

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1855

6
7 H.P. 1320 House of Representatives, January 15, 1986
8 Submitted by the Department of Business, Occupational and Professional
Regulation pursuant to Joint Rule 24.

9 Reference to the Committee on Business and Commerce suggested and
ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Stevens of Bangor.

Cosponsored by Senator Bustin of Kennebec, Representative Rydell of
Brunswick and Representative Telow of Lewiston.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Perfect the Maine Business
18 Opportunity Sales Act.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 32 MRSA c. 69-B, as amended, is re-
23 pealed.

24 Sec. 2. 32 MRSA c. 106 is enacted to read:

25 CHAPTER 106

26 MAINE BUSINESS OPPORTUNITY SALES ACT

27 SUBCHAPTER I

28 TITLE AND DEFINITIONS

29 §10801. Title

30 This Act shall be known and may be cited as the
31 "Maine Business Opportunity Sales Act."

1 §10802. Definitions

2 As used in this chapter, unless the context indi-
3 cates otherwise, the following terms have the follow-
4 ing meanings.

5 1. Advertising. "Advertising" means any circu-
6 lar, prospectus, advertisement or other material or
7 any communication by radio, television, pictures or
8 similar means used in connection with an offer or
9 sale of any business opportunity.

10 2. Business opportunity. "Business opportunity"
11 means:

12 A. A contract or agreement between a seller and
13 purchaser, express or implied, orally or in writ-
14 ing, wherein it is agreed that the seller or a
15 person recommended by the seller shall provide to
16 the purchaser any products, equipment, supplies
17 or services enabling the purchaser to start a
18 business and the seller represents directly or
19 indirectly, orally or in writing, that:

20 (1) The seller or a person recommended by
21 the seller will provide or assist the pur-
22 chaser in finding locations for the use or
23 operation of vending machines, racks, dis-
24 play cases or other similar devices, on
25 premises neither owned nor leased by the
26 purchaser or seller;

27 (2) The seller or a person recommended by
28 the seller will provide or assist the pur-
29 chaser in finding outlets or accounts for
30 the purchaser's products or services;

31 (3) The seller or a person specified by the
32 seller will purchase any or all products
33 made, produced, fabricated, grown, bred or
34 modified by the purchaser;

35 (4) The seller guarantees that the purchas-
36 er will derive income from the business
37 which exceeds the price paid to the seller;

1 (5) The seller will refund all or part of
2 the price paid to the seller, or repurchase
3 any of the products, equipment or supplies
4 provided by the seller or a person recom-
5 ended by the seller, if the purchaser is
6 dissatisfied with the business; or

7 (6) The seller will provide a marketing
8 plan; but

9 B. Does not include:

10 (1) Any offer or sale of an ongoing busi-
11 ness operated by the seller and to be sold
12 in its entirety;

13 (2) Any offer or sale of a business oppor-
14 tunity to an ongoing business where the
15 seller will provide products, equipment,
16 supplies or services which are substantially
17 similar to the products, equipment, supplies
18 or services sold by the purchaser in connec-
19 tion with the purchaser's ongoing business;

20 (3) Any offer or sale of a business oppor-
21 tunity which is registered pursuant to
22 Maine's securities registration and disclo-
23 sure law;

24 (4) Any offer or sale of a business oppor-
25 tunity which involves a marketing plan made
26 in conjunction with the licensing of a fed-
27 erally registered trademark or federally
28 registered service mark, provided that the
29 seller has a minimum net worth of \$1,000,000
30 as determined on the basis of the seller's
31 most recent audited financial statement pre-
32 pared within 13 months of the first offer in
33 this State. Net worth may be determined on
34 a consolidated basis where the seller is at
35 least 80% owned by one person and that per-
36 son expressly guarantees the obligations of
37 the seller with regard to the offer or sale
38 of any business opportunity claimed to be
39 excluded under this subparagraph; or

1 (5) Any offer or sale of a business oppor-
2 tunity by an executor, administrator, sher-
3 iff, marshal, receiver, trustee in bankrupt-
4 cy, guardian or conservator or a judicial
5 offer or sale of a business opportunity.

6 3. Franchise. "Franchise" means a contract or
7 agreement between a seller and a purchaser, express
8 or implied, orally or in writing, where it is agreed
9 that:

10 A. A franchisee is granted the right to engage
11 in the business of offering, selling or distrib-
12 uting goods or services under a marketing plan
13 prescribed in substantial part by a franchisor;
14 and

15 B. The operation of the franchisee's business
16 pursuant to such a plan is substantially associ-
17 ated with the franchisor's business and trade-
18 mark, service mark, trade name, logotype, adver-
19 tising or other commercial symbol designating the
20 franchisor or its affiliate.

21 For the purposes of this subsection, "franchisee"
22 means a person to whom a franchise is granted and
23 "franchisor" means a person who grants a franchise.

24 4. Marketing plan. "Marketing plan" means ad-
25 vice or training provided to the purchaser by the
26 seller or a person recommended by the seller pertain-
27 ing to the sale of any products, equipment, supplies
28 or services and the advice or training includes, but
29 is not limited to, preparing or providing:

30 A. Promotional literature, brochures, pamphlets
31 or advertising materials;

32 B. Training regarding the promotion, operation
33 or management of the business opportunity; or

34 C. Operational, managerial, technical or finan-
35 cial guidelines or assistance.

36 5. Offer; offer to sell. "Offer" or "offer to
37 sell" includes every attempt to dispose of a business
38 opportunity for value or solicitation of an offer to
39 purchase a business opportunity.

