
By: Senator Bromwell

Introduced and read first time: January 31, 1996

Assigned to: Finance

A BILL ENTITLED

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; providing procedures for the renewal of registrations; authorizing the
12 Maryland Securities Commissioner to require the filing of certain documents
13 associated with the sale of business opportunities; authorizing the Maryland
14 Securities Commissioner under certain circumstances to pass certain orders to
15 suspend or revoke the effectiveness of certain registrations, amendments to
16 registrations, or required reports; allowing a prospective buyer a certain amount of
17 time to review a certain disclosure document before signing a certain contract or
18 agreement; expanding the types of information that a seller must include in a
19 certain disclosure document; defining a certain term; and generally relating to the
20 Maryland Business Opportunities Sales Act.

21 BY repealing and reenacting, with amendments,
22 Article - Business Regulation
23 Section 14-101, 14-103, 14-104, 14-114, 14-117, and 14-118
24 Annotated Code of Maryland
25 (1992 Volume and 1995 Supplement)

26 BY repealing and reenacting, without amendments,
27 Article - Business Regulation
28 Section 14-102, 14-105 through 14-109, 14-111, 14-112, 14-115, 14-116, 14-119,
29 and 14-120 through 14-129
30 Annotated Code of Maryland
31 (1992 Volume and 1995 Supplement)

32 BY repealing

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1 Article - Business Regulation
2 Section 14-110 and 14-113
3 Annotated Code of Maryland
4 (1992 Volume and 1995 Supplement)

5 BY adding to

6 Article - Business Regulation
7 Section 14-110, 14-113, 14-113.1, and 14-119.1
8 Annotated Code of Maryland
9 (1992 Volume and 1995 Supplement)

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

12 **Article - Business Regulation**

13 14-101.

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

15 (b) "Business opportunity" means an arrangement between a buyer and seller in
16 which the seller[:

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

19 (2) represents that the seller:

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

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

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

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

32 (v) guarantees that the buyer will get from the business income that
33 will exceed the price paid for the business.] OR A PERSON RECOMMENDED OR
34 REFERRED BY THE SELLER PROVIDES TO THE BUYER PRODUCTS, EQUIPMENT,
35 SUPPLIES, OR SERVICES THAT ENABLE THE BUYER TO START A BUSINESS, AND THE
36 SELLER REPRESENTS, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, THAT:

37 1. THE SELLER OR A PERSON RECOMMENDED OR
38 REFERRED BY THE SELLER WILL HELP THE BUYER IN FINDING LOCATIONS FOR THE

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

3 14-103.

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

5 (1) [the buyer must:

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

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

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

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

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

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

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

15 (i) originates from the State; or

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

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

18 2. a post office in the State.

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

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

24 1. is not published in the State; or

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

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

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

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

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

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

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

5 (ii) the acceptance is received at:

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

7 2. a post office in the State.

8 14-104.

9 (A) This subtitle does not apply to:

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

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

14 (3) an offer to sell or sale of a franchise registered under Subtitle 2 of this
15 title;

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

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

25 (6) AN OFFER TO SELL OR THE SALE OF A BUSINESS OPPORTUNITY FOR
26 WHICH THE BUYER IS REQUIRED TO PAY THE SELLER OR A PERSON
27 RECOMMENDED OR REFERRED BY THE SELLER LESS THAN \$200 FROM ANY TIME
28 BEFORE COMMENCING OPERATIONS TO 6 MONTHS AFTER COMMENCING
29 OPERATION OF THE BUSINESS OPPORTUNITY; OR

30 [(6)] (7) any other sale or transaction if the Commissioner:

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

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

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

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

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

5 14-105.

6 The Commissioner may delegate any power or duty of the Commissioner under this
7 subtitle.

8 14-106.

9 To enforce this subtitle, the Commissioner may pass orders and adopt regulations
10 and forms.

11 14-107.

12 The Commissioner may:

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

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

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

19 14-108.

