
By: **Chairman, Economic Matters Committee (By Request - Departmental -
Labor, Licensing and Regulation)**

Introduced and read first time: February 8, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commissioner of Financial Regulation - Investigative and Enforcement**
3 **Powers**

4 FOR the purpose of authorizing the Commissioner of Financial Regulation to take
5 certain actions against certain persons for violations of laws, regulations, rules,
6 or orders over which the Commissioner has jurisdiction under certain
7 circumstances; prohibiting certain licensees from engaging in certain practices
8 under certain circumstances; and generally relating to the investigative and
9 enforcement powers of the Commissioner of Financial Regulation.

10 BY repealing and reenacting, without amendments,
11 Article - Financial Institutions
12 Section 2-114
13 Annotated Code of Maryland
14 (2003 Replacement Volume and 2004 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Financial Institutions
17 Section 2-115
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2004 Supplement)

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

22 **Article - Financial Institutions**

23 2-114.

24 (a) The Commissioner may:

25 (1) Make public or private investigations as the Commissioner considers
26 necessary to:

1 (i) Determine whether a person has violated a provision of law,
2 regulation, rule, or order over which the Commissioner has jurisdiction; or

3 (ii) Aid in the enforcement of a law or in the prescribing of
4 regulations, rules, and orders over which the Commissioner has jurisdiction;

5 (2) Require or permit a person to file a statement in writing, under oath
6 or otherwise as the Commissioner determines, as to all the facts and circumstances
7 concerning the matter to be investigated; and

8 (3) Subject to the provisions of Title 10, Subtitle 6 of the State
9 Government Article, publish information concerning a violation of a law, regulation,
10 rule, or order over which the Commissioner has jurisdiction.

11 (b) For the purpose of an investigation or proceeding, the Commissioner or an
12 officer designated by the Commissioner may administer oaths and affirmations,
13 subpoena witnesses, compel their attendance, take evidence, and require the
14 production of books, papers, correspondence, memoranda, agreements, or other
15 documents or records which the Commissioner considers relevant or material to the
16 inquiry.

17 (c) (1) In case of contumacy by or refusal to obey a subpoena issued to a
18 person, the circuit court of the county in which the person resides or transacts
19 business, on application by the Commissioner, may issue to the person an order
20 requiring the person to appear before the Commissioner or the officer designated by
21 the Commissioner to produce documentary evidence if so ordered or to give evidence
22 touching the matter under investigation or in question.

23 (2) Failure to obey the order of the court may be punished by the court as
24 a contempt of court.

25 2-115.

26 (a) When the Commissioner determines that a person has engaged in an act or
27 practice constituting a violation of a law, regulation, rule or order over which the
28 Commissioner has jurisdiction, and that immediate action against the person is in the
29 public interest, the Commissioner may in the Commissioner's discretion issue,
30 without a prior hearing, a summary order directing the person to cease and desist
31 from engaging in the activity, provided that the summary cease and desist order gives
32 the person:

33 (1) Notice of the opportunity for a hearing before the Commissioner to
34 determine whether the summary cease and desist order should be vacated, modified,
35 or entered as final; and

36 (2) Notice that the summary cease and desist order will be entered as
37 final if the person does not request a hearing within 15 days of receipt of the
38 summary cease and desist order.

1 (b) When the Commissioner determines after notice and a hearing, unless the
2 right to notice and a hearing is waived, that a person has engaged in an act or practice
3 constituting a violation of a law, regulation, rule or order over which the
4 Commissioner has jurisdiction, OR WHICH WOULD BE A VIOLATION IF THE PERSON
5 WERE A LICENSEE, the Commissioner may in the Commissioner's discretion and in
6 addition to taking any other action authorized by law:

7 (1) Issue a final cease and desist order against the person;

8 (2) [Suspend] IF THE PERSON IS A LICENSEE, SUSPEND or revoke the
9 license of the person;

10 (3) Issue a penalty order against the person imposing a civil penalty up
11 to the maximum amount of \$1,000 for a first violation and a maximum amount of
12 \$5,000 for each subsequent violation; [or]

13 (4) ISSUE AN ORDER TO BAR THE PERSON FROM ENGAGING IN ANY
14 BUSINESS OVER WHICH THE COMMISSIONER HAS JURISDICTION; OR

15 (5) Take any combination of the actions specified in this subsection.

16 (c) In determining the amount of financial penalty to be imposed under
17 subsection (b) of this section, the Commissioner shall consider the following factors:

18 (1) The seriousness of the violation;

19 (2) The good faith of the violator;

20 (3) The violator's history of previous violations;

21 (4) The deleterious effect of the violation on the public and the industry
22 involved;

23 (5) The assets of the violator; and

24 (6) Any other factors relevant to the determination of the financial
25 penalty.

26 (d) (1) A PERSON LICENSED BY THE COMMISSIONER UNDER THIS ARTICLE
27 MAY NOT, AFTER EXERCISING REASONABLE DUE DILIGENCE, KNOWINGLY EMPLOY
28 OR USE AS AN AGENT A PERSON AGAINST WHOM THE COMMISSIONER HAS ISSUED A
29 FINAL DEBARMENT ORDER UNDER SUBSECTION (B)(4) OF THIS SECTION.

30 (2) THE PROHIBITION IN PARAGRAPH (1) OF THIS SUBSECTION SHALL
31 REMAIN IN EFFECT DURING THE TERM OF THE ORDER.

32 (E) Notice of any hearing under this section shall be given and the hearing
33 shall be held in accordance with the Administrative Procedure Act.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
35 effect July 1, 2005.