1 2. Payment of \$250 or less. Any offer or sale
2 of a business opportunity for which the purchaser is
3 required to make a payment to the seller or a person
4 recommended by the seller not to exceed \$250 during
5 the period from any time before commencing operation
6 to within 6 months after commencing operation of the
7 business opportunity;

8 3. Seller with \$1,000,000 net worth. Any offer
9 or sale of a business opportunity where the seller
10 has a net worth of not less than \$1,000,000 as deter-
11 mined on the basis of this seller's most recent au-
12 dated financial statement prepared within 13 months
13 of the first offer in this State. Net worth may be
14 determined on a consolidated basis where the seller
15 is at least 80% owned by one person and that person
16 expressly guarantees the obligations of the seller
17 with regard to the offer or sale of any business op-
18 portunity claimed to be exempt under this subsection.
19 The superintendent may by rule withdraw or further
20 condition the availability of this exemption;

21 4. Purchaser with \$250,000 net worth. Any offer
22 or sale of a business opportunity where the purchaser
23 has a net worth of not less than \$250,000. Net worth
24 shall be determined exclusive of principal residence,
25 furnishings in the residence and automobiles. The
26 superintendent may by rule withdraw or further condi-
27 tion the availability of this exemption;

28 5. Sale to financial institution. Any offer or
29 sale of a business opportunity where the purchaser is
30 a bank, savings and loan association, trust company,
31 insurance company, credit union or investment company
32 as defined by the United States Investment Company
33 Act of 1940, pension or profit sharing trust, or oth-
34 er financial institution or institutional buyer or a
35 dealer registered pursuant to the Revised Maine Secu-
36 rities Act, where the purchaser is acting for itself
37 or in a fiduciary capacity;

38 6. Sale of franchise. Any offer or sale of a
39 business opportunity which is defined as a franchise
40 in section 10802, subsection 3, provided that the
41 seller delivers to each purchaser at the earlier of
42 the first personal meeting or 10 business days prior
43 to the earlier of the execution by a purchaser of any

1 contract or agreement imposing a binding legal obli-
2 gation on the purchaser or the payment by a purchaser
3 of any consideration in connection with the offer or
4 sale of the business opportunity, one of the follow-
5 ing disclosure documents:

6 A. A uniform franchise offering circular pre-
7 pared in accordance with the guidelines adopted
8 by the North American Securities Administrators
9 Association, Incorporated, as amended through
10 September 21, 1983; or

11 B. A disclosure document prepared pursuant to
12 the Federal Trade Commission rule entitled Dis-
13 closure Requirements and Prohibitions concerning
14 Franchising and Business Opportunity Ventures, 16
15 Code of Federal Regulations, Section 436 (1979).

16 For the purposes of this subsection, a "personal
17 meeting" means a face-to-face meeting between the
18 purchaser and the seller or their representatives
19 which is held for the purpose of discussing the offer
20 or sale of a business opportunity. The superintend-
21 ent may by rule adopt any amendment to the uniform
22 franchise offering circular that has been adopted by
23 the North American Securities Administrators Associa-
24 tion, Incorporated, or any amendment to the disclo-
25 sure document prepared pursuant to the Federal Trade
26 Commission rule entitled Disclosure Requirements and
27 Prohibitions concerning Franchising and Business Op-
28 portunity Ventures, 16 Code of Federal Regulations,
29 Section 436 (1979), that has been adopted by the Fed-
30 eral Trade Commission;

31 7. Cash payment not exceeding \$500. Any offer
32 or sale of a business opportunity for which the cash
33 payment made by a purchaser for any business opportu-
34 nity does not exceed \$500 and the payment is made for
35 the not-for-profit sale of sales demonstration equip-
36 ment, material or samples or the payment is made for
37 product inventory sold to the purchaser at a bona
38 fide wholesale price; and

39 8. Other. Any offer or sale of a business op-
40 portunity which the superintendent exempts by order
41 or a class of business opportunities which the super-
42 intendent exempts by rule upon the finding that that

1 exemption is not contrary to public interest and that
2 registration is not necessary or appropriate for the
3 protection of purchasers.

4 §10902. Denial or revocation of exemptions

5 1. Denial or revocation. The superintendent may
6 by order deny or revoke any exemption specified in
7 section 10901 with respect to a particular offering
8 of one or more business opportunities. No such order
9 may be entered without appropriate prior notice to
10 all interested parties, opportunity for hearing and
11 written findings of fact and conclusions of law.

12 2. Summary action. If the public interest or
13 the protection of purchasers so requires, the super-
14 intendent may by order summarily deny or revoke any
15 of the specified exemptions pending final determina-
16 tion of any proceedings under this section. Upon the
17 entry of the order, the superintendent shall promptly
18 notify all interested parties that the order has been
19 entered, of the reasons for the entry and that within
20 15 days of the receipt of a written request the mat-
21 ter will be set down for hearing. If no hearing is
22 requested and none is ordered by the superintendent,
23 the order becomes final 30 days after entry of the
24 summary order. If a hearing is requested or ordered,
25 the superintendent, after notice of and opportunity
26 for hearing to all interested persons, may modify or
27 vacate the order or extend it until final determina-
28 tion.

