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Annotated Code of Maryland
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*** Current through the 2004 session ***
*** Annotations current through December 3, 2004 ***

BUSINESS REGULATION
TITLE 14. BUSINESS OPPORTUNITIES, FRANCHISES, AND MULTILEVEL DISTRIBUTION COMPANIES
SUBTITLE 2. FRANCHISES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Md. BUSINESS REGULATION Code Ann. § 14-201 (2004)

§ 14-201. Definitions

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

(b) Advertisement. -- "Advertisement" means a communication that:

(1) is published in connection with an offer to sell or sale of a franchise; and

(2) is:

(i) written or printed;

(ii) made by means of a recorded telephone message; or

(iii) spoken on radio, television, or similar communications media.

(c) Area franchise. -- "Area franchise" means an agreement between a franchisor and subfranchisor in which, for consideration, the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name of or for the franchisor.

(d) Commissioner. -- "Commissioner" means the Securities Commissioner in the Office of the Attorney General.

(e) Franchise. --

(1) "Franchise" means an expressed or implied, oral or written agreement in which:

(i) a purchaser is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor;

(ii) the operation of the business under the marketing plan or system is associated substantially with the trademark, service mark, trade name, logotype, advertising, or other commercial symbol that designates the franchisor or its affiliate; and

(iii) the purchaser must pay, directly or indirectly, a franchise fee.

(2) "Franchise" includes an area franchise.

(f) Franchise fee. --

Md. BUSINESS REGULATION Code Ann. § 14-201

(1) "Franchise fee" means a charge or payment that a franchisee or subfranchisor is required or agrees to pay for the right to enter into a business under a franchise agreement.

(2) "Franchise fee" includes payment for goods or services.

(3) "Franchise fee" does not include:

(i) the purchase of or agreement to purchase goods at a wholesale price;

(ii) the payment of a reasonable service charge to the issuer of a credit card by an establishment that accepts the credit card;

(iii) the amount paid to a licensed trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services;

(iv) the purchase of or agreement to purchase goods on consignment, if the proceeds remitted by the franchisee from the sale are the wholesale price of the goods;

(v) the repayment by a franchisee of a bona fide loan that the franchisor has made to the franchisee;

(vi) the purchase of or agreement to purchase goods at a retail price subject to a commission or compensation plan that in substance is a wholesale transaction;

(vii) the purchase of or agreement to purchase, at their fair market value, supplies or fixtures that are needed to enter into the business or continue the business under a franchise agreement;

(viii) the purchase or lease of or agreement to purchase or lease, at its fair market value, real property that is needed to enter into the business or continue the business under a franchise agreement; and

(ix) the amount paid for sales demonstration material and equipment, sold at no profit by the seller, for use in making sales and not for resale.

(g) Franchisee. -- "Franchisee" means a person to whom a franchise is granted.

(h) Franchisor. -- "Franchisor" means a person who grants a franchise.

(i) Subfranchisor. -- "Subfranchisor" means a person to whom an area franchise is granted.

HISTORY: An. Code 1957, art. 56, § 345; 1992, ch. 4, § 2; ch. 26, § 4; 2004, ch. 25, § 6.

NOTES:

EDITOR'S NOTE. --Section 6, ch. 25, Acts 2004, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new volume or a replacement volume of the Annotated Code, shall make nonsubstantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 6 of ch. 25, subsection (g) was redesignated as (f) and (f) as (g) to maintain alphabetical order.

MARYLAND LAW REVIEW. --For article, "Survey of Developments in Maryland Law, 1983-84," see *44 Md. L. Rev.* 360 (1985).

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev.* 1 (1980).

ARBITRATION OF DISPUTES CONCERNING FRANCHISE AGREEMENTS. --Policies of the former Franchise Act (former Art. 56, § 345 et seq.) did not take precedence over the policy of the Maryland Arbitration Act; arbitration of a dispute concerning a franchise agreement did not contravene the aims of the *Franchise Act*. *Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 649 A.2d 365 (1994).

ALLEGATIONS OF FRAUDULENT INDUCEMENT IN FRANCHISE AGREEMENT. --Allegations of fraudulent inducement in a franchise agreement containing a broad arbitration clause were not sufficient to permit the franchisee to

avoid arbitration of the dispute, as there were no allegations of fraud in the inducement as to the arbitration clause itself or as to the parties' intention to arbitrate. *Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 649 A.2d 365 (1994).

CITED IN Holmes v. Coverall N. Am., Inc., 98 Md. App. 519, 633 A.2d 932 (1993), *aff'd*, 336 Md. 534, 649 A.2d 365 (1994); *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 824 A.2d 87 (2003).