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

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

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

23 (3) enforce this subtitle.

24 14-109.

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

27 (b) Unless otherwise provided in this subtitle or in regulations adopted under it,
28 the Commissioner shall hold hearings authorized by this subtitle in accordance with Title
29 10 of the State Government Article.

30 [14-110.

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

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

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

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

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

3 (i) issue a permanent or preliminary injunction or pass a restraining
4 order; and

5 (ii) appoint a receiver or conservator for the defendant or the
6 defendant's assets.

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

8 14-110.

9 (A) (1) WHENEVER THE COMMISSIONER DETERMINES THAT A PERSON HAS
10 ENGAGED OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE THAT CONSTITUTES A
11 VIOLATION OF THIS SUBTITLE OR A VIOLATION OF A REGULATION ADOPTED OR
12 ORDER PASSED UNDER THIS SUBTITLE, THE COMMISSIONER MAY, WITHOUT A
13 PRIOR HEARING, PASS A SUMMARY ORDER DIRECTING THE PERSON TO CEASE AND
14 DESIST FROM ENGAGING IN THE ACTIVITY THAT CONSTITUTES A VIOLATION.

15 (2) THE SUMMARY ORDER SHALL PROVIDE:

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

19 (II) NOTICE THAT THE COMMISSIONER SHALL ENTER THE ORDER
20 AS FINAL IF THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER FAILS TO
21 REQUEST A HEARING WITHIN 15 DAYS AFTER THE RECEIPT OF THE CEASE AND
22 DESIST ORDER.

23 (3) UNLESS THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER
24 WAIVES THE RIGHT TO A HEARING, WHENEVER THE COMMISSIONER DETERMINES
25 AFTER NOTICE AND A HEARING THAT A PERSON HAS ENGAGED IN ANY ACT OR
26 PRACTICE CONSTITUTING A VIOLATION OF THIS SUBTITLE, THE COMMISSIONER
27 MAY IN THE DISCRETION OF THE COMMISSIONER AND IN ADDITION TO TAKING ANY
28 OTHER ACTION AUTHORIZED UNDER THIS SUBTITLE:

29 (I) PASS A FINAL CEASE AND DESIST ORDER AGAINST THE
30 PERSON;

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

33 (III) TAKE ANY COMBINATION OF THE ACTIONS SPECIFIED IN THIS
34 SECTION.

35 (B) THE PERSON SUBJECT TO THE CEASE AND DESIST ORDER MAY WAIVE
36 THE RIGHT TO A HEARING.

37 (C) (1) WHENEVER THE COMMISSIONER DETERMINES THAT ANY PERSON
38 HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING
39 A VIOLATION OF THIS SUBTITLE OR A VIOLATION OF A REGULATION OR ORDER

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1 UNDER THIS SUBTITLE, THE COMMISSIONER MAY SUE IN THE CIRCUIT COURT TO
2 OBTAIN ONE OR MORE OF THE FOLLOWING REMEDIES:

3 (I) A TEMPORARY RESTRAINING ORDER;

4 (II) A TEMPORARY OR PERMANENT INJUNCTION;

5 (III) A DECLARATORY JUDGMENT;

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

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

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

11 (VII) RESTITUTION;

12 (VIII) RESCISSION; OR

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

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

16 14-111.

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

19 (1) administer oaths;

20 (2) receive evidence; and

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

23 14-112.

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

27 (1) tend to incriminate the person; or

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

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

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

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1 [14-113.

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

4 (1) file with the Commissioner:

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

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

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

11 14-113.

12 A PERSON MAY NOT SELL OR OFFER TO SELL ANY BUSINESS OPPORTUNITY IN
13 THE STATE OR TO ANY PROSPECTIVE BUYER IN THE STATE UNLESS THE BUSINESS
14 OPPORTUNITY IS REGISTERED UNDER THIS SUBTITLE.

15 14-113.1.