29 3. Order not retroactive. No order under this
30 section may operate retroactively.

31 4. Sale without knowledge of order. No person
32 may be considered to have violated section 11001 by
33 reason of any offer or sale effected after the entry
34 of an order under section 11002, subsection 2, if
35 that person sustains the burden of proof that he did
36 not know and, in the exercise of reasonable care,
37 could not have known of the order.

38 §10903. Burden of proof

39 In any administrative, civil or criminal proceed-
40 ing related to this Act, the burden of proving an ex-

1 emption, an exception from a definition or an exclu-
2 sion from this Act is upon the person claiming it.

3 SUBCHAPTER III

4 REGISTRATION AND DISCLOSURE

5 §11001. Registration requirement

6 It is unlawful for any person to offer or sell
7 any business opportunity in this State unless the
8 business opportunity is registered under this Act or
9 is exempt under section 10901.

10 §11002. Registration

11 1. Filing. To register a business opportunity,
12 the seller must file with the superintendent one of
13 the following disclosure documents with the appropri-
14 ate cover sheet as required by section 11003, subsec-
15 tion 2, a consent to service of process as specified
16 in subsection 2 and the appropriate fee as required
17 by subsection 3:

18 A. A uniform franchise offering circular pre-
19 pared in accordance with the guidelines adopted
20 by the North American Securities Administrators
21 Association, Incorporated, as amended through
22 September 21, 1983. The superintendent may by
23 rule adopt any amendment to the uniform franchise
24 offering circular that has been adopted by North
25 American Securities Administrators Association,
26 Incorporated;

27 B. A disclosure document prepared pursuant to
28 the Federal Trade Commission rule entitled Dis-
29 closure Requirements and Prohibitions Concerning
30 Franchising and Business Opportunity Ventures, 16
31 Code of Federal Regulations, Section 436 (1979).
32 The superintendent may by rule adopt any amend-
33 ment to the disclosure document prepared pursuant
34 to 16 Code of Federal Regulations, Section 436
35 (1979), that has been adopted by the Federal
36 Trade Commission; or

37 C. A disclosure document prepared pursuant to
38 section 11003, subsection 2.

1 2. Consent to service of process. Every seller
2 shall file, in such form as the superintendent may
3 prescribe, an irrevocable consent appointing the su-
4 perintendent or the successor in office to be the
5 seller's attorney to receive service of any lawful
6 process in any noncriminal suit, action or proceeding
7 against the seller or the seller's successor, execu-
8 tor or administrator which arises under this Act af-
9 ter the consent has been filed, with the same force
10 and validity as if served personally on the person
11 filing the consent. Service may be made by leaving a
12 copy of the process in the office of the superintend-
13 ent, but is not effective unless the plaintiff or pe-
14 tioner, who may be the superintendent or the Attor-
15 ney General in a suit, action or proceeding, forth-
16 with sends notice of the service and a copy of the
17 process by registered or certified mail to the de-
18 fendant's or respondent's address on file with the
19 superintendent, and the plaintiff's affidavit of com-
20 pliance with this subsection is filed in the case on
21 or before the return date of the process, if any, or
22 within such further time as the court allows.

23 3. Fee. A registration statement must be accom-
24 panied by a nonrefundable fee of \$100.

25 4. Effectiveness of registration. A registra-
26 tion automatically becomes effective upon the expira-
27 tion of the 10th full business day after a complete
28 filing, provided that no order has been issued or
29 proceeding is pending under section 11005. The su-
30 perintendent may by order waive or reduce the time
31 period prior to effectiveness, provided that a com-
32 plete filing has been made. The superintendent may
33 by order defer the effective date until the expira-
34 tion of the 10th full business day after the filing
35 of any amendment.

36 5. Renewal. The registration is effective for
37 one year commencing on the date of effectiveness and
38 may be renewed annually upon the filing of a current
39 disclosure document accompanied by any documents or
40 information that the superintendent may by rule or
41 order require and a \$100 renewal fee. Failure to re-
42 new upon the close of the one-year period of effec-
43 tiveness shall result in expiration of the registra-
44 tion. The superintendent may by rule or order re-
45 quire the filing of a sales report.

1 6. Filing of advertising. The superintendent
2 may by rule require the filing of all proposed liter-
3 ature or advertising prior to its use.

4 §11003. Disclosure requirements

5 1. Delivery of disclosure document. It is un-
6 lawful for any person to offer or sell any business
7 opportunity required to be registered under this Act
8 unless a written disclosure document as filed under
9 section 11002, subsection 1, is delivered to each
10 purchaser at least 10 business days prior to the exe-
11 cution by a purchaser of any contract or agreement
12 imposing a binding legal obligation on the purchaser
13 or the payment by a purchaser of any consideration in
14 connection with the offer or sale of the business op-
15 portunity.