NOTES APPLICABLE TO ENTIRE ARTICLE

CROSS REFERENCES. --As to licenses of pilots, see § 11-401 *et seq.* of the *Business Occupations and Professions Article*.

As to duty of clerk of court to apply for blank licenses, and to make return of licenses issued, see § § 2-208 and 2-210 of the *Courts Article*.

As to marriage licenses, see § 2-401 *et seq.* and § 2-501 *et seq.* of the *Family Law Article*.

As to licenses of sales finance companies, see § 11-401 *et seq.* of the *Financial Institutions Article*.

As to licenses of midwives, see § 8-601 *et seq.* of the *Health Occupations Article*.

As to licenses to practice medicine, see § 14-301 *et seq.* of the *Health Occupations Article*.

As to licenses of insurance companies, their brokers, agents and solicitors, see the *Insurance Article*.

As to licenses in connection with fish and fisheries, see Title 4 of the *Natural Resources Article*.

As to hunting licenses, see § 10-301 *et seq.* of the *Natural Resources Article*.

As to duty of Comptroller to have blank licenses prepared, see § 4-110 of the *State Government Article*.

As to licenses for vendors for sales and use tax purposes under Retail Sales Tax Act, see § 11-701 *et seq.* and § 13-1016 of the *Tax - General Article*.

As to licensing of airports, see § 5-304 of the *Transportation Article*.

As to licensing of air schools, see § 5-901 *et seq.* of the *Transportation Article*.

As to licenses for sale of alcoholic beverages, see *Article 2B*.

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Md. BUSINESS REGULATION Code Ann. § 14-202 (2004)

§ 14-202. Legislative policy

(a) Findings. -- The General Assembly finds that:

(1) the widespread sale of franchises has created many investment and business problems; and
(2) franchisees have suffered substantial losses when the franchisor or its representative has not given complete information about:

- (i) the franchisor-franchisee relationship;
- (ii) the franchise agreement; and
- (iii) the business experience of the franchisor or its representative.

(b) Intent of subtitle. -- The intent of this subtitle is to:

- (1) give each prospective franchisee necessary information about any franchise offer;
- (2) prohibit the sale of franchises if the sale would lead to fraud or a likelihood that the franchisor's representations would not be fulfilled; and
- (3) protect the franchisor-franchisee relationship.

HISTORY: An. Code 1957, art. 56, § 346; 1992, ch. 4, § 2.

FAILURE TO REGISTER UNDER THIS SUBTITLE DOES NOT VOID AGREEMENTS. --Area operators' agreement and franchise agreement was not void ab initio because of franchisor's failure to register under this subtitle. *Bagel Enters., Inc. v. Baskin & Sears*, 56 Md. App. 184, 467 A.2d 533 (1983), cert. denied, 299 Md. 136, 472 A.2d 999 (1984).

WAIVER OF RIGHT TO RESCIND. --Franchisee waived its right to rescind franchising agreement based on franchisor's failure to register under this subtitle where franchisee indicated its desire to continue with agreement after it was aware of its right to rescind. *Bagel Enters., Inc. v. Baskin & Sears*, 56 Md. App. 184, 467 A.2d 533 (1983), cert. denied, 299 Md. 136, 472 A.2d 999 (1984).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

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Md. BUSINESS REGULATION Code Ann. § 14-203 (2004)

§ 14-203. Scope of subtitle

(a) In general. -- This subtitle applies to an offer to sell or sale of a franchise if:

- (1) the franchisee must pay a franchise fee of more than \$ 100; and
- (2) (i) the offeree or franchisee is a resident of the State;
(ii) the franchised business will be or is operated in the State;
(iii) the offer to sell is made in the State; or
(iv) the offer to buy is accepted in the State.

(b) Offer to sell made in State; offer to buy accepted in State. --

- (1) For purposes of this section, an offer to sell is made in the State if the offer:
 - (i) originates from the State; or
 - (ii) is directed by the offeror to the State and is received at the place to which it is directed.

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

- (i) a newspaper or other publication of general, regular, and paid circulation that has had two-thirds of its circulation outside the State during the past 12 months; or
- (ii) a radio or television broadcast that originates outside the State and is received in the State.

(3) For purposes of this section, an offer to buy is accepted in the State when acceptance is communicated to the offeror in the State.

(4) For purposes of this section, acceptance is communicated to the offeror in the State when:

- (i) the offeree directs acceptance to the offeror in the State reasonably believing the offeror to be in the State;
and
- (ii) the acceptance is received at the place to which it is directed.

