



House of Representatives

General Assembly

File No. 257

January Session, 2009

Substitute House Bill No. 6232

House of Representatives, March 26, 2009

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36b-61 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 When used in sections 36b-60 to 36b-80, inclusive, as amended by
4 this act, unless the context otherwise requires:

5 (1) "Affiliate" means a person that: (A) Directly or indirectly
6 controls, is controlled by, or is under common control with, a seller; (B)
7 directly or indirectly owns, controls or holds with power to vote ten
8 per cent or more of the outstanding voting securities of a seller; or (C)
9 has, in common with a seller, one or more partners, officers, directors,
10 trustees, branch managers or other persons occupying similar status or
11 performing similar functions;

12 (2) "Business opportunity" means the sale or lease, or offer for sale

13 or lease, of any product, equipment, supply or service which is sold or
14 offered for sale to the purchaser-investor for the purpose of enabling
15 the purchaser-investor to start a business, and in which the seller
16 represents that: (A) The seller will provide locations or assist the
17 purchaser-investor in finding locations for the use or operation of
18 vending machines, racks, display cases or other similar devices, or
19 currency-operated amusement machines or devices, or any other
20 devices within the intent of sections 36b-60 to 36b-80, inclusive, as
21 amended by this act, as the commissioner shall by regulation or order
22 determine, on premises neither owned nor leased by the purchaser-
23 investor or seller; or (B) the seller will purchase any or all products
24 made, produced, fabricated, grown, bred or modified by the
25 purchaser-investor using, in whole or in part, the supplies, services or
26 chattels sold to the purchaser-investor; or (C) the seller guarantees,
27 either conditionally or unconditionally, that the purchaser-investor
28 will derive income from the business opportunity, or that the seller
29 will refund all or part of the price paid for the business opportunity or
30 repurchase any of the products, equipment, supplies or chattels
31 supplied by the seller, if the purchaser-investor is unsatisfied with the
32 business opportunity; or (D) the seller will provide a sales program or
33 marketing program to the purchaser-investor, provided sections 36b-
34 60 to 36b-80, inclusive, as amended by this act, shall not apply to the
35 sale of a marketing program made in conjunction with the licensing of
36 a registered trademark or service mark, provided (i) such trademark or
37 service mark has been effectively registered under federal law; and (ii)
38 for such trademark or service mark initially registered under federal
39 law on or after October 1, 1996, the seller files with the commissioner a
40 copy of the trademark or service mark certificate prior to any offer or
41 sale in the state, provided further that failure to file such certificate
42 shall not, in and of itself, preclude reliance on this exclusion. "Business
43 opportunity" does not include the sale of an ongoing business where
44 the owner of that business sells and intends to sell only that one
45 business opportunity, nor does it include the not-for-profit sale of sales
46 demonstration equipment, materials or samples, for a total price of five
47 hundred dollars or less to any one person;

48 [(1)] (3) "Commissioner" means the Banking Commissioner or any
49 person appointed or designated by the Banking Commissioner to
50 administer said sections; [.]

51 (4) "Not-for-profit sale" means a sale in which the seller recovers
52 only the actual costs of producing and shipping the goods or materials
53 sold. A sale shall not qualify as a not for profit sale if the price to the
54 purchaser-investor includes any commissions, rebates, fees or
55 overrides;

56 [(2)] (5) "Person" means an individual, corporation, limited liability
57 company, trust, partnership, incorporated or unincorporated
58 association or any other legal entity; [.]

59 [(3)] (6) "Purchaser-investor" means a person who has purchased or
60 is solicited for the purchase of a business opportunity; [.]