16 2. Cover sheet. The disclosure document must
17 have a cover sheet which is entitled, in at least
18 10-point bold type, "DISCLOSURE REQUIRED BY MAINE."
19 Under the title must appear the statement in at least
20 10-point type that "The registration of this business
21 opportunity does not constitute approval, recommenda-
22 tion or endorsement by the Department of Business,
23 Occupational and Professional Regulation of the
24 State. The information contained in this disclosure
25 document has not been verified by this State. If you
26 have any questions or concerns about this investment,
27 seek professional advice before you sign a contract
28 or make any payment. You are to be provided 10 busi-
29 ness days to review this document before signing any
30 contract or agreement or making any payment to the
31 seller or the seller's representative." The seller's
32 name or principal business address, along with the
33 date of the disclosure document, must also be pro-
34 vided on the cover sheet. No other information may
35 appear on the cover sheet. The disclosure document
36 must contain the following information, unless the
37 seller uses a disclosure document as provided in sec-
38 tion 11002, subsection 1, paragraph A or B:

39 A. The names or residential addresses of those
40 salespersons who will engage in the offer or sale
41 of the business opportunity in this State;

1 B. The name of the seller; whether the seller is
2 doing business as an individual, partnership or
3 corporation; the names under which the seller has
4 done, is doing or intends to do business; and the
5 name of any parent or affiliated company that
6 will engage in business transactions with the
7 purchaser or which will take responsibility for
8 statements made by the seller;

9 C. The names, addresses and titles of the
10 seller's officers, directors, trustees, general
11 managers, principal executives, agents and any
12 other persons charged with responsibility for the
13 seller's business activities relating to the sale
14 of the business opportunity;

15 D. Prior business experience of the seller re-
16 lating to business opportunities, including:

17 (1) The name, address and a description of
18 any business opportunity previously offered
19 by the seller;

20 (2) The length of time the seller has of-
21 fered each such business opportunity; and

22 (3) The length of time the seller has con-
23 ducted the business opportunity currently
24 being offered to the purchaser;

25 E. With respect to persons identified in para-
26 graph C:

27 (1) A description of the persons' business
28 experience for the 10-year period preceding
29 the filing date of this disclosure document.
30 The description of business experience must
31 list principal occupations and employers;
32 and

33 (2) A listing of the persons' educational
34 and professional backgrounds including, the
35 names of schools attended and degrees re-
36 ceived and any other information that will
37 demonstrate sufficient knowledge and experi-
38 ence to perform the services proposed;

1 F. Whether the seller or any person identified
2 in paragraph C:

3 (1) Has been convicted of any felony, or
4 pleaded nolo contendere to a felony charge,
5 or has been the subject of any criminal,
6 civil or administrative proceedings alleging
7 the violation of any business opportunity
8 law, securities law, commodities law, fran-
9 chise law, fraud or deceit, embezzlement,
10 fraudulent conversion, restraint of trade,
11 unfair or deceptive practices, misappropria-
12 tion of property or comparable allegations;

13 (2) Has filed in bankruptcy, been adjudged
14 bankrupt, been reorganized due to insolvency
15 or was an owner, principal officer or gener-
16 al partner of any other person that has so
17 filed or was so adjudged or reorganized dur-
18 ing or within the last 7 years;

19 G. The name of the person identified in para-
20 graph F, nature of and parties to the action or
21 proceeding, court or other forum, date of the in-
22 stitution of the action, docket references to the
23 action, current status of the action or proceed-
24 ing, terms and conditions of any order or decree,
25 the penalties or damages assessed and terms of
26 settlement;

27 H. The initial payment required or, when the ex-
28 act amount cannot be determined, a detailed esti-
29 mate of the amount of the initial payment to be
30 made to the seller;

31 I. A detailed description of the actual services
32 the seller agrees to perform for the purchaser;

33 J. A detailed description of any training the
34 seller agrees to provide for the purchaser;

35 K. A detailed description of services the seller
36 agrees to perform in connection with the place-
37 ment of equipment, products or supplies at a lo-
38 cation, as well as any agreement necessary in or-
39 der to locate or operate equipment, products or
40 supplies on premises neither owned nor leased by
41 the purchaser or seller;

1 L. A detailed description of any license or per-
2 mit that will be necessary in order for the pur-
3 chaser to engage in or operate the business op-
4 portunity;

5 M. The business opportunity seller that is re-
6 quired to secure a bond pursuant to section 11006
7 shall state in the disclosure document the fol-
8 lowing: "As required by the State, the seller has
9 secured a bond issued by (insert name or address
10 of surety company), a surety company, authorized
11 to do business in this State. Before signing a
12 contract or agreement to purchase this business
13 opportunity, you should check with the surety
14 company to determine the bond's current status."

15 N. Any representations made by the seller to the
16 purchaser concerning sales or earnings that may
17 be made from the business opportunity, including,
18 but not limited to:

19 (1) The bases or assumptions for any actu-
20 al, average, projected or forecasted sales,
21 profits, income or earnings;

22 (2) The total number of purchasers who,
23 within a period of 3 years of the date of the
24 disclosure document, purchased a busi-
25 ness opportunity involving the product,
26 equipment, supplies or services being of-
27 fered to the purchaser; or

28 (3) The total number of purchasers who,
29 within 3 years of the date of the disclosure
30 document, purchased a business opportunity
31 involving the product, equipment, supplies
32 or services being offered to the purchaser
33 who, to the seller's knowledge, have actual-
34 ly received earnings in the amount or range
35 specified;

36 O. Any seller who makes a guarantee to a pur-
37 chaser shall give a detailed description of the
38 elements of the guarantee. The description must
39 include, but is not limited to, the duration,
40 terms, scope, conditions and limitations of the
41 guarantee;