(c) Existing franchise. -- This subtitle does not apply to the renewal or extension of an existing franchise if there is no interruption in the operation of the franchised business.

HISTORY: An. Code 1957, art. 56, § 345; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

APPLICABILITY. --Where there was no evidence on the record that the defendants had made any offers to sell franchises or that the plaintiffs had accepted any such offers, in Maryland, the protections of the State franchise regulation statute were not implicated. *Motor City Bagels, L.L.C. v. The American Bagel Co., 50 F. Supp. 2d 460 (D. Md. 1999)*.

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Md. BUSINESS REGULATION Code Ann. § 14-204 (2004)

§ 14-204. Subtitle in addition to other law

The powers, remedies, procedures, and penalties of this subtitle are in addition to and not in limitation of any other powers, remedies, procedures, and penalties provided by law.

HISTORY: An. Code 1957, art. 56, § 365B; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-205 (2004)

§ 14-205. Delegation

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

HISTORY: An. Code 1957, art. 56, § 345; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-206 (2004)

§ 14-206. Regulations

The Commissioner may adopt and enforce regulations to administer and enforce this subtitle.

HISTORY: An. Code 1957, art. 56, § 364; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-207 (2004)

§ 14-207. Publication of information

(a) About violations of subtitle. -- The Commissioner may publish information about violations of this subtitle.

(b) Public information. -- Under regulations that the Commissioner adopts, the Commissioner may make available to any person any information submitted to the Commissioner.

HISTORY: An. Code 1957, art. 56, § § 364, 365D; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-208 (2004)

§ 14-208. Investigations

The Commissioner may:

(1) investigate in or outside the State to:

- (i) determine if a person has violated this subtitle or a regulation adopted or order passed under it;
- (ii) adopt regulations or forms under this subtitle; or
- (iii) enforce this subtitle; and

(2) require or allow a person to submit a written statement, under oath or otherwise as the Commissioner determines, about the matter being investigated.

HISTORY: An. Code 1957, art. 56, § 364; 1992, ch. 4, § 2; ch. 26, § 4; 1993, ch. 5, § 1.

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Md. BUSINESS REGULATION Code Ann. § 14-209 (2004)

§ 14-209. Interpretive opinions

- (a) In general. -- On request, the Commissioner may issue an interpretive opinion.
- (b) Form; fee. --
 - (1) A request for an interpretive opinion shall be in writing.
 - (2) The requester shall pay a fee of \$ 100.

HISTORY: An. Code 1957, art. 56, § § 350, 364; 1992, ch. 4, § 2; 1993, ch. 5, § 1.

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Md. BUSINESS REGULATION Code Ann. § 14-210 (2004)

§ 14-210. Civil enforcement of subtitle

(a) Cease and desist order. --

(1) Whenever the Commissioner finds that a person has violated or is about to violate this subtitle or a regulation adopted or order passed under it, the Commissioner may order the person to cease and desist from the further offer to sell or sale of the franchise until the offer or sale complies with this subtitle.

(2) After passage of a cease and desist order, the alleged violator may submit to the Commissioner a written request for a hearing.

(3) The hearing shall begin:

- (i) within 15 business days after the Commissioner receives the request for a hearing; or
- (ii) at a later date, with the consent of the alleged violator.

(4) Unless there is a timely hearing, the cease and desist order is rescinded.

(b) Injunction; other powers. --

(1) Whenever the Commissioner finds that a person has violated or is about to violate this subtitle or a regulation adopted or order passed under it, the Commissioner may sue in the circuit court to enjoin the violation or enforce this subtitle or the regulation or order.

(2) The court shall:

- (i) determine if a violation of this subtitle has been or is about to be committed; and
- (ii) if so, pass any order the court considers necessary to prevent the violation or remove the effects of the violation and prevent it from continuing or being renewed in the future.

(3) The court may exercise all equitable powers necessary for this purpose, including:

- (i) injunction;
- (ii) revocation, forfeiture, or suspension of the charter authority or privileges of a business organization operating under the laws of the State;

- (iii) dissolution of a corporation or association organized under the laws of the State;
 - (iv) suspension or termination of the right of a corporation or association organized under the laws of another state or country to do business in the State;
 - (v) restitution;
 - (vi) restraining order;
 - (vii) award of damages to be paid by a franchisor or subfranchisor to a person injured by a violation of this subtitle; and
 - (viii) appointment of a receiver or conservator.
- (4) The court may not require the Commissioner to post bond.
- (c) Time limitation. -- The Commissioner may not exercise a power under this section more than 3 years after the violation occurs.

