33 SUBSECTION IS FILED IN THE NONCRIMINAL SUIT, ACTION, OR PROCEEDING ON OR
34 BEFORE THE RETURN DATE OF THE PROCESS, IF ANY, OR WITHIN FURTHER TIME AS
35 THE COURT ALLOWS.

36 (D) THE INITIAL FEE TO FILE AN APPLICATION TO REGISTER A BUSINESS
37 OPPORTUNITY OFFERING IS \$250.

38 (E) (1) A BUSINESS OPPORTUNITY OFFERING REGISTRATION BECOMES
39 EFFECTIVE AT MIDNIGHT ON THE 10TH BUSINESS DAY AFTER THE DAY ON WHICH

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1 THE SELLER FILES ALL REQUIRED DOCUMENTS FOR REGISTRATION, PROVIDED
2 THAT NO ORDER HAS BEEN PASSED OR PROCEEDING IS PENDING UNDER § 14-119.1
3 OF THIS SUBTITLE.

4 (2) BY ORDER, THE COMMISSIONER:

5 (I) MAY WAIVE OR REDUCE THE TIME PERIOD BETWEEN THE
6 DATE OF THE FILING AND THE DATE THAT THE REGISTRATION IS EFFECTIVE IF THE
7 SELLER HAS FILED ALL REQUIRED DOCUMENTS FOR REGISTRATION; OR

8 (II) MAY POSTPONE THE DATE THAT THE REGISTRATION
9 BECOMES EFFECTIVE AT MIDNIGHT ON THE 10TH BUSINESS DAY AFTER THE DAY ON
10 WHICH THE SELLER FILES AN AMENDMENT TO THE REGISTRATION.

11 (F) THE REGISTRATION IS EFFECTIVE FOR 1 YEAR FROM THE DATE OF
12 EFFECTIVENESS.

13 (G) ~~(1) THE REGISTRATION MAY BE RENEWED ANNUALLY UPON THE~~
14 ~~FILING OF A CURRENT DISCLOSURE DOCUMENT ALONG WITH ANY OTHER~~
15 ~~DOCUMENTS OR INFORMATION THAT THE COMMISSIONER MAY REQUIRE BY~~
16 ~~ORDER OR REGULATION.~~

17 ~~(2) IF NOT RENEWED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS~~
18 ~~SUBSECTION, A REGISTRATION EXPIRES 1 YEAR AFTER THE DAY ON WHICH IT~~
19 ~~BECOMES EFFECTIVE.~~

20 ~~(H)~~ THE COMMISSIONER MAY BY REGULATION REQUIRE THE FILING OF ALL
21 PROPOSED LITERATURE OR ADVERTISING PRIOR TO ITS USE.

22 ~~(H)~~ (H) THE COMMISSIONER MAY BY REGULATION REQUIRE THE FILING OF
23 SALES REPORTS.

24 14-114.

25 (a) [A disclosure statement shall be prepared in the form that the Commissioner
26 requires.] A PERSON MAY NOT SELL OR OFFER TO SELL A BUSINESS OPPORTUNITY
27 UNLESS A WRITTEN DISCLOSURE DOCUMENT, FILED UNDER § 14-113.1(A) OF THIS
28 SUBTITLE, IS DELIVERED TO THE BUYER AT LEAST 10 FULL BUSINESS DAYS BEFORE
29 THE BUYER EXECUTES A CONTRACT OR AN AGREEMENT THAT IMPOSES A BINDING
30 LEGAL OBLIGATION ON THE BUYER OR THE PAYMENT BY A BUYER OF ANY
31 CONSIDERATION IN CONNECTION WITH THE SALE OR OFFER TO SELL A BUSINESS
32 OPPORTUNITY.