- 1 P. A statement of:
- 2 (1) The total number of business opportuni-
3 ties that are the same or similar in nature
4 to those that have been sold or organized by
5 the seller;
- 6 (2) The names and addresses of purchasers
7 who have requested a refund or rescission
8 from the seller within the last 12 months
9 and the number of those who have received
10 the refund or rescission; and
- 11 (3) The total number of business opportuni-
12 ties the seller intends to sell in this
13 State within the next 12 months;
- 14 Q. A statement describing any contractual re-
15 strictions, prohibitions or limitations on the
16 purchaser's conduct. A copy of all business op-
17 portunities or other contracts or agreements pro-
18 posed for use or in use in this State including,
19 without limitation, all lease agreements, option
20 agreements and purchase agreements must be at-
21 tached;
- 22 R. The rights and obligations of the seller and
23 the purchaser regarding termination of the busi-
24 ness opportunity contract or agreement;
- 25 S. A statement accurately describing the grounds
26 upon which the purchaser may initiate legal ac-
27 tion to terminate the business opportunity con-
28 tract or agreement;
- 29 T. A copy of the most recent audited financial
30 statement of the seller, prepared within 13
31 months of the first offer in this State, together
32 with a statement of any material changes in the
33 financial condition of the seller from that date.
34 The superintendent may allow the seller to submit
35 a limited review in order to satisfy the require-
36 ments of paragraph M;
- 37 U. A list of the states in which this business
38 opportunity is registered;

1 V. A list of the states in which this disclosure
2 document is on file;

3 W. A list of the states which have denied, sus-
4 pending or revoked the registration of this busi-
5 ness opportunity;

6 X. A section entitled "Risk Factors" containing
7 a series of short concise statements summarizing
8 the principal factors which make this business
9 opportunity a high risk or one of a speculative
10 nature. Each statement shall include a cross-
11 reference to the page on which further informa-
12 tion regarding that risk factor can be found in
13 the disclosure document; and

14 Y. Any additional information as the superin-
15 tendent may require by rule or order.

16 §11004. Contract or agreement provisions

17 1. Written contract required. It is unlawful
18 for any person to offer or sell any business opportu-
19 nity required to be registered, unless the business
20 opportunity contract and agreement is in writing and
21 a copy of the contract or agreement is given to the
22 purchaser at the time the purchaser signs the con-
23 tract or agreement.

24 2. Contents of contract. Contracts or agree-
25 ments must set forth in at least 10-point type or
26 equivalent size, if handwritten, the following:

27 A. The terms or conditions of any and all pay-
28 ments due to the seller;

29 B. The seller's principal business address and
30 the name and address of the seller's agent in
31 this State authorized to receive service of pro-
32 cess;

33 C. The business form of the seller, whether cor-
34 porate, partnership or otherwise;

35 D. The delivery date or when the contract pro-
36 vides for a periodic delivery of times to the
37 purchaser, the approximate delivery date of the

1 product, equipment or supplies the seller is to
2 deliver to the purchaser to enable the purchaser
3 to start his business; and

4 E. Whether the product, equipment or supplies
5 are to be delivered to the purchaser's home or
6 business address or are to be placed or caused to
7 be placed by the seller at locations owned or
8 managed by persons other than the purchaser.

9 §11005. Denial, suspension or revocation of regis-
10 tration

11 1. Denial, suspension or revocation order. The
12 superintendent may issue an order denying effective-
13 ness to, or suspending or revoking the effectiveness
14 of, any registration if the superintendent finds that
15 the order is in the public interest and that:

16 A. The registration as of its effective date or
17 as of any earlier date in the case of any order
18 denying effectiveness, or any amendment as of its
19 effective date, or any report is incomplete in
20 any material respect or contains any statement
21 which was, in the light of the circumstances un-
22 der which it was made, false or misleading with
23 respect to any material fact;

24 B. Any provision of this Act or any rule, order
25 or condition lawfully imposed under this Act has
26 been knowingly violated in connection with the
27 business opportunity:

28 (1) By the person filing the registration;
29 or

30 (2) By the seller, any partner, officer, or
31 director of the seller, any person occupying
32 a similar status or performing similar func-
33 tions, or any person directly or indirectly
34 controlling or controlled by the seller, but
35 only if the person filing the registration
36 is directly or indirectly controlled by or
37 acting for the seller;

38 C. The business opportunity registered or sought
39 to be registered is the subject of an administra-

1 tive order denying, suspending or revoking a reg-
2 istration or a permanent or temporary injunction
3 of any court of competent jurisdiction; but the
4 superintendent:

5 (1) May not institute a proceeding against
6 an effective registration under this para-
7 graph more than one year from the date of
8 the order or injunction relied on; and

9 (2) May not enter an order under this para-
10 graph on the basis of an order or injunction
11 entered under any other state act unless
12 that order or injunction was based on facts
13 which would currently constitute a ground
14 for an order under this section;

15 D. The seller's enterprise or method of business
16 or that of the business opportunity, includes or
17 would include activities which are illegal where
18 performed;

19 E. The business opportunity or the offering of a
20 business opportunity has worked or tended to work
21 a fraud upon purchasers or would so operate;

22 F. There has been a failure to file any docu-
23 ments or information required by section 11002;

24 G. The seller has failed to pay the proper fil-
25 ing fee, but the superintendent may enter only a
26 denial order under this paragraph and shall va-
27 cate any such order when the deficiency has been
28 corrected; and

29 H. The seller's literature or advertising is
30 misleading, incorrect, incomplete or deceptive.

31 2. Limitation on proceeding. The superintendent
32 may not institute a proceeding under this section
33 against an effective registration on the basis of a
34 fact or transaction known to the superintendent when
35 the registration became effective unless the proceed-
36 ing is instituted within the next 30 days.

