

SENATE BILL 820

C8, I4

9lr2430

By: **Senator Harrington**

Introduced and read first time: February 6, 2009

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Employee Opportunity to Purchase Act**

3 FOR the purpose of requiring certain business entities to give certain employees the
4 option to purchase the business entity under certain circumstances through a
5 certain offer of sale; requiring certain business entities to include certain
6 statements in certain offers of sale; requiring certain business entities to give
7 certain employees the option to purchase the facilities and capital equipment of
8 certain business locations through a certain offer of sale; providing that
9 employees have a certain number of days to respond to certain offers of sale
10 with an offer of purchase; providing that employees may accept a certain offer of
11 sale only through a certain plan; requiring the Department of Business and
12 Economic Development to conduct a certain study under certain circumstances;
13 requiring the Department to conduct a certain election under certain
14 circumstances; providing that a certain percentage of certain employees must
15 vote to purchase a business to be able to make a certain offer of purchase;
16 providing that a certain percentage of certain employees must vote to purchase
17 certain facilities and capital equipment to be able to make a certain offer of
18 purchase; requiring the State to provide credit enhancement and gap financing
19 under certain circumstances; providing that the right of a third party to
20 purchase a business entity that operates in the State is conditional on the
21 exercise of certain rights; providing that certain purchasers are presumed to act
22 with full knowledge of certain rights and policies; requiring the Department, in
23 consultation with the Department of Labor, Licensing, and Regulation and
24 other appropriate stakeholders, to adopt certain regulations; providing for the
25 effective dates of this Act; defining certain terms; and generally relating to
26 employee purchase of business entities.

27 BY adding to

28 Article – Economic Development

29 Section 14–201 through 14–206 to be under the new subtitle “Employee
30 Opportunity to Purchase Act”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Volume)

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

5 **Article – Economic Development**

6 **SUBTITLE 2. EMPLOYEE OPPORTUNITY TO PURCHASE ACT.**

7 **14-201.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (B) “EMPLOYEE ” MEANS AN INDIVIDUAL WHO IS EMPLOYED DIRECTLY
11 BY A BUSINESS ENTITY AND HAS A NORMAL WORKWEEK OF AT LEAST 30 HOURS.

12 (C) “EMPLOYEE STOCK OWNERSHIP PLAN” MEANS A PLAN THAT MEETS
13 THE REQUIREMENTS OF 29 U.S.C. § 1107(D)(6) AND INCLUDES DEMOCRATIC
14 PARTICIPATORY GOVERNANCE MECHANISMS FOR THE BUSINESS ENTITY.

15 (D) “MICROENTERPRISE” MEANS A BUSINESS THAT:

16 (1) HAS FIVE OR FEWER EMPLOYEES;

17 (2) HAS \$25,000 OR LESS IN CAPITALIZATION; AND

18 (3) HAS \$100,000 OR LESS IN NET WORTH.

19 **14-202.**

20 (A) THIS SECTION APPLIES TO A BUSINESS ENTITY THAT IS ORGANIZED
21 UNDER THE LAWS OF THE STATE AND IS NOT A MICROENTERPRISE.

22 (B) BEFORE A BUSINESS ENTITY SUBJECT TO THIS SECTION THAT IS
23 LOCATED IN THE STATE IS SOLD, CLOSED, OR RELOCATED OUT OF THE STATE,
24 THE BUSINESS ENTITY MUST GIVE ITS EMPLOYEES THE OPTION TO PURCHASE
25 THE BUSINESS ENTITY THROUGH AN OFFER OF SALE.

26 (C) A BUSINESS ENTITY SHALL INCLUDE IN THE OFFER OF SALE
27 REQUIRED UNDER THIS SECTION:

28 (1) THE ASKING PRICE AND MATERIAL TERMS OF THE SALE;

1 (2) A STATEMENT AS TO WHETHER A CONTRACT WITH A THIRD
2 PARTY EXISTS FOR THE SALE OF THE BUSINESS ENTITY;

3 (3) A STATEMENT THAT THE OWNERS OF THE BUSINESS ENTITY
4 WILL MAKE AVAILABLE BUSINESS DOCUMENTS TO THE EMPLOYEES IF THE
5 BUSINESS ENTITY IS SOLD TO THE EMPLOYEES; AND

6 (4) ANY OTHER STATEMENTS REQUIRED BY THE DEPARTMENT IN
7 REGULATION.

8 (D) THE ASKING PRICE PRESENTED IN THE OFFER OF SALE UNDER THIS
9 SECTION MAY NOT BE GREATER THAN:

10 (1) THE REASONABLE MARKET PRICE OF THE BUSINESS ENTITY;
11 OR

12 (2) ANY OFFER TO PURCHASE THE BUSINESS ENTITY BY A THIRD
13 PARTY.

14 **14-203.**

15 (A) THIS SECTION APPLIES TO A BUSINESS ENTITY THAT:

16 (1) IS ORGANIZED UNDER THE LAWS OF THE UNITED STATES,
17 ANOTHER STATE OF THE UNITED STATES, A TERRITORY, POSSESSION, OR
18 DISTRICT OF THE UNITED STATES, OR A FOREIGN COUNTRY; AND

19 (2) IS NOT A MICROENTERPRISE.

20 (B) BEFORE A BUSINESS ENTITY SUBJECT TO THIS SECTION SELLS,
21 CLOSES, OR RELOCATES A BUSINESS LOCATION THAT IS LOCATED IN THE
22 STATE, THE BUSINESS ENTITY MUST GIVE THE EMPLOYEES EMPLOYED AT THE
23 BUSINESS LOCATION THE OPTION TO PURCHASE THE FACILITIES AND CAPITAL
24 EQUIPMENT OF THE BUSINESS LOCATION THROUGH AN OFFER OF SALE.

