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**By: Delegates Harrison and Rawlings** Introduced and read first time: January 16, 1997 Assigned to: Economic Matters

# A BILL ENTITLED

#### 1 AN ACT concerning

#### 2 MSBDFA - Equity Participation Investment Program

3 FOR the purpose of increasing the maximum dollar amount of the Maryland Small

- 4 Business Development Financing Authority's participation in franchises through the
- 5 Equity Participation Investment Program; removing a certain annual cap for total
- 6 financing under the Equity Participation Investment Program; removing a certain
- 7 net worth requirement necessary to apply for certain financing from the Equity
- 8 Participation Investment Program; altering the percentage of business ownership by
- 9 certain persons required to qualify for the Equity Participation Investment
- 10 Program; and generally relating to the Maryland Small Business Development
- 11 Financing Authority.

12 BY repealing and reenacting, without amendments,

- 13 Article 83A Department of Business and Economic Development
- 14 Section 5-1025(b) and (c)
- 15 Annotated Code of Maryland
- 16 (1995 Replacement Volume and 1996 Supplement)

17 BY repealing and reenacting, with amendments,

- 18 Article 83A Department of Business and Economic Development
- 19 Section 5-1046
- 20 Annotated Code of Maryland
- 21 (1995 Replacement Volume and 1996 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

23 MARYLAND, That the Laws of Maryland read as follows:

## 24 Article 83A - Department of Business and Economic Development

## 25 5-1025.

- 26 (b) If the applicant is an individual, the applicant shall satisfy the Authority that:
- 27 (1) The applicant is of good moral character;
- 28 (2) As determined from creditors, employers, and other individuals who
- 29 have personal knowledge of the applicant, the applicant has a reputation for financial
- 30 responsibility;

1 (3) The applicant is a resident of Maryland or the applicant's principal place 2 of business is in Maryland; and 3 (4) The applicant is unable to obtain adequate business financing on 4 reasonable terms through normal lending channels because the applicant: 5 (i) Belongs to a group that historically has been deprived of access to 6 normal economic or financial resources because of race, color, creed, sex, religion, or 7 national origin; 8 (ii) Has an identifiable physical handicap that severely limits the 9 ability of the applicant to obtain financial assistance, but does not limit the ability of the 10 applicant to perform the contract or other activity for which the applicant would be 11 receiving financial assistance; or 12 (iii) Has any other social or economic impediment that is beyond the 13 personal control of the applicant, such as lack of formal education or financial capacity or 14 geographical or regional economic distress but that does not limit the ability of the 15 applicant to perform the contract or other activity for which the applicant would be 16 receiving financial assistance. 17 (c) If the applicant is other than a sole proprietorship, at least 70 percent of the 18 business enterprise shall be owned by individuals who meet the qualifications for 19 applicants under subsection (b) of this section. 20 5-1046. (a) Under the Program, the Authority may provide equity participation financing, 21 22 including the purchase of qualified securities issued by a franchise, by a technology-based 23 business, or by an enterprise acquiring an existing business, only after the enterprise has 24 submitted an application that contains a business plan, including: 25 (1) A description of the franchisor, technology-based business, or existing 26 business and its management, product, and market; 27 (2) A statement of the amount, immediacy of need, and projected use of the 28 capital required; 29 (3) A statement of the potential economic impact of the purchase; 30 (4) Information that relates to the satisfaction of the applicant's 31 requirements of [§ 5-1025] SUBSECTIONS (F) AND (G) of this [subtitle] SECTION; and 32 (5) Any other information the Authority requires. 33 (b) Under the Program, any equity participation financing shall satisfy the 34 following requirements: 35 (1) The Authority may not: 36 (i) 1. Own securities representing more than 45 percent of the 37 voting stock of any franchise or technology-based business; or