37 3. Summary action. The superintendent may by
38 order summarily postpone or suspend the effectiveness

1 of the registration pending final determination of
2 any proceeding under this section. Upon the entry of
3 the order, the superintendent shall promptly notify
4 the seller that the order has been entered and of the
5 reasons for the entry of the order and that within 15
6 days after the receipt of a written request the mat-
7 ter will be set down for hearing. If no hearing is
8 requested and none is ordered by the superintendent,
9 the order becomes final 30 days after entry of the
10 summary order. If a hearing is requested or ordered,
11 the superintendent, after notice of and opportunity
12 for hearing to the seller, may modify or vacate the
13 order or extend it until final determination.

14 4. Stop order. No stop order may be entered un-
15 der any part of this section, except subsection 3,
16 without appropriate notice to the seller, opportunity
17 for hearing and written findings of fact and conclu-
18 sions of law.

19 5. Modification of order. The superintendent
20 may vacate or modify an order issued under this sec-
21 tion if the superintendent finds that the conditions
22 which prompted its entry have changed or that it is
23 otherwise in the public interest to do so.

24 §11006. Minimum net worth or bond requirement

25 1. Net worth; bond. In connection with the of-
26 fer or sale of a business opportunity, no seller may
27 make or use any of the representations set forth in
28 section 10802, subsection 2, paragraph A, subpara-
29 graph (4) or (5), unless the seller has at all times
30 a minimum net worth of \$25,000 as determined in ac-
31 cordance with generally accepted accounting princi-
32 ples. In lieu of the minimum net worth requirement,
33 the superintendent may, by rule or order, require a
34 business opportunity seller to obtain a surety bond
35 issued by a surety company authorized to do business
36 in this State. The surety bond must be in an amount
37 not less than \$25,000 and must be in favor of this
38 State for the benefit of any purchaser. The superin-
39 tendent may, by rule or order, increase the amount of
40 the bond for the protection of purchasers and may re-
41 quire the seller to file reports of all sales in this
42 State to determine the appropriate amount of bond.

1 this Act or in the prescribing of rules or forms;

2 B. May require or permit any person to file a
3 statement, under oath or otherwise as the super-
4 intendent determines, as to all the facts or cir-
5 cumstances concerning the matter to be investi-
6 gated; and

7 C. May publish information concerning any viola-
8 tion of this Act or any rule or order.

9 2. Subpoenas. For the purpose of any investiga-
10 tion or proceeding under this Act, the superintendent
11 or any officer designated by the superintendent may
12 administer oaths and affirmations, subpoena wit-
13 nesses, compel their attendance, take evidence and
14 require the production of any books, papers, corre-
15 spondence, memoranda, agreements or other documents
16 or records which the superintendent deems relevant or
17 material to the inquiry.

18 3. Court order. In case of contumacy by or re-
19 usal to obey a subpoena issued to any person, the
20 Kennebec County Superior Court upon application by
21 the superintendent may issue to the person an order
22 requiring him to appear before the superintendent to
23 produce documentary evidence if so ordered or to give
24 evidence touching upon the matter under investigation
25 or in question. Failure to obey the order of the
26 court may be punished by the court as a contempt of
27 court.

28 §12003. Remedies

29 Whenever it appears to the superintendent that
30 any person has engaged in or is about to engage in
31 any act or practice constituting a violation of any
32 provision of this Act or any rule or order of this
33 section, the superintendent may:

34 1. Cease and desist order. Issue an order di-
35 recting the person to cease and desist from continu-
36 ing the act or practice. Any person named in a cease
37 and desist order issued by the superintendent may,
38 within 30 days after receipt of the order, file a
39 written request for a hearing with the superintend-
40 ent. If the superintendent does not receive a writ-

1 ten request for a hearing within the time specified,
2 the cease and desist order becomes permanent and the
3 person named in the order is deemed to have waived
4 all rights to a hearing;

5 2. Court action. Bring an action in Superior
6 Court to enjoin the acts or practices and to enforce
7 compliance with this Act or any rule or order under
8 this section. Upon a proper showing, a permanent or
9 temporary injunction, restraining order or writ of
10 mandamus shall be granted and a receiver or conserva-
11 tor may be appointed for the defendant or the defend-
12 ant's assets or the court may order rescission, which
13 shall include restitution plus interest at the legal
14 rate, for any sales of business opportunities deter-
15 mined to be unlawful under this Act or any rule or
16 order. The court shall not require the superintend-
17 ent to post a bond; and

18 3. Prosecution. Refer such evidence as may be
19 available concerning violations of this Act or any
20 rule or order under this section to the Attorney Gen-
21 eral or the appropriate district attorney, who may,
22 with or without such a reference, institute the ap-
23 propriate proceedings under this section.

24 §12004. Judicial review of orders

25 Any person aggrieved by a final order of the su-
26 perintendent may obtain judicial review of the order
27 in the Kennebec County Superior Court by filing a pe-
28 tition in accordance with Title 5, section 11001 and
29 the Maine Rules of Civil Procedure, Rule 80C.