33 (b) The disclosure statement shall include a cover sheet that contains only:

34 (1) a heading, in boldface capital letters in 10-point or larger type, that
35 states "disclosure required by Maryland law";

36 (2) under the heading, in 10-point or larger type, the following statement:
37 "The State of Maryland has not reviewed and does not approve, recommend, endorse, or
38 sponsor any business opportunity. The information in this disclosure statement has not
39 been verified by the State. If you have any questions about this investment, see an
40 attorney before you sign a contract or contact the Division of Securities in the Office of

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1 the Attorney General. YOU ARE TO BE GIVEN 10 BUSINESS DAYS TO REVIEW THIS
2 DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY
3 PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE."; and

4 (3) the current address and telephone number of the Division of Securities.

5 (c) After the cover sheet, the disclosure statement shall include the following
6 information:

7 (1) the name and address of the seller;

8 (2) whether the seller is doing business as an individual, partnership, or
9 corporation;

10 (3) the names under which the seller has done, is doing, or intends to do
11 business;

12 (4) the name of any parent or affiliated company that will engage in business
13 transactions with buyers or that takes responsibility for statements of the seller;

14 (5) the name, address, and title of each of the seller's officers, directors,
15 trustees, general partners, general managers, principal executives, and others responsible
16 for the seller's activities that relate to the sale of business opportunities;

17 (6) [the length of time the seller has sold business opportunities] THE
18 NAMES AND RESIDENTIAL ADDRESSES OF THE SALESPERSONS WHO ENGAGE IN THE
19 SALE OR OFFER TO SELL A BUSINESS OPPORTUNITY IN THE STATE;

20 (7) [the length of time the seller has sold business opportunities that
21 involve the products, equipment, supplies, or services that the seller currently is offering
22 to the buyer;] PRIOR BUSINESS EXPERIENCE OF THE SELLER RELATING TO BUSINESS
23 OPPORTUNITIES, INCLUDING:

24 (I) THE NAME, ADDRESS, AND A DESCRIPTION OF ANY BUSINESS
25 OPPORTUNITY PREVIOUSLY OFFERED BY THE SELLER;

26 (II) THE LENGTH OF TIME THE SELLER HAS OFFERED EACH
27 BUSINESS OPPORTUNITY; AND

28 (III) THE LENGTH OF TIME THE SELLER HAS CONDUCTED THE
29 BUSINESS OPPORTUNITY CURRENTLY BEING OFFERED TO THE BUYER;

30 (8) A full and detailed description of the acts and services that the seller
31 agrees to perform for the buyer;

32 (9) [a copy of a financial statement of the seller that is not more than 13
33 months old and is updated to reflect any material changes in the seller's financial
34 condition;

35 (10)] (i) whether the seller OR ANY PERSON DESCRIBED IN PARAGRAPH
36 (5) OF THIS SUBSECTION has been convicted of a felony, has pleaded nolo contendere to
37 a felony charge, or has been adjudged liable in a civil action, if the felony or civil action
38 involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;
39 and

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1 (ii) if so, the court, date of the conviction or the judgment, and any
2 penalty imposed or damages assessed;

3 [(11)] (10) (i) whether the seller OR ANY PERSON DESCRIBED IN
4 PARAGRAPH (5) OF THIS SUBSECTION is subject to:

5 1. a currently effective order of the Federal Trade Commission;
6 or

7 2. a currently effective order that enjoins or restricts business
8 activity as a result of an action brought by a public agency, including an action that affects
9 a license as a real estate broker, associate real estate broker, or real estate salesperson;
10 and

11 (ii) if so, the date, nature, and issuer of the order and any penalty
12 imposed;

13 (11) WHETHER THE SELLER OR ANY PERSON IDENTIFIED IN PARAGRAPH
14 (5) OF THIS SUBSECTION HAS FILED FOR BANKRUPTCY, BEEN ADJUDGED BANKRUPT,
15 BEEN REORGANIZED DUE TO INSOLVENCY, OR WAS AN OWNER, PRINCIPAL
16 OFFICER, OR GENERAL PARTNER OF ANY OTHER PERSON THAT HAS FILED
17 BANKRUPTCY, BEEN ADJUDGED BANKRUPT, OR WAS REORGANIZED DUE TO
18 INSOLVENCY DURING OR WITHIN THE LAST 7 YEARS;