HISTORY: An. Code 1957, art. 56, § 363; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-211 (2004)

§ 14-211. Criminal proceedings authorized

(a) In general. --

(1) The Commissioner may refer to the State's Attorney evidence of a criminal violation of this subtitle.

(2) With or without the referral of evidence, a State's Attorney may bring appropriate criminal proceedings under this subtitle.

(b) Time limitation. -- A criminal proceeding may not be brought more than 3 years after the alleged violation.

HISTORY: An. Code 1957, art. 56, § 365A; 1992, ch. 4, § 2.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-212 (2004)

§ 14-212. Miscellaneous powers

In connection with an investigation or proceeding under this subtitle, the Commissioner may:

- (1) administer oaths;
- (2) receive evidence; and
- (3) issue subpoenas for the attendance of witnesses to:
 - (i) testify; or
 - (ii) produce evidence.

HISTORY: An. Code 1957, art. 56, § 364; 1992, ch. 4, § 2; ch. 26, § 4.

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Md. BUSINESS REGULATION Code Ann. § 14-213 (2004)

§ 14-213. Privilege against self-incrimination

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

- (1) tend to incriminate the person; or
- (2) subject the person to a penalty or forfeiture.

(b) Prosecution and punishment. --

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

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

HISTORY: An. Code 1957, art. 56, § 364; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-214 (2004)

§ 14-214. Registration required; exemptions

(a) Registration required. -- Except as otherwise provided in this subtitle, a person must register the offer of a franchise with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in the State.

(b) Exemptions. -- The registration requirement of this section does not apply to:

- (1) a transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator;
- (2) an offer to sell or sale of a franchise that is substantially similar to a franchise already owned by the offeree or buyer; and
- (3) any other transaction that the Commissioner exempts by regulation because:
 - (i) the transaction is not within the purpose of this subtitle; and
 - (ii) the registration of the transaction is not necessary or appropriate in the public interest or for the protection of investors.

(c) Sale for franchisee's or subfranchisor's own account. --

(1) The registration requirement of this section does not apply to the offer to sell or sale of a franchise by a franchisee for the franchisee's own account, or the offer to sell or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account.

(2) A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

(d) Claims of exemption. --

(1) The Commissioner may require by regulation that a franchisor or subfranchisor who claims under subsection (b)(3) of this section to be exempt from the registration requirements of this section:

- (i) file with the Commissioner a notice of claim of exemption in the form that the Commissioner requires; and
- (ii) pay a fee of \$ 250.

(2) The franchisor or subfranchisor shall sign and verify the notice of claim of exemption.

HISTORY: An. Code 1957, art. 56, § § 347, 348, 350; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

FAILURE TO REGISTER UNDER SUBTITLE DOES NOT VOID AGREEMENTS. --Area operators' agreement and franchise agreement was not void ab initio because of franchisor's failure to register under this subtitle. *Bagel Enters., Inc. v. Baskin & Sears, 56 Md. App. 184, 467 A.2d 533 (1983)*, cert. denied, *299 Md. 136, 472 A.2d 999 (1984)*.

WAIVER OF RIGHT TO RESCIND. --Franchisee waived its right to rescind franchising agreement based on franchisor's failure to register under this subtitle where franchisee indicated its desire to continue with agreement after it was aware of its right to rescind. *Bagel Enters., Inc. v. Baskin & Sears, 56 Md. App. 184, 467 A.2d 533 (1983)*, cert. denied, *299 Md. 136, 472 A.2d 999 (1984)*.

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Md. BUSINESS REGULATION Code Ann. § 14-215 (2004)

§ 14-215. Applications for registration

(a) In general. -- Except as otherwise provided in this section, an applicant for registration shall:

- (1) file with the Commissioner:
 - (i) an application in the form that the Commissioner requires; and
 - (ii) a prospectus for the franchise; and
- (2) pay an application fee of \$ 500.

(b) Alternative application. -- Instead of the application for registration and prospectus described in subsection (a) of this section, the Commissioner may accept an application for registration and prospectus that:

- (1) are found by the Commissioner to include disclosure requirements similar to those of this subtitle; and
- (2) are:
 - (i) required by a unit of the federal government or another state government; or
 - (ii) approved by an association of administrators of state franchise laws.

(c) Signature and verification required. -- The applicant shall sign and verify the application for registration.