30 §12005. Rules, forms and orders

31 1. General power. The superintendent may make,
32 amend and rescind such rules, forms and orders as are
33 necessary to carry out the provisions of this Act,
34 including rules and forms governing disclosure docu-
35 ments, applications and reports and defining any
36 terms, whether or not used in this Act, insofar as
37 the definitions are not inconsistent with the provi-
38 sions of this Act. For the purpose of rules and
39 forms, the superintendent may classify business op-
40 portunities, persons and matters within his jurisdic-
41 tion and prescribe different requirements for differ-
42 ent classes.

1 2. Adoption of rules, forms and orders. No
2 rule, form or order may be made, amended or rescinded
3 unless the superintendent finds that the action is
4 necessary or appropriate in the public interest or
5 for the protection of the purchaser. In prescribing
6 rules and forms, the superintendent may cooperate
7 with the securities administrators of other jurisdic-
8 tions with a view to effectuating the policy of this
9 Act to achieve maximum uniformity in the form and
10 content of disclosure statements, applications and
11 reports whenever practicable.

12 3. Liability. No provision of this Act imposing
13 any liability applies to any act done or omitted in
14 good faith in conformity with any rule, form or order
15 of the superintendent, notwithstanding that the rule,
16 form or order may later be amended or rescinded or be
17 determined by judicial or other authority to be
18 invalid for any reason.

19 §12006. Administration files and options

20 1. Time of filing. A document is filed when it
21 is received by the superintendent.

22 2. Register. The superintendent shall keep a
23 register of all applications for registration and
24 disclosure documents which are or have been effective
25 under this Act and all orders which have been entered
26 under this Act. The register shall be open for pub-
27 lic inspections.

28 3. Inspection. Unless otherwise provided by
29 law, any registration statement, filing, application
30 or report filed with the superintendent shall be open
31 for public inspection.

32 4. Interpretative opinions. The superintendent
33 may honor written requests from interested persons
34 for interpretative opinions upon the payment of a fee
35 as determined by rule of the superintendent.

36 §12007. Scope of the Act; service of process

37 1. Sales and offers. The provisions of this Act
38 concerning sales and offers to sell apply to persons
39 who sell or offer to sell when:

- 1 A. An offer to sell is made in this State;
- 2 B. An offer to purchase is made and accepted in
3 this State; or
- 4 C. The purchaser is domiciled in this State and
5 the business opportunity is or will be operated
6 in this State.
- 7 2. Offer in this State. For the purpose of this
8 section, an offer to sell is made in this State,
9 whether or not either party is then present in this
10 State, when:
- 11 A. The offer originates from this State; or
- 12 B. The offer is directed by the offeror to this
13 State and received at the place to which it is
14 directed or at any post office in this State in
15 the case of a mailed offer.
- 16 3. Offer accepted in this State. For the pur-
17 pose of this section, an offer to sell is accepted in
18 this State when acceptance:
- 19 A. Is communicated to the offeror in this State;
20 and
- 21 B. Has not previously been communicated to the
22 offeror, orally or in writing, outside this
23 State, and acceptance is communicated to the of-
24 feror in this State, whether or not either party
25 is then present in this State when the offeree
26 directs it to the offeror in this State reason-
27 ably believing the offeror to be in this State
28 and it is received at the place to which it is
29 directed or at any post office in this State in
30 the case of a mailed acceptance.
- 31 4. Offer not made in this State. An offer to
32 sell is not made in this State when:
- 33 A. The publisher circulates or there is circu-
34 lated on his behalf in this State any bona fide
35 newspaper or other publication of general, regu-
36 lar and paid circulation which is not published
37 in this State or which is published in this

1 State, but has had more than 2/3 of its circula-
2 tion outside this State during the past 12
3 months; or

4 B. A radio or television program originating
5 outside this State is received in this State.

6 5. Service of process. When any person, includ-
7 ing any nonresident of this State, engages in conduct
8 prohibited or made actionable by this Act or any rule
9 or order under this Act, and the person has not filed
10 a consent to service of process and personal jurisdic-
11 tion over the person cannot otherwise be obtained
12 in this State, that conduct shall be considered
13 equivalent to the person's appointment of the super-
14 intendent or the superintendent's successor in office
15 to be the person's attorney to receive service of any
16 lawful process in any noncriminal suit, action or
17 proceeding against the person or the person's succes-
18 sor, executor or administrator which grows out of
19 that conduct and which is brought under this Act or
20 any rule or order under this Act, with the same force
21 and validity as if served on the person personally.
22 Service may be made by leaving a copy of the process
23 in the office of the superintendent, but it is not
24 effective unless:

25 A. The plaintiff, who may be the superintendent
26 in a suit, action or proceeding instituted by the
27 superintendent, forthwith sends notice of the
28 service and a copy of the process by certified or
29 registered mail to the defendant's or
30 respondent's last known address or takes other
31 steps which are reasonably calculated to give ac-
32 tual notice; and

33 B. The plaintiff's affidavit of compliance with
34 this subsection is filed in the case on or before
35 the return day of the process, if any, or within
36 such time as the court allows.

37 6. Continuance. When process is served under
38 this section, the court, or the superintendent in a
39 proceeding before the superintendent, shall order
40 continuances as may be necessary to afford the de-
41 fendant or respondent reasonable opportunity to de-
42 fend.