19 (12) a copy of the form of agreement proposed;

20 (13) the conditions of any financing arrangement offered directly or
21 indirectly by the seller or an agent or affiliate of the seller;

22 (14) whether the buyer receives an exclusive territory;

23 (15) a complete description of any training that the seller promises, including
24 the length of the training;

25 (16) a complete description of:

26 (i) any services that the seller promises will be performed in
27 connection with the placement of the buyer's products, equipment, or supplies at various
28 locations; and

29 (ii) the kind of agreement to be made with the owner or manager of
30 each location;

31 (17) A COMPLETE DESCRIPTION OF ANY LICENSES OR PERMITS THAT
32 ARE NECESSARY IN ORDER FOR THE BUYER TO OPERATE OR ENGAGE IN THE
33 BUSINESS OPPORTUNITY;

34 (18) if the seller gets a surety bond under § 14-115 of this subtitle, the
35 following statement, or a similar statement required by the Commissioner: "As required
36 by Maryland law, the seller has secured a bond issued by _____ (name and address of surety
37 company), a surety company authorized to do business in the State. Before signing a
38 contract to buy this business opportunity, you should ask the surety company about the
39 current status of the bond.";

14

1 [(18)] (19) if the seller establishes a trust account under §14-115 of this
2 subtitle, the following statement, or a similar statement required by the Commissioner:
3 "As required by Maryland law, the seller has established a trust account _____ (account
4 number) with _____ (name and address of bank or savings institution). Before signing a
5 contract to buy this business opportunity, you should ask the bank or savings institution
6 about the current status of the trust account.";

7 [(19)] (20) the following statement: "If the seller fails to deliver the
8 products, equipment, or supplies necessary to begin substantial operation of the business
9 within 45 days after the delivery date stated in your contract, you may notify the seller in
10 writing and demand that the contract be canceled."; [and]

11 [(20)] (21) if the seller makes a statement about sales, earnings, or range of
12 sales or earnings that may be made through the business opportunity, a statement of:

13 (i) the total number of buyers who have bought from the seller, within
14 3 years before the date of the disclosure statement, business opportunities that involve
15 the products, equipment, supplies, or services being offered; and

16 (ii) to the seller's knowledge, the total number of those buyers who
17 have actually received earnings in the amount or range specified;

18 (22) A STATEMENT OF:

19 (I) THE TOTAL NUMBER OF BUSINESS OPPORTUNITIES THAT ARE
20 THE SAME OR SIMILAR IN NATURE TO THOSE THAT HAVE BEEN SOLD OR
21 ORGANIZED BY THE SELLER;

22 (II) THE NAMES AND ADDRESSES OF BUYERS WHO HAVE
23 REQUESTED A REFUND OR RESCISSION FROM THE SELLER WITHIN THE LAST 12
24 MONTHS AND THE NUMBER OF THOSE BUYERS WHO HAVE RECEIVED THE REFUND
25 OR RESCISSION; AND

26 (III) THE TOTAL NUMBER OF BUSINESS OPPORTUNITIES THAT THE
27 SELLER INTENDS TO SELL IN THE STATE WITHIN THE NEXT 12 MONTHS;

28 (23) A COPY OF THE MOST RECENT AUDITED FINANCIAL STATEMENT OF
29 THE SELLER, PREPARED WITHIN 13 MONTHS AFTER THE DATE OF THE FIRST OFFER
30 IN THE STATE, TOGETHER WITH A STATEMENT OF ANY MATERIAL CHANGES IN THE
31 FINANCIAL CONDITION OF THE SELLER FROM THE DATE OF THE MOST RECENT
32 AUDITED FINANCIAL STATEMENT;

33 (24) A LIST OF STATES IN WHICH THIS BUSINESS OPPORTUNITY IS
34 REGISTERED;

35 (25) A LIST OF STATES IN WHICH THE DISCLOSURE STATEMENT IS ON
36 FILE;

37 (26) A LIST OF STATES THAT HAVE DENIED, SUSPENDED, OR REVOKED
38 THE REGISTRATION OF THIS BUSINESS OPPORTUNITY;