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| 1<br>2   | 2. Own an interest greater than 45 percent in any franchise or technology-based business; or  |  |
| 3<br>4   | (ii) 1. Own securities representing more than 25 percent of the voting stock of any enterprise acquiring an existing business; or   |  |
| 5<br>6   | 2. Own an interest greater than 25 percent in any enterprise acquiring an existing business.  |  |
| 7<br>8   | (2) The amount of the Authority's equity participation financing may not exceed:  |  |
| 9  | (i) 1. [\$100,000] \$500,000 for any franchise; or  |  |
| 10   | 2. 45 percent of the total initial investment in the franchise;   |  |
| 11   | (ii) 1. \$500,000 for any enterprise acquiring an existing business; or   |  |
| 12<br>13   | 2. 25 percent of the total investment in the enterprise acquiring an existing business; or  |  |
| 14   | (iii) \$500,000 for a technology-based business.  |  |
| 15 [(3) The total amount of equity participation financing disbursed may not<br>16 exceed \$3,000,000 for a calendar year.]  |   |  |
| <ul> <li>[(4)] (3) (i) The Authority shall find that there is a reasonable</li> <li>probability that the Authority will recover its initial investment and an adequate return on</li> <li>investment.</li> </ul> |   |  |
| 20   | (ii) The Authority's investment shall be recoverable within:  |  |
| 21   | 1.7 years of the equity participation financing in a franchise;   |  |
| 22<br>23   | 2. 7 years of the equity participation financing in an enterprise<br>acquiring an existing business; or   |  |
| 24<br>25   | 3. 10 years of the equity participation financing in a technology-based business.   |  |
|  | [(5)] (4) The Authority's recovery shall be the greater of the current value<br>of the percentage of the equity investment in the enterprise or the amount of the initial<br>investment in the enterprise.  |  |
|  | [(6)] (5) The value of the business entity at the time of recovery shall be<br>determined after obtaining at least 1 independent appraisal of the value from an<br>appraiser selected from a list of at least 3 appraisers supplied by the authority. |  |
| 32<br>33   | (c) The liability of the State and of the Authority in providing equity participation<br>financing is limited to its investments under the Program.   |  |
| 34   | (d) When applying to the Authority to acquire an existing business, an enterprise   |  |

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34 (d) When applying to the Authority to acquire an existing business, an enterprise35 [shall have the following minimum qualifications:

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(1) The enterprise or its principals shall have a minimum net worth of at 2 least \$75,000 pledged as security; and (2) The enterprise] or its principals shall have had 3 or more years of 4 successful experience with demonstrated achievements and management responsibilities. (e) When being acquired, the existing business shall meet the following minimum 6 qualifications: (1) The existing business shall have been in existence for at least 5 years; (2) The existing business shall have been profitable for at least 2 of the 9 previous 3 years; (3) The existing business shall have sufficient cash flow to service the debt 11 and ensure adequate return of the Authority's investment; (4) The existing business shall have the capacity for growth and job creation; (5) The existing business shall have its principal place of business in 14 Maryland; and (6) The existing business shall have a strong customer base. (F) IF THE APPLICANT ENTERPRISE IS AN INDIVIDUAL, THE APPLICANT 17 SHALL SATISFY THE AUTHORITY THAT: (1) THE APPLICANT IS OF GOOD MORAL CHARACTER; (2) AS DETERMINED FROM CREDITORS, EMPLOYERS, AND OTHER 20 INDIVIDUALS WHO HAVE PERSONAL KNOWLEDGE OF THE APPLICANT, THE 21 APPLICANT HAS A REPUTATION FOR FINANCIAL RESPONSIBILITY; (3) THE APPLICANT IS A RESIDENT OF MARYLAND OR THE APPLICANT'S 23 PRINCIPAL PLACE OF BUSINESS IS IN MARYLAND: AND (4) THE APPLICANT IS UNABLE TO OBTAIN ADEQUATE BUSINESS 25 FINANCING ON REASONABLE TERMS THROUGH NORMAL LENDING CHANNELS 26 BECAUSE THE APPLICANT: (I) BELONGS TO A GROUP THAT HISTORICALLY HAS BEEN 28 DEPRIVED OF ACCESS TO NORMAL ECONOMIC OR FINANCIAL RESOURCES BECAUSE 29 OF RACE, COLOR, CREED, SEX, RELIGION, OR NATIONAL ORIGIN; (II) HAS AN IDENTIFIABLE PHYSICAL HANDICAP THAT SEVERELY 31 LIMITS THE ABILITY OF THE APPLICANT TO OBTAIN FINANCIAL ASSISTANCE. BUT 32 DOES NOT LIMIT THE ABILITY OF THE APPLICANT TO PERFORM THE CONTRACT OR 33 OTHER ACTIVITY FOR WHICH THE APPLICANT WOULD BE RECEIVING FINANCIAL 34 ASSISTANCE; OR (III) HAS ANY OTHER SOCIAL OR ECONOMIC IMPEDIMENT THAT IS 36 BEYOND THE PERSONAL CONTROL OF THE APPLICANT, SUCH AS LACK OF FORMAL

37 EDUCATION OR FINANCIAL CAPACITY OR GEOGRAPHICAL OR REGIONAL

38 ECONOMIC DISTRESS BUT THAT DOES NOT LIMIT THE ABILITY OF THE APPLICANT

TO PERFORM THE CONTRACT OR OTHER ACTIVITY FOR WHICH THE APPLICANT
 WOULD BE RECEIVING FINANCIAL ASSISTANCE.

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3 (G) IF THE APPLICANT ENTERPRISE IS OTHER THAN A SOLE
4 PROPRIETORSHIP, AT LEAST 51 PERCENT OF THE ENTERPRISE SHALL BE OWNED BY
5 INDIVIDUALS WHO MEET THE QUALIFICATIONS FOR APPLICANTS UNDER
6 SUBSECTION (F) OF THIS SECTION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect8 October 1, 1997.