HISTORY: An. Code 1957, art. 56, § § 349, 350, 352; 1992, ch. 4, § 2; ch. 26 § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

FAILURE TO REGISTER UNDER SUBTITLE DOES NOT VOID AGREEMENTS. --Area operators' agreement and franchise agreement was not void ab initio because of franchisor's failure to register under this subtitle. *Bagel Enters., Inc. v. Baskin & Sears, 56 Md. App. 184, 467 A.2d 533 (1983)*, cert. denied, *299 Md. 136, 472 A.2d 999 (1984)*.

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Md. BUSINESS REGULATION Code Ann. § 14-216 (2004)

§ 14-216. Prospectus

(a) In general. -- The prospectus shall contain:

(1) the material information set forth in the application for registration, as required by regulation of the Commissioner; and

(2) any other disclosures that the Commissioner requires.

(b) Required statement. -- The prospectus shall state, in 10-point or larger bold type, that registration is not approval, recommendation, or endorsement by the Commissioner.

(c) Contents. -- The prospectus shall include the following information:

(1) the name of the franchisor;

(2) the name under which the franchisor does or intends to do business;

(3) the name of any parent or affiliated company that engages in business transactions with franchisees;

(4) the address of the principal office of the franchisor;

(5) the name and address of the resident agent of the franchisor;

(6) whether the franchisor does business as an individual, partnership, or corporation;

(7) information about the identity and business experience of persons affiliated with the franchisor, as the Commissioner requires;

(8) (i) 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

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

(9) (i) whether any person identified in the prospectus is subject to:

Md. BUSINESS REGULATION Code Ann. § 14-216

1. a currently effective order of the Securities and Exchange Commission, or the securities administrator of a state, that denies registration to or suspends or revokes the registration of the person as a securities broker, securities dealer, or investment adviser;

2. a currently effective order of a National Securities Association or National Securities Exchange, as defined in the Securities and Exchange Act of 1934, that suspends or expels the person from membership in the Association or Exchange;

3. a currently effective order of the Federal Trade Commission; or

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

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

(10) the length of time the franchisor has:

(i) conducted business of the type to be operated by a franchisee;

(ii) granted franchises for that business; and

(iii) granted franchises in other lines of business;

(11) 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;

(12) a copy of the typical franchise agreement used or proposed for use in the State;

(13) the franchise fee or, if the franchise fee is not the same in each case, the formula that the franchisor uses to set the amount of the franchise fee and the way the franchisor will apply the franchise fee;

(14) any payment other than a franchise fee that the franchisee or subfranchisor must pay to the franchisor, including any royalty or payment that the franchisor collects wholly or partly for a third party;

(15) the conditions under which the franchisor may terminate, refuse to renew, or repurchase the franchise;

(16) 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;

(17) whether, under the franchise agreement or by practice, the franchisee is limited in the goods or services that the franchisee may offer to customers;

(18) the conditions of any financing arrangement offered directly or indirectly by the franchisor or an agent or affiliate of the franchisor;

(19) any past or present practice or any intent of the franchisor to sell, assign, or discount to a third party, wholly or partly, a note, contract, or other obligation of the franchisee or subfranchisor;

(20) a copy of any statement of estimated or projected franchisee earnings prepared for presentation to prospective franchisees, subfranchisors, or others and a statement of the information on which the estimation or projection is based;

(21) any compensation or other benefit given or promised to a public figure that arises wholly or partly from:

(i) the use of the public figure in the name or symbol of the franchise; or

(ii) the endorsement or recommendation of the franchise by the public figure;

(22) the number of franchises currently operating or proposed to be sold, as the Commissioner requires by regulation;

(23) whether franchisees or subfranchisors receive an exclusive territory or area franchise;

(24) an authorization for the Commissioner to examine the applicant's financial records that relate to the sale of franchises;

- (25) an irrevocable consent to be sued in the State;
- (26) appointment of the Commissioner as attorney to receive service of process for the franchisor;
- (27) any other information that the franchisor wants to give; and
- (28) any other information that the Commissioner reasonably requires.

(d) Applications by subfranchisors. -- If the applicant is a subfranchisor, the application shall include the same information about the subfranchisor as is required from the franchisor under this section.

(e) Financial statements. -- The Commissioner by regulation may:

- (1) set the form and content of financial statements required under this subtitle;
- (2) state the circumstances under which consolidated financial statements may be submitted; and
- (3) state the circumstances under which financial statements shall be audited by an independent certified public accountant or other public accountant.

HISTORY: An. Code 1957, art. 56, § 349, 352; 1992, ch. 4, § 2; ch. 26, § 4.

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Md. BUSINESS REGULATION Code Ann. § 14-217 (2004)

§ 14-217. Escrow requirements

(a) In general. -- If the Commissioner finds that it is necessary and appropriate for the protection of prospective franchisees or subfranchisors because a franchisor has not made adequate financial arrangements to fulfill the franchisor's obligations under an offering, the Commissioner may require the franchisor to escrow franchise fees or other money paid by a franchisee or subfranchisor until the obligations have been satisfied.