1 §12008. Statutory policy

2 This Act shall be so construed as to effectuate
3 its general purpose to make uniform the law of those
4 states which enact it.

5 SUBCHAPTER V

6 FRAUDULENT PRACTICES AND CRIMINAL PENALTIES

7 §12101. Fraudulent practices

8 It is unlawful for any person, in connection with
9 the offer or sale of any business opportunity in this
10 State, directly or indirectly:

11 1. Device. To employ any device, scheme or ar-
12 tifice to defraud;

13 2. Untrue statements. To make any untrue state-
14 ment of a material fact or to omit to state a materi-
15 al fact necessary in order to make the statements
16 made, in the light of the circumstances under which
17 they are made, not misleading; or

18 3. Fraud. To engage in any act, practice or
19 course of business which operates or would operate as
20 a fraud or deceit upon any person.

21 §12102. Misleading filings

22 It is unlawful for any person to make or cause to
23 be made, in any document filed with the superintend-
24 ent or in any proceeding under this Act, any state-
25 ment which is, at the time and in the light of the
26 circumstances under which it is made, false or mis-
27 leading in any material respect or, in connection
28 with that statement, to omit to state a material fact
29 necessary in order to make the statements made, in
30 the light of the circumstances under which they are
31 made, not misleading.

32 §12103. Unlawful representations

33 Neither the fact that an application for regis-
34 tration has been filed nor the fact that a business
35 opportunity is effectively registered constitutes a

1 finding by the superintendent that any document filed
2 under this Act is true, complete and not misleading.
3 Neither any such fact nor the fact that an exemption
4 or exception is available for a business opportunity
5 means that the superintendent has passed in any way
6 upon the merits or qualifications of, or recommended
7 or given approval to, any person or business opportu-
8 nity. It is unlawful to make, or cause to be made,
9 to any purchaser any representation inconsistent with
10 this section.

11 §12104. Advertising

12 It is unlawful for any person, in connection with
13 the offer or sale of any business opportunity in this
14 State, to publish, circulate or use any advertising
15 which contains an untrue statement of a material fact
16 or omits to state a material fact necessary in order
17 to make the statements made, in the light of the cir-
18 cumstances under which they are made, not misleading.

19 §12105. Criminal penalties

20 1. Penalty. Notwithstanding Title 17-A, section
21 4-A, any person who knowingly violates section 11001;
22 11003, subsection 1; section 11004; 11006; 12101;
23 12103; or 12104 or who knowingly violates any rule or
24 order under this Act, or who violates section 12102
25 knowing that the statement made was false or mislead-
26 ing in any material respect, shall be, upon convic-
27 tion, fined not more than \$10,000 or imprisoned not
28 more than 5 years, or both, for each offense. Each
29 of the acts specified shall constitute a separate of-
30 fense and a prosecution or conviction for any one of
31 such offenses shall not bar prosecution or conviction
32 for any other offense.

33 2. Limitation. No prosecution for any crime under
34 this Act may be commenced more than 6 years after
35 the alleged violation.

36 3. Punishment under other statutes. Nothing in
37 this Act limits the power of the State to punish any
38 person for any conduct which constitutes a crime under
39 any other statute.

1 Every person who directly or indirectly controls
2 a person liable under section 12201 or this section,
3 every partner is a partnership so liable, every principal
4 executive officer or director of a corporation
5 so liable, every person occupying a similar status or
6 performing similar functions and every employee of a
7 person so liable who materially aids in the act or
8 transaction constituting the violation is also liable
9 jointly and severally with and to the same extent as
10 such person, unless the person liable under this section
11 proves that he did not know and, in the exercise
12 of reasonable care, could not have known of the existence
13 of the facts constituting the alleged liability.
14 There is contribution, as in cases of contract,
15 among the several persons held liable.

16 §12203. Miscellaneous provisions

17 1. Violations and actions. No action may be
18 maintained under section 12201 unless commenced before
19 the expiration of 2 years after the act or
20 transaction constituting the violation, except that,
21 if liability arises as a result of a violation of
22 section 12101, 12103 or 12104, the action shall be
23 brought within 2 years of discovery of the violation
24 or within 2 years of the time at which discovery
25 should have been made in the exercise of reasonable
26 diligence.

27 2. Other remedies. The rights and remedies under
28 this Act are in addition to any other rights or
29 remedies that may exist at law or in equity.

30 3. Waiver of liability. Any condition, stipulation
31 or provision binding any purchaser of a business
32 opportunity to waive compliance with or relieving a
33 person from any duty or liability imposed by or any
34 right provided by this Act or any rule or order issued
35 pursuant to this Act is void.

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STATEMENT OF FACT

This bill repeals the present "Regulations of the Sale of Business Opportunities" and replaces it with the "Maine Business Opportunity Sales Act," a uniform scheme for the regulation of the sale of business opportunities within Maine. The Act defines business opportunities, sets forth registration and disclosure procedures, contains antifraud and enforcement provisions and provides civil and criminal penalties.

The law shifts the administration of the Act from the Bureau of Licensing and Enforcement to the Securities Division of the Bureau of Banking. An analysis and comparison of the Act with the present and proposed Revised Maine Securities Act reveals a striking similarity between the regulatory process, the nature of the conduct being regulated and the consumer population which it seeks to protect.

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