39 (27) A SECTION ENTITLED "RISK FACTORS" CONTAINING A SERIES OF
40 CONCISE STATEMENTS SUMMARIZING THE PRINCIPAL FACTORS THAT MAKE THIS

15

1 BUSINESS OPPORTUNITY A HIGH RISK OR OF A SPECULATIVE NATURE, EACH
2 STATEMENT INCLUDING A CROSS-REFERENCE TO THE PAGE ON WHICH FURTHER
3 INFORMATION REGARDING THAT RISK FACTOR MAY BE FOUND IN THE
4 DISCLOSURE DOCUMENT; AND

5 (28) ANY OTHER INFORMATION THAT THE COMMISSIONER REQUIRES
6 BY REGULATION OR ORDER.

7 14-115.

8 (a) If a seller guarantees that a buyer will derive from a business opportunity
9 income that will exceed the price paid for the business opportunity or represents that the
10 seller will refund all or part of the price paid or repurchase the products, equipment, or
11 supplies sold or leased by the seller if the buyer is not satisfied with the business
12 opportunity, the seller shall:

13 (1) get a surety bond in favor of the State from a surety company authorized
14 to do business in the State; or

15 (2) establish a trust account in favor of the State with an insured bank or
16 savings institution in the State.

17 (b) The amount of the bond or trust account shall be at least \$50,000.

18 (c) (1) A person may bring an action against the bond or trust account to
19 recover damages resulting from:

20 (i) a violation of this subtitle; or

21 (ii) the seller's breach of the contract for the sale of a business
22 opportunity.

23 (2) The surety or trustee is liable only for actual damages up to the amount
24 of the bond or trust account.

25 14-116.

26 The seller shall:

27 (1) file with the Commissioner an amendment to the documents previously
28 submitted to the Commissioner whenever a material change in the required information
29 occurs; and

30 (2) pay a fee of \$50 for filing the amendment.

31 14-117.

32 ~~The seller shall:~~

33 ~~(1) file annually with the Commissioner a copy of its current disclosure~~
34 ~~statement and bond or copy of the trust account notification required under § [14-113]~~
35 ~~14-113.1 of this subtitle; and~~

36 ~~(2) pay an annual renewal fee of \$100.~~

16

1 (A) UNLESS THE REGISTRATION OF A BUSINESS OPPORTUNITY IS RENEWED
2 FOR A 1-YEAR TERM AS PROVIDED IN THIS SECTION, THE REGISTRATION EXPIRES
3 ON THE FIRST ANNIVERSARY OF ITS EFFECTIVE DATE.

4 (B) BEFORE THE REGISTRATION EXPIRES, THE REGISTRANT PERIODICALLY
5 MAY RENEW IT FOR AN ADDITIONAL 1-YEAR TERM, IF THE REGISTRANT:

6 (1) FILES WITH THE COMMISSIONER:

7 (I) A RENEWAL APPLICATION ON THE FORM THAT THE
8 COMMISSIONER PROVIDES;

9 (II) A CURRENT DISCLOSURE DOCUMENT ALONG WITH ANY
10 OTHER DOCUMENTS OR INFORMATION THAT THE COMMISSIONER MAY REQUIRE
11 BY ORDER OR REGULATION; AND

12 (III) PROOF THAT THE SELLER HAS SATISFIED THE BOND AND
13 TRUST ACCOUNT REQUIREMENTS UNDER § 14-115 OF THIS SUBTITLE; AND

14 (2) PAYS A RENEWAL FEE OF \$100.

15 (C) THE COMMISSIONER SHALL RENEW THE REGISTRATION OF A BUSINESS
16 OPPORTUNITY IF THE REGISTRANT COMPLIES WITH THE REQUIREMENTS OF THIS
17 SECTION.