(b) Surety bonds. --

(1) At the option of the franchisor, the franchisor may post an adequate surety bond as provided by regulations of the Commissioner.

(2) The total liability of the surety under the bond may not exceed the penal sum of the bond.

HISTORY: An. Code 1957, art. 56, § 351; 1992, ch. 4, § 2; ch. 26, § 4.

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Md. BUSINESS REGULATION Code Ann. § 14-218 (2004)

§ 14-218. Issuance and effective date of registration

- (a) Issuance. -- The Commissioner shall register an offer of a franchise if it meets the requirements of this subtitle.
- (b) Effective date. -- Unless a stop order is in effect, registration of the offer of a franchise automatically takes effect at:
- (1) noon on the 30th business day after an application for registration or the last amendment to it is filed; or
 - (2) an earlier time that the Commissioner sets.

HISTORY: An. Code 1957, art. 56, § 354; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-219 (2004)

§ 14-219. Term and renewal of registration

(a) Term of registration. --

(1) Unless registration of an offer of a franchise is renewed for a 1-year term as provided in this section, the registration expires on the first anniversary of its effective date.

(2) However, the Commissioner by regulation or order may set a different term of registration.

(b) Applications for renewal. --

(1) Before registration expires, the registrant periodically may renew it for an additional 1-year term, if the registrant:

(i) at least 15 business days before the expiration of registration files with the Commissioner:

1. a renewal application on the form that the Commissioner provides; and

2. a prospectus;

(ii) otherwise is entitled to be registered; and

(iii) pays a renewal fee of \$ 250.

(2) The registrant shall sign and verify the renewal application.

(3) The Commissioner by order may allow a registrant to submit a renewal application after the 15th business day before expiration of the registration.

(c) Issuance of renewal. -- The Commissioner shall renew the registration of an offer of a franchise if it meets the requirements of this section.

(d) Effective date of renewal. -- Unless a stop order or other order is in effect under this subtitle, renewal of the registration of the offer of a franchise automatically takes effect at:

(1) noon on the day when the previous registration is due to expire; or

(2) an earlier time that the Commissioner sets.

HISTORY: An. Code 1957, art. 56, § § 350, 358, 359, 360; 1992, ch. 4 § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-220 (2004)

§ 14-220. Amendments to registration

(a) Application for amendment to registration. -- If there is a material change in the information that a registrant previously filed with the Commissioner, the franchisor shall:

- (1) file promptly with the Commissioner an application to amend the registration; and
- (2) pay a fee of \$ 100.

(b) Form. -- The registrant shall sign and verify the application to amend the registration.

(c) Regulations. -- The Commissioner by regulation may state:

- (1) what constitutes a material change; and
- (2) the circumstances under which a revised prospectus shall accompany an application to amend the registration.

(d) Effective date of amendment. -- If the Commissioner approves the amendment to the registration, the amendment takes effect on the date the Commissioner sets after considering the public interest and the protection of franchisees.

HISTORY: An. Code 1957, art. 56, § § 350, 361, 362; 1992, ch. 4, § 2; ch. 26, § 4; 1993, ch. 5, § 1.

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Md. BUSINESS REGULATION Code Ann. § 14-221 (2004)

§ 14-221. Grounds for issuing stop order

The Commissioner summarily may pass a stop order to deny, suspend, or revoke a registration if the Commissioner finds that:

- (1) there has been a violation of this subtitle or a regulation adopted under it;
- (2) the offer to sell or sale of the franchise would constitute misrepresentation to, deceit of, or fraud on the buyer;
- (3) a person identified in an application has been convicted of an offense or has had a civil judgment entered against the person as described in § 14-216(c)(8) of this subtitle or is subject to an order described in § 14-216(c)(9) of this subtitle, and the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees;
- (4) the prospectus or amendment to it is incomplete or inaccurate in any material respect;
- (5) the prospectus or amendment to it includes a false or misleading statement of a material fact or omits to state a material fact required to be stated in the prospectus or amendment or necessary to make the statements in the prospectus or amendment not misleading;
- (6) in connection with an offer to sell or sale of a franchise, a person in the State is engaging or is about to engage in a false, fraudulent, or deceptive practice or in a device, scheme, or artifice to defraud; or
- (7) the financial condition of the franchisor affects or will affect the ability of the franchisor to meet an obligation under the franchise or other agreement and the franchisor is not able or willing to comply or has failed to comply with a regulation, order, or administrative determination of the Commissioner under § 14-217 of this subtitle.