25 (C) A BUSINESS ENTITY SUBJECT TO THIS SECTION SHALL INCLUDE IN
26 THE OFFER OF SALE REQUIRED UNDER THIS SECTION:

27 (1) THE ASKING PRICE AND MATERIAL TERMS OF THE SALE;

28 (2) A STATEMENT AS TO WHETHER A CONTRACT WITH A THIRD
29 PARTY EXISTS FOR THE SALE OF THE BUSINESS LOCATION; AND

1 **(3) A STATEMENT THAT THE OWNERS OF THE BUSINESS ENTITY**
2 **WILL MAKE AVAILABLE BUSINESS DOCUMENTS TO THE EMPLOYEES IF THE**
3 **FACILITIES AND CAPITAL EQUIPMENT OF THE BUSINESS LOCATION ARE SOLD**
4 **TO THE EMPLOYEES.**

5 **(D) THE ASKING PRICE PRESENTED IN THE OFFER OF SALE REQUIRED**
6 **UNDER THIS SECTION MAY NOT BE GREATER THAN:**

7 **(1) THE REASONABLE MARKET PRICE OF THE FACILITIES AND**
8 **CAPITAL EQUIPMENT OF THE BUSINESS LOCATION; OR**

9 **(2) ANY OFFER TO PURCHASE THE FACILITIES AND CAPITAL**
10 **EQUIPMENT OF THE BUSINESS LOCATION BY A THIRD PARTY.**

11 **14-204.**

12 **(A) WHEN THE EMPLOYEES OF A BUSINESS ENTITY RECEIVE AN OFFER**
13 **OF SALE UNDER § 14-202 OR § 14-203 OF THIS SUBTITLE, THE EMPLOYEES**
14 **HAVE 60 DAYS TO RESPOND WITH AN OFFER OF PURCHASE.**

15 **(B) EMPLOYEES MAY ACCEPT AN OFFER OF SALE REQUIRED UNDER §§**
16 **14-202 AND 14-203 OF THIS SUBTITLE ONLY THROUGH AN EMPLOYEE STOCK**
17 **OWNERSHIP PLAN.**

18 **(C) ON RECEIVING A PETITION FROM AT LEAST 10% OF THE**
19 **EMPLOYEES OF A BUSINESS ENTITY THAT HAS MADE AN OFFER OF SALE UNDER**
20 **§§ 14-202 AND 14-203 OF THIS SUBTITLE, THE DEPARTMENT SHALL CONDUCT**
21 **A FEASIBILITY AND MARKET STUDY ON BEHALF OF THE EMPLOYEES.**

22 **(D) (1) IF THE STUDY REQUIRED UNDER SUBSECTION (C) OF THIS**
23 **SECTION IS FAVORABLE, THE DEPARTMENT SHALL CONDUCT AN ELECTION**
24 **AMONG THE EMPLOYEES OF THE BUSINESS ENTITY.**

25 **(2) 58% OF THE EMPLOYEES OF THE BUSINESS ENTITY WHO**
26 **MAKE AN OFFER UNDER § 14-202 OF THIS SUBTITLE MUST VOTE TO PURCHASE**
27 **THE BUSINESS ENTITY TO BE ABLE TO MAKE AN OFFER OF PURCHASE FOR THE**
28 **BUSINESS ENTITY.**

29 **(3) 58% OF THE EMPLOYEES OF THE BUSINESS LOCATION WHO**
30 **MAKE AN OFFER UNDER § 14-203 OF THIS SUBTITLE MUST VOTE TO PURCHASE**
31 **THE FACILITIES AND CAPITAL EQUIPMENT OF THE BUSINESS LOCATION TO BE**
32 **ABLE TO MAKE AN OFFER OF PURCHASE FOR THE FACILITIES AND CAPITAL**
33 **EQUIPMENT.**

1 **14-205.**

2 **IF THE EMPLOYEES OF A BUSINESS ENTITY OR BUSINESS LOCATION**
3 **ELECT UNDER § 14-204(C) OF THIS SUBTITLE TO MAKE AN OFFER OF**
4 **PURCHASE, THEN THE STATE SHALL PROVIDE CREDIT ENHANCEMENT AND GAP**
5 **FINANCING TO SUPPLEMENT A BANK LOAN TOWARD THE PURCHASE.**

6 **14-206.**

7 **(A) THE RIGHT OF A THIRD PARTY TO PURCHASE A BUSINESS ENTITY**
8 **THAT OPERATES IN THE STATE IS CONDITIONAL ON THE EXERCISE OF**
9 **EMPLOYEE RIGHTS UNDER THIS SUBTITLE.**

10 **(B) THIRD PARTY PURCHASERS OF BUSINESS ENTITIES ARE PRESUMED**
11 **TO ACT WITH FULL KNOWLEDGE OF EMPLOYEE RIGHTS AND PUBLIC POLICY**
12 **UNDER THIS SUBTITLE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
14 Business and Economic Development, in consultation with the Department of Labor,
15 Licensing, and Regulation and other appropriate stakeholders, shall adopt regulations
16 to implement the provisions of this Act, including:

17 (1) the appropriate form of notice of offers of sale under this Act and
18 any additional statements that should be included in the notice;

19 (2) the appropriate sources of credit enhancement and gap financing
20 for employees who elect to purchase businesses under this Act; and

21 (3) an outreach and marketing plan to notify businesses, employees,
22 and other affected stakeholders of their rights and responsibilities under this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
24 take effect October 1, 2010.

25 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
26 Section 3 of this Act, this Act shall take effect July 1, 2009.