18 ~~14-118.~~

19 ~~The seller shall give a prospective buyer a copy of the disclosure [statement]~~
20 ~~DOCUMENT required by this subtitle[, or the documents that the Federal Trade~~
21 ~~Commission requires for sales of business opportunities,] at the earlier of:~~

22 ~~(1) the first personal meeting of the buyer and seller to discuss the possible~~
23 ~~sale of a business opportunity; or~~

24 ~~(2) 10 business days before the buyer signs a contract for the sale of a~~
25 ~~business opportunity or pays any consideration to the seller.~~

26 ~~14-119. 14-118.~~

27 (a) Each contract for the sale of a business opportunity shall be in writing.

28 (b) The contract shall include:

29 (1) the terms and conditions of payment;

30 (2) a full and detailed description of the acts or services that the seller
31 agrees to perform for the buyer;

32 (3) the address of the seller's principal office;

33 (4) the name and address of the seller's resident agent; and

34 (5) the approximate date that the seller will deliver to the buyer any
35 products, equipment, or supplies.

17

1 (c) When a buyer signs a contract for the sale of a business opportunity, the seller
2 shall give the buyer a copy of the contract.

3 ~~14-119.1.~~ 14-119.

4 (A) THE COMMISSIONER MAY PASS AN ORDER DENYING EFFECTIVENESS TO,
5 OR SUSPENDING OR REVOKING THE EFFECTIVENESS OF, ANY REGISTRATION IF THE
6 COMMISSIONER FINDS THAT THE ORDER IS IN THE PUBLIC INTEREST AND THAT:

7 (1) (I) THE REGISTRATION AS OF ITS EFFECTIVE DATE, OR AS OF ANY
8 EARLIER DATE IN THE CASE OF AN ORDER DENYING EFFECTIVENESS, IS
9 INCOMPLETE IN ANY MATERIAL RESPECT OR CONTAINS ANY STATEMENT MADE
10 THAT WAS, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH IT WAS MADE, FALSE
11 OR MISLEADING WITH RESPECT TO ANY MATERIAL FACT;

12 (II) AN AMENDMENT AS OF ITS EFFECTIVE DATE IS INCOMPLETE
13 IN ANY MATERIAL RESPECT OR CONTAINS ANY STATEMENT MADE THAT WAS, IN
14 LIGHT OF THE CIRCUMSTANCES UNDER WHICH IT WAS MADE, FALSE OR
15 MISLEADING WITH RESPECT TO ANY MATERIAL FACT; OR

16 (III) A REPORT IS INCOMPLETE IN ANY MATERIAL RESPECT OR
17 CONTAINS ANY STATEMENT MADE THAT WAS, IN LIGHT OF THE CIRCUMSTANCES
18 UNDER WHICH IT WAS MADE, FALSE OR MISLEADING WITH RESPECT TO ANY
19 MATERIAL FACT;

20 (2) ANY PROVISION OF THIS SUBTITLE OR ANY ORDER OR CONDITION
21 LAWFULLY IMPOSED UNDER THIS SUBTITLE HAS BEEN VIOLATED, IN CONNECTION
22 WITH THE BUSINESS OPPORTUNITY BY:

23 (I) THE PERSON FILING THE REGISTRATION;

24 (II) A SELLER, ANY PARTNER, OFFICER, OR DIRECTOR OF THE
25 SELLER, OR ANY PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR
26 FUNCTIONS AS THE SELLER; OR

27 (III) A PERSON THAT DIRECTLY OR INDIRECTLY CONTROLS OR IS
28 CONTROLLED BY THE SELLER IF THE PERSON FILING THE REGISTRATION IS
29 DIRECTLY OR INDIRECTLY CONTROLLED BY OR ACTING FOR THE SELLER;

30 (3) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE
31 BUSINESS OPPORTUNITY REGISTERED OR SOUGHT TO BE REGISTERED IS THE
32 SUBJECT OF AN ORDER DENYING, SUSPENDING, OR REVOKING A REGISTRATION OR
33 A PERMANENT OR TEMPORARY INJUNCTION OF ANY COURT OF COMPETENT
34 JURISDICTION;