HISTORY: An. Code 1957, art. 56, § 353; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-222 (2004)

§ 14-222. Notice; hearing; vacating or modifying stop order

(a) Notice. -- After passing a stop order, the Commissioner promptly shall send to the applicant or registrant a notice that:

- (1) states that the stop order has been passed;
- (2) states the reasons for the stop order; and
- (3) informs the applicant or registrant of the right to a hearing under this section.

(b) Hearing. --

- (1) The applicant or registrant may submit to the Commissioner a written request for a hearing on the stop order.
- (2) The Commissioner shall schedule a hearing within 15 business days after the Commissioner receives the request unless the applicant or registrant consents to a later date.

(3) The Commissioner may schedule a hearing even if the applicant or registrant does not request a hearing.

(c) Vacating or modifying stop order. --

(1) If a hearing is not requested and is not scheduled by the Commissioner and therefore is not held, the stop order remains in effect until the Commissioner modifies or vacates it.

(2) If a hearing is held, after the hearing, the Commissioner may modify or vacate the stop order or extend it until the Commissioner makes a final determination.

(3) The Commissioner may modify or vacate a stop order if the Commissioner finds that:

- (i) conditions have changed; or
- (ii) it is otherwise in the public interest to vacate or modify the stop order.

HISTORY: An. Code 1957, art. 56, § § 355, 356; 1992, ch. 4, § 2; ch. 26, § 4.

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Md. BUSINESS REGULATION Code Ann. § 14-223 (2004)

§ 14-223. Copies of documents to franchisees

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:

(1) the first personal meeting of the franchisor and the prospective franchisee to discuss the possible sale of the franchise; or

(2) 10 business days before the execution of a contract or payment of any consideration that relates to the franchise relationship.

HISTORY: An. Code 1957, art. 56, § 357; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-224 (2004)

§ 14-224. Records required

Each franchisor or subfranchisor shall keep a complete set of records of each sale of a franchise.

HISTORY: An. Code 1957, art. 56, § 349A; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-225 (2004)

§ 14-225. Advertisements offering franchises

A person may not publish an advertisement offering to sell a franchise subject to registration under this subtitle unless:

- (1) the person submits a copy of the advertisement to the Commissioner for review at least 7 business days before the first publication of the advertisement unless the Commissioner by regulation or order allows a later submission; or
- (2) the advertisement is exempted from review by regulation of the Commissioner.

HISTORY: An. Code 1957, art. 56, § 350A; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-226 (2004)

§ 14-226. Release from liability as condition of sale

As a condition of the sale of a franchise, a franchisor may not require a prospective franchisee to agree to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability under this subtitle.

HISTORY: An. Code 1957, art. 56, § 365C; 1992, ch. 4, § 2.

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Md. BUSINESS REGULATION Code Ann. § 14-227 (2004)

§ 14-227. Civil liability

(a) Grounds. --

(1) A person who sells or grants a franchise is civilly liable to the person who buys or is granted a franchise if the person who sells or grants a franchise offers to sell or sells a franchise:

(i) without the offer of the franchise being registered under this subtitle; or

(ii) by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, if the person who buys or is granted a franchise does not know of the untruth or omission.

(2) In determining liability under this subsection, the person who sells or grants a franchise has the burden of proving that the person who sells or grants a franchise did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.

(b) Action to recover damages. -- The person who buys or is granted a franchise may sue under this section to recover damages sustained by the grant of the franchise.

(c) Action by court. -- A court may order the person who sells or grants a franchise to:

(1) rescind the franchise; and

(2) make restitution to the person who buys or is granted a franchise.

(d) Joint and several liability. --

(1) Joint and several liability under this section extends to:

(i) each person who directly or indirectly controls a person liable under this section;

(ii) each partner in a partnership liable under this section;

(iii) each principal officer or director of a corporation liable under this section;

(iv) each other person that has a similar status or performs similar functions as a person liable under this section; and

(v) each employee of a person liable under this section, if the employee materially aids in the act or transaction that is a violation under this subtitle.

(2) However, liability under this subsection does not extend to a person who did not have knowledge of or reasonable grounds to believe in the existence of the facts by which the liability is alleged to exist.

(e) Time limitation. -- An action under this section must be brought within 3 years after the grant of the franchise.