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

18 (1) A UNIFORM FRANCHISE OFFERING CIRCULAR PREPARED IN
19 ACCORDANCE WITH THE GUIDELINES ADOPTED BY THE NORTH AMERICAN
20 SECURITIES ADMINISTRATORS ASSOCIATION, INC., AS AMENDED THROUGH
21 JANUARY 1, 1996;

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

26 (3) A DISCLOSURE DOCUMENT PREPARED IN ACCORDANCE WITH §
27 14-114(B) OF THIS SUBTITLE; OR

28 (4) ANY OTHER DOCUMENT THAT THE COMMISSIONER SPECIFIES BY
29 REGULATION OR ORDER.

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

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

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

35 (3) THE FILING FEE REQUIRED UNDER SUBSECTION (D) OF THIS
36 SECTION.

10

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

6 (2) AFTER THE CONSENT HAS BEEN FILED, THE CONSENT HAS THE
7 SAME FORCE AND VALIDITY AS IF SERVED PERSONALLY ON THE PERSON FILING
8 THE CONSENT.

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

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

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

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

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

23 (E) (1) A BUSINESS OPPORTUNITY OFFERING REGISTRATION BECOMES
24 EFFECTIVE AT MIDNIGHT ON THE 10TH BUSINESS DAY AFTER THE DAY ON WHICH
25 THE SELLER FILES ALL REQUIRED DOCUMENTS FOR REGISTRATION, PROVIDED
26 THAT NO ORDER HAS BEEN PASSED OR PROCEEDING IS PENDING UNDER § 14-119.1
27 OF THIS SUBTITLE.

28 (2) BY ORDER, THE COMMISSIONER:

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

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

35 (F) THE REGISTRATION IS EFFECTIVE FOR 1 YEAR FROM THE DATE OF
36 EFFECTIVENESS.

37 (G) (1) THE REGISTRATION MAY BE RENEWED ANNUALLY UPON THE
38 FILING OF A CURRENT DISCLOSURE DOCUMENT ALONG WITH ANY OTHER
39 DOCUMENTS OR INFORMATION THAT THE COMMISSIONER MAY REQUIRE BY
40 ORDER OR REGULATION.

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

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

6 (I) THE COMMISSIONER MAY BY REGULATION REQUIRE THE FILING OF
7 SALES REPORTS.

8 14-114.

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

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

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

20 (2) under the heading, in 10-point or larger type, the following statement:
21 "The State of Maryland has not reviewed and does not approve, recommend, endorse, or
22 sponsor any business opportunity. The information in this disclosure statement has not
23 been verified by the State. If you have any questions about this investment, see an
24 attorney before you sign a contract or contact the Division of Securities in the Office of
25 the Attorney General. YOU ARE TO BE GIVEN 10 BUSINESS DAYS TO REVIEW THIS
26 DOCUMENT BEFORE SIGNING ANY CONTRACT OR AGREEMENT OR MAKING ANY
27 PAYMENT TO THE SELLER OR THE SELLER'S REPRESENTATIVE."; and

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

29 (c) After the cover sheet, the disclosure statement shall include the following
30 information:

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

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

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

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

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

12

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

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

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

10 (II) THE LENGTH OF TIME THE SELLER HAS OFFERED EACH
11 BUSINESS OPPORTUNITY; AND

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

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

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

19 (10)] (i) whether the seller OR ANY PERSON DESCRIBED IN PARAGRAPH
20 (5) OF THIS SUBSECTION has been convicted of a felony, has pleaded nolocontendere to
21 a felony charge, or has been adjudged liable in a civil action, if the felony or civil action
22 involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;
23 and

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

26 [(11)] (10) (i) whether the seller OR ANY PERSON DESCRIBED IN
27 PARAGRAPH (5) OF THIS SUBSECTION is subject to:

28 1. a currently effective order of the Federal Trade Commission;
29 or

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

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

36 (11) WHETHER THE SELLER OR ANY PERSON IDENTIFIED IN PARAGRAPH
37 (5) OF THIS SUBSECTION HAS FILED FOR BANKRUPTCY, BEEN ADJUDGED BANKRUPT,
38 BEEN REORGANIZED DUE TO INSOLVENCY, OR WAS AN OWNER, PRINCIPAL
39 OFFICER, OR GENERAL PARTNER OF ANY OTHER PERSON THAT HAS FILED

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1 BANKRUPTCY, BEEN ADJUDGED BANKRUPT, OR WAS REORGANIZED DUE TO
2 INSOLVENCY DURING OR WITHIN THE LAST 7 YEARS;

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

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

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

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

9 (16) a complete description of:

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

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

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

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

24 [(18)] (19) if the seller establishes a trust account under §14-115 of this
25 subtitle, the following statement, or a similar statement required by the Commissioner:
26 "As required by Maryland law, the seller has established a trust account _____ (account
27 number) with _____ (name and address of bank or savings institution). Before signing a
28 contract to buy this business opportunity, you should ask the bank or savings institution
29 about the current status of the trust account.";

30 [(19)] (20) the following statement: "If the seller fails to deliver the
31 products, equipment, or supplies necessary to begin substantial operation of the business
32 within 45 days after the delivery date stated in your contract, you may notify the seller in
33 writing and demand that the contract be canceled."; [and]

34 [(20)] (21) if the seller makes a statement about sales, earnings, or range of
35 sales or earnings that may be made through the business opportunity, a statement of:

36 (i) the total number of buyers who have bought from the seller, within
37 3 years before the date of the disclosure statement, business opportunities that involve
38 the products, equipment, supplies, or services being offered; and

14

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

3 (22) A STATEMENT OF:

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

7 (II) THE NAMES AND ADDRESSES OF BUYERS WHO HAVE
8 REQUESTED A REFUND OR RESCISSION FROM THE SELLER WITHIN THE LAST 12
9 MONTHS AND THE NUMBER OF THOSE BUYERS WHO HAVE RECEIVED THE REFUND
10 OR RESCISSION; AND

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

13 (23) A COPY OF THE MOST RECENT AUDITED FINANCIAL STATEMENT OF
14 THE SELLER, PREPARED WITHIN 13 MONTHS AFTER THE DATE OF THE FIRST OFFER
15 IN THE STATE, TOGETHER WITH A STATEMENT OF ANY MATERIAL CHANGES IN THE
16 FINANCIAL CONDITION OF THE SELLER FROM THE DATE OF THE MOST RECENT
17 AUDITED FINANCIAL STATEMENT;

18 (24) A LIST OF STATES IN WHICH THIS BUSINESS OPPORTUNITY IS
19 REGISTERED;

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

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

24 (27) A SECTION ENTITLED "RISK FACTORS" CONTAINING A SERIES OF
25 CONCISE STATEMENTS SUMMARIZING THE PRINCIPAL FACTORS THAT MAKE THIS
26 BUSINESS OPPORTUNITY A HIGH RISK OR OF A SPECULATIVE NATURE, EACH
27 STATEMENT INCLUDING A CROSS-REFERENCE TO THE PAGE ON WHICH FURTHER
28 INFORMATION REGARDING THAT RISK FACTOR MAY BE FOUND IN THE
29 DISCLOSURE DOCUMENT; AND

30 (28) ANY OTHER INFORMATION THAT THE COMMISSIONER REQUIRES
31 BY REGULATION OR ORDER.

32 14-115.

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

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

15

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

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

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

6 (i) a violation of this subtitle; or

7 (ii) the seller's breach of the contract for the sale of abusiness
8 opportunity.

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

11 14-116.

12 The seller shall:

13 (1) file with the Commissioner an amendment to the documents previously
14 submitted to the Commissioner whenever a material change in the required information
15 occurs; and

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

17 14-117.