35 (4) THE SELLER'S ENTERPRISE OR METHOD OF BUSINESS, OR THAT OF
36 THE BUSINESS OPPORTUNITY, INCLUDES OR WOULD INCLUDE ACTIVITIES THAT
37 ARE ILLEGAL WHERE PERFORMED;

38 (5) THE BUSINESS OPPORTUNITY OR THE OFFERING OF A BUSINESS
39 OPPORTUNITY HAS WORKED OR TENDED TO WORK A FRAUD UPON PURCHASERS
40 OR WOULD SO OPERATE;

18

1 (6) THERE HAS BEEN A FAILURE TO FILE ANY DOCUMENTS OR
2 INFORMATION REQUIRED BY § 14-113.1; OR

3 (7) THE SELLER'S LITERATURE OR ADVERTISING IS MISLEADING,
4 INCORRECT, INCOMPLETE, OR DECEPTIVE.

5 (B) (1) THE COMMISSIONER MAY ENTER A DENIAL ORDER IF THE
6 COMMISSIONER FINDS THAT THE ORDER IS IN THE PUBLIC INTEREST AND THE
7 SELLER HAS FAILED TO PAY THE PROPER REGISTRATION FEE.

8 (2) THE COMMISSIONER SHALL VACATE ANY SUCH ORDER WHEN THE
9 DEFICIENCY HAS BEEN CORRECTED.

10 (C) THE COMMISSIONER MAY NOT:

11 (1) INSTITUTE A PROCEEDING AGAINST AN EFFECTIVE REGISTRATION
12 UNDER SUBSECTION (A)(3) OF THIS SECTION MORE THAN 1 YEAR AFTER THE DATE
13 OF THE ORDER OR INJUNCTION RELIED ON; OR

14 (2) PASS AN ORDER UNDER SUBSECTION (A)(3) OF THIS SECTION ON
15 THE BASIS OF AN ORDER OR INJUNCTION ENTERED UNDER ANY OTHER STATE ACT
16 UNLESS THAT ORDER OR INJUNCTION WAS BASED ON FACTS WHICH WOULD
17 CURRENTLY CONSTITUTE GROUNDS FOR AN ORDER UNDER THIS SECTION.

18 (D) BY ORDER, THE COMMISSIONER SUMMARILY MAY POSTPONE OR
19 SUSPEND THE EFFECTIVENESS OF THE REGISTRATION PENDING FINAL
20 DETERMINATION OF ANY PROCEEDING UNDER THIS SECTION.

21 (E) UPON THE ENTRY OF THE ORDER, THE COMMISSIONER SHALL PROMPTLY
22 NOTIFY THE SELLER:

23 (1) THAT THE ORDER HAS BEEN ENTERED;

24 (2) THE BASIS FOR THE ORDER; AND

25 (3) THAT WITHIN 15 DAYS AFTER THE DAY ON WHICH THE
26 COMMISSIONER RECEIVES A WRITTEN REQUEST BY THE SELLER, THE MATTER WILL
27 BE SET DOWN FOR A HEARING.

28 (F) IF THE SELLER FAILS TO REQUEST A HEARING AND THE COMMISSIONER
29 FAILS TO ORDER A HEARING, THE ORDER SHALL REMAIN IN EFFECT UNTIL THE
30 COMMISSIONER MODIFIES OR VACATES THE ORDER.

31 (G) IF THE SELLER REQUESTS A HEARING OR THE COMMISSIONER ORDERS A
32 HEARING, THE COMMISSIONER, AFTER PROVIDING NOTICE OF AN OPPORTUNITY
33 FOR HEARING TO THE SELLER, MAY MODIFY OR VACATE THE ORDER OR EXTEND IT
34 UNTIL FINAL DETERMINATION.

35 (H) THE COMMISSIONER MAY NOT ENTER AN ORDER DESCRIBED UNDER
36 SUBSECTION (B) OF THIS SECTION WITHOUT FIRST PROVIDING TO THE SELLER
37 NOTICE IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, AN OPPORTUNITY
38 FOR HEARING, AND WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

19

1 (I) IF THE COMMISSIONER FINDS THAT THE CONDITIONS WHICH PROMPTED
2 ITS ENTRY HAVE CHANGED OR THAT IT IS OTHERWISE IN THE PUBLIC INTEREST,
3 THE COMMISSIONER MAY VACATE OR MODIFY AN ORDER PASSED UNDER THIS
4 SECTION.