HISTORY: An. Code 1957, art. 56, § 365; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

APPLICABILITY. --Where parties entered into a contract essentially to consolidate two distinctive area development agreements, the contract did not involve the sale of franchises and did not give rise to a private cause of action under the State franchise regulation statute. *Motor City Bagels, L.L.C. v. The American Bagel Co., 50 F. Supp. 2d 460 (D. Md. 1999)*.

PROOF OF DAMAGE. --Liability under the Franchise Act requires proof of damage, and the fact that plaintiffs' gross revenues exceeded their own estimates and the gross revenues of their predecessor was fatal to their statutory claim based on franchisor's incomplete disclosure. *Layton v. AAMCO Transmissions, Inc., 717 F. Supp. 368 (D. Md. 1989)*.

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Md. BUSINESS REGULATION Code Ann. § 14-228 (2004)

§ 14-228. Offer or sale of franchise without registration

(a) Prohibited act. -- Except as otherwise provided in this subtitle, a person may not offer to sell, through advertisement or otherwise, or sell a franchise in the State unless the offer of the franchise has been registered under this subtitle.

(b) Penalty. -- A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$ 10,000 or imprisonment not exceeding 5 years or both.

HISTORY: An. Code 1957, art. 56, § § 347, 365A; 1992, ch. 4, § 2.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

FAILURE TO REGISTER UNDER SUBTITLE DOES NOT VOID AGREEMENTS. --Area operators' agreement and franchise agreement was not void ab initio because of franchisor's failure to register under this subtitle. *Bagel Enters., Inc. v. Baskin & Sears, 56 Md. App. 184, 467 A.2d 533 (1983)*, cert. denied, *299 Md. 136, 472 A.2d 999 (1984)*.

WAIVER OF RIGHT TO RESCIND. --Franchisee waived its right to rescind franchising agreement based on franchisor's failure to register under this subtitle where franchisee indicated its desire to continue with agreement after it was aware of its right to rescind. *Bagel Enters., Inc. v. Baskin & Sears, 56 Md. App. 184, 467 A.2d 533 (1983)*, cert. denied, *299 Md. 136, 472 A.2d 999 (1984)*.

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Md. BUSINESS REGULATION Code Ann. § 14-229 (2004)

§ 14-229. Fraud or deceit; untrue statements or omissions of material fact

(a) Prohibited acts. -- In connection with an offer to sell or sale of a franchise, a person, directly or indirectly, may not:

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading; or

(3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

(b) Penalty. -- A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$ 10,000 or imprisonment not exceeding 5 years or both.

HISTORY: An. Code 1957, art. 56, § § 347, 365A; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-230 (2004)

§ 14-230. False or misleading statement or omission in prospectus or amendment

(a) Prohibited act. -- In a prospectus or amendment to it, a person may not willfully make a false or misleading statement of a material fact or willfully omit to state a material fact required to be stated in the prospectus or amendment or necessary to make the statements in the prospectus or amendment not misleading.

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

HISTORY: An. Code 1957, art. 56, § 365A; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

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BUSINESS REGULATION
TITLE 14. BUSINESS OPPORTUNITIES, FRANCHISES, AND MULTILEVEL DISTRIBUTION COMPANIES
SUBTITLE 2. FRANCHISES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Md. BUSINESS REGULATION Code Ann. § 14-231 (2004)

§ 14-231. Untrue statements or omissions of material fact in applications, notices, or reports

(a) Prohibited act. -- A person may not make or cause to be made an untrue statement of a material fact or omit to state a material fact in an application for registration, to amend registration, or for renewal or in a notice or report filed with the Commissioner under this subtitle.

(b) Penalty. -- A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$ 10,000 or imprisonment not exceeding 5 years or both.

HISTORY: An. Code 1957, art. 56, § § 347, 365A; 1992, ch. 4, § 2; ch. 26, § 4.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-232 (2004)

§ 14-232. Failure to notify Commissioner of material change

(a) Prohibited act. -- A person may not fail to notify the Commissioner promptly of a material change as required by § 14-220 of this subtitle.

(b) Penalty. -- A person who willfully sells a franchise knowingly violating this section is guilty of a felony and, on conviction, is subject for each violation to a fine not exceeding \$ 10,000 or imprisonment not exceeding 5 years or both.

HISTORY: An. Code 1957, art. 56, § § 347, 365A; 1992, ch. 4, § 2.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "Franchise Law Compliance: Before the Logo Hits the Streets," see *10 U. Balt. L. Rev. 1 (1980)*.

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Md. BUSINESS REGULATION Code Ann. § 14-233 (2004)

§ 14-233. Short title

This subtitle is the Maryland Franchise Registration and Disclosure Law.

HISTORY: 1992, ch. 4, § 2; ch. 26, § 4.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.