

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1202
Economic Matters

(Delegate Stein)

Finance

Business Regulation - Franchises - Copies of Documents to Franchisees

This bill alters the Maryland Franchise Registration and Disclosure Law by modifying the timeframe by which a franchisor must give a prospective franchisee a copy of the offering prospectus and each proposed agreement relating to the franchise. A franchisor may not sell a franchise without providing the specified documents by the earlier of: (1) 14 calendar days before the franchisee executes any binding agreement with the franchisor; (2) 14 calendar days before the payment of any consideration relating to the franchise; or (3) a reasonable request by a prospective franchisee to receive a copy of the offering prospectus. A person who violates the timeframes in the bill is subject to existing civil and criminal penalty provisions.

Fiscal Summary

State Effect: The modified disclosure timeframes do not materially affect imposition of existing penalties; therefore, State finances and operations are not affected.

Local Effect: The modified disclosure timeframes do not materially affect imposition of existing penalties; therefore, local finances are not materially affected.

Small Business Effect: Potential minimal.

Analysis

Current Law: A franchisor may not sell a franchise in the State without first giving a prospective franchisee a copy of the offering prospectus and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of:

- the first personal meeting of the franchisor and the prospective franchisee to discuss the possible sale of the franchise; or
- 10 business days before the execution of a contract or payment of any consideration that relates to the franchise relationship.

The prospectus for the franchise must contain the material set forth in the application for registration, as required by the Securities Commissioner within the Office of the Attorney General and any other disclosures the commissioner requires. The prospectus must state, in 10-point or larger bold type, that registration does not constitute approval, recommendation, or endorsement by the commissioner. The prospectus must and contain specified identifying and other information, including but not limited to:

- whether any person identified in the prospectus has been convicted of a felony, has pleaded *nolo contendere* to a felony charge, or has been adjudged liable in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property and the conviction date or sanctions imposed;
- the length of time the franchisor has conducted business of the type to be operated by a franchisee, granted franchises for that business, and granted franchises in other lines of business;
- a recent financial statement of the franchisor and a statement of each material change in the financial condition of the franchisor since the financial statement was made;
- the franchise fee or the formula used by the franchisor to determine the fee;
- a description of all goods, fixtures, and services that, under the franchise agreement or by practice, the franchisee or subfranchisor must buy from the franchisor or a designee of the franchisor; and
- an authorization for the commissioner to examine the applicant's financial records that relate to the sale of franchises.

In connection with an offer to sell or the sale of a franchise, a person may not employ a device, scheme, or artifice to defraud, or make an untrue statement of a material fact or omit to state a material fact. A person is further prohibited from engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person. A willful violator is guilty of a felony and, upon conviction, is subject to a fine of up to \$10,000 for each violation and/or imprisonment for up to five years. A person is also subject to the aforementioned penalty if the person:

- offers to sell a franchise that has not been registered under Maryland Franchise Registration and Disclosure Law,;
- fails to notify the commissioner of a specified material change; or
- omits a material fact or makes an untrue statement of a material fact in specified franchise documents.

A franchisor is subject to civil liability to a franchisee if the sale is made without required registration of the franchise or if the sale is made due to an untrue material statement of fact or omission, as specified.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Securities Division),
Department of Legislative Services

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ncs/kdm

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