5 14-120.

6 In connection with an offer to sell or sale of a business opportunity, a person may
7 not make any untrue statement of a material fact or omit to state a material fact necessary
8 in order to make the statement made, in light of the circumstances under which it is
9 made, not misleading.

10 14-121.

11 In connection with an offer to sell or sale of a business opportunity, a person may
12 not engage in any act, practice, or course of business or employ any device, scheme, or
13 artifice to defraud that operates or would operate as a fraud or deceit on another person.

14 14-122.

15 In connection with an offer to sell or sale of a business opportunity, a person may
16 not represent that the business opportunity provides income or earning potential of any
17 kind unless:

18 (1) the seller has documentation to substantiate the representation; and

19 (2) the person discloses the documentation to the prospective buyer when
20 the representation is made.

21 14-123.

22 In connection with an offer to sell or sale of a business opportunity, a person may
23 not use the trademark, service mark, trade name, logotype, advertising, or other
24 commercial symbol of a business unless:

25 (1) the business controls the ownership interest in the seller;

26 (2) the business accepts responsibility for each representation that the seller
27 makes about the business opportunity; or

28 (3) it is clear from the circumstances that the owner of the commercial
29 symbol is not involved in the sale of the business opportunity.

30 14-124.

31 In connection with an offer to sell or sale of a business opportunity, a person may
32 not make or authorize making a reference to compliance with this subtitle in an
33 advertisement or other contact with prospective buyers other than by use of the disclosure
34 statement or other disclosure documents required by this subtitle.

35 14-125.

36 (a) In connection with an offer to sell or sale of a business opportunity, a person
37 may not fail to deliver products, equipment, or supplies necessary to begin substantial

20

1 operation of the business within 45 days after the delivery date stated in the contract for
2 the sale of the business opportunity.

3 (b) This section does not apply if the Commissioner or a court in a civil
4 proceeding finds that the failure is due to the conditions stated in § 2-615 of the
5 Commercial Law Article.

6 14-126.

7 (a) (1) If a seller violates a provision of §§ 14-120 through 14-125 of this
8 subtitle, the buyer, within 1 year after the date of a contract for the sale of a business
9 opportunity:

10 (i) may void the contract; and

11 (ii) is entitled to receive from the seller a refund of any money paid to
12 the seller.

13 (2) On receipt of the refund, the buyer shall make available to the seller any
14 products, equipment, or supplies received from the seller at:

15 (i) the buyer's address; or

16 (ii) the place where the products, equipment, or supplies were located
17 when notice to void the contract was given.

18 (3) However, the buyer may not be unjustly enriched by exercising a remedy
19 under this subsection.

20 (b) A buyer may sue for damages, including reasonable attorney's fees, if the
21 buyer is injured by:

22 (1) a violation of this subtitle; or

23 (2) the seller's breach of a contract for the sale of a business opportunity.

24 (c) On complaint that a seller has violated this subtitle, the circuit court may
25 enjoin the seller from further violation.

26 (d) The remedies in this section are in addition to any other remedy provided by
27 law or in equity.

28 14-127.

29 (a) A person who sells a business opportunity may not, in a disclosure statement
30 or amendment to it, willfully make a false or misleading statement of a material fact or
31 willfully omit to state a material fact required or necessary to make the statements in a
32 disclosure statement not misleading.

33 (b) A person who violates this section is guilty of a felony and, on conviction, is
34 subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding
35 5 years or both.

21

1 14-128.

2 A person who violates this subtitle is guilty of a misdemeanor and, unless another
3 criminal penalty is specifically provided elsewhere, on conviction, is subject to a fine not
4 exceeding \$1,000 or imprisonment not exceeding 1 year or both.

5 14-129.

6 This subtitle is the Maryland Business Opportunity Sales Act.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1996.