18 The seller shall:

19 (1) file annually with the Commissioner a copy of its current disclosure
20 statement and bond or copy of the trust account notification required under § [14-113]
21 14-113.1 of this subtitle; and

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

23 14-118.

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

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

29 (2) 10 business days before the buyer signs a contract for the sale of a
30 business opportunity or pays any consideration to the seller.

31 14-119.

32 (a) Each contract for the sale of a business opportunity shall be inwriting.

33 (b) The contract shall include:

34 (1) the terms and conditions of payment;

16

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

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

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

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

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

9 14-119.1.

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

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

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

22 (III) A REPORT IS INCOMPLETE IN ANY MATERIAL RESPECT OR
23 CONTAINS ANY STATEMENT MADE THAT WAS, IN LIGHT OF THE CIRCUMSTANCES
24 UNDER WHICH IT WAS MADE, FALSE OR MISLEADING WITH RESPECT TO ANY
25 MATERIAL FACT;

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

29 (I) THE PERSON FILING THE REGISTRATION;

30 (II) A SELLER, ANY PARTNER, OFFICER, OR DIRECTOR OF THE
31 SELLER, OR ANY PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR
32 FUNCTIONS AS THE SELLER; OR

33 (III) A PERSON THAT DIRECTLY OR INDIRECTLY CONTROLS OR IS
34 CONTROLLED BY THE SELLER IF THE PERSON FILING THE REGISTRATION IS
35 DIRECTLY OR INDIRECTLY CONTROLLED BY OR ACTING FOR THE SELLER;

36 (3) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE
37 BUSINESS OPPORTUNITY REGISTERED OR SOUGHT TO BE REGISTERED IS THE
38 SUBJECT OF AN ORDER DENYING, SUSPENDING, OR REVOKING A REGISTRATION OR
39 A PERMANENT OR TEMPORARY INJUNCTION OF ANY COURT OF COMPETENT
40 JURISDICTION;

17

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

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

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

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

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

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

16 (C) THE COMMISSIONER MAY NOT:

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

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

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

27 (E) UPON THE ENTRY OF THE ORDER, THE COMMISSIONER SHALL PROMPTLY
28 NOTIFY THE SELLER:

29 (1) THAT THE ORDER HAS BEEN ENTERED;

30 (2) THE BASIS FOR THE ORDER; AND

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

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

37 (G) IF THE SELLER REQUESTS A HEARING OR THE COMMISSIONER ORDERS A
38 HEARING, THE COMMISSIONER, AFTER PROVIDING NOTICE OF AN OPPORTUNITY

18

1 FOR HEARING TO THE SELLER, MAY MODIFY OR VACATE THE ORDER OR EXTEND IT
2 UNTIL FINAL DETERMINATION.

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

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

11 14-120.

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

16 14-121.

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

20 14-122.

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

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

25 (2) the person discloses the documentation to the prospective buyer when
26 the representation is made.

27 14-123.

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

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

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

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

36 14-124.

37 In connection with an offer to sell or sale of a business opportunity, a person may
38 not make or authorize making a reference to compliance with this subtitle in an

19

1 advertisement or other contact with prospective buyers other than by use of the disclosure
2 statement or other disclosure documents required by this subtitle.

3 14-125.

4 (a) In connection with an offer to sell or sale of a business opportunity, a person
5 may not fail to deliver products, equipment, or supplies necessary to begin substantial
6 operation of the business within 45 days after the delivery date stated in the contract for
7 the sale of the business opportunity.

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

11 14-126.

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

15 (i) may void the contract; and

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

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

20 (i) the buyer's address; or

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

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

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

27 (1) a violation of this subtitle; or

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

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

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

33 14-127.

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

20

1 (b) A person who violates this section is guilty of a felony and, on conviction, is
2 subject for each violation to a fine not exceeding \$10,000 or imprisonment not exceeding
3 5 years or both.

4 14-128.

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

8 14-129.

9 This subtitle is the Maryland Business Opportunity Sales Act.

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