61 (7) (A) "Sale" or "sell" includes every contract of sale of, contract to
62 sell, or disposition of a business opportunity or interest in a business
63 opportunity for value; (B) "Offer" or "offer to sell" includes every
64 attempt or offer to dispose of, or solicitation of an offer to buy, a
65 business opportunity or interest in a business opportunity for value.
66 Nothing in this subdivision shall limit or diminish the full meaning of
67 the terms "sale", "sell", "offer" or "offer to sell" as construed by the
68 courts of this state;

69 [(4)] (8) "Seller" means a person who [is engaged in the business of
70 selling or offering for sale] sells or offers to sell a business
71 [opportunities] opportunity or any agent or [representative] person
72 who, directly or indirectly, acts on behalf of such person; and [.]

73 [(5) (A) "Sale" or "sell" includes every contract of sale of, contract to
74 sell, or disposition of a business opportunity or interest in a business
75 opportunity for value. (B) "Offer" or "offer to sell" includes every
76 attempt or offer to dispose of, or solicitation of an offer to buy, a
77 business opportunity or interest in a business opportunity for value.
78 Nothing in this subdivision shall limit or diminish the full meaning of

79 the terms "sale", "sell", "offer" or "offer to sell" as construed by the
80 courts of this state.

81 (6) "Business opportunity" means the sale or lease, or offer for sale
82 or lease of any products, equipment, supplies or services which are
83 sold or offered for sale to the purchaser-investor for the purpose of
84 enabling the purchaser-investor to start a business, and in which the
85 seller represents (A) that the seller will provide locations or assist the
86 purchaser-investor in finding locations for the use or operation of
87 vending machines, racks, display cases or other similar devices, or
88 currency-operated amusement machines or devices, or any other
89 devices within the intent of sections 36b-60 to 36b-80, inclusive, as the
90 commissioner shall by regulation or order determine, on premises
91 neither owned nor leased by the purchaser-investor or seller; or (B)
92 that the seller will purchase any or all products made, produced,
93 fabricated, grown, bred or modified by the purchaser-investor using in
94 whole or in part, the supplies, services or chattels sold to the
95 purchaser-investor; or (C) that the seller guarantees, either
96 conditionally or unconditionally, that the purchaser-investor will
97 derive income from the business opportunity; or that the seller will
98 refund all or part of the price paid for the business opportunity, or
99 repurchase any of the products, equipment, supplies or chattels
100 supplied by the seller, if the purchaser-investor is unsatisfied with the
101 business opportunity; or (D) that the seller will provide a sales
102 program or marketing program to the purchaser-investor, provided
103 sections 36b-60 to 36b-80, inclusive, shall not apply to the sale of a
104 marketing program made in conjunction with the licensing of a
105 registered trademark or service mark, provided (i) such trademark or
106 service mark has been effectively registered under federal law; and (ii)
107 for such trademark or service mark initially registered under federal
108 law on or after October 1, 1996, the seller files with the commissioner a
109 copy of the trademark or service mark certificate prior to any offer or
110 sale in Connecticut, provided further that failure to file such certificate
111 shall not, in and of itself, preclude reliance on this exclusion. "Business
112 opportunity" does not include the sale of an ongoing business where
113 the owner of that business sells and intends to sell only that one

114 business opportunity; nor does it include the not for profit sale of sales
115 demonstration equipment, materials or samples, for a total price of five
116 hundred dollars or less to any one person.

117 (7) "Not for profit sale" means a sale in which the seller recovers
118 only the actual costs of producing and shipping the goods or materials
119 sold. A sale shall not qualify as a not for profit sale if the price to the
120 purchaser-investor includes any commissions, rebates, fees or
121 overrides.]

122 [(8)] (9) "Trademark" or "service mark" includes [trademarks, trade
123 names, service marks, logotypes] a trademark, trade name, service
124 mark, logotype, advertising or other commercial [symbols] symbol.

125 Sec. 2. Section 36b-62 of the general statutes is repealed and the
126 following is substituted in lieu thereof (*Effective October 1, 2009*):

127 (a) No person shall sell or offer a business opportunity in this state
128 unless such person is registered under this section or is exempt from
129 registration under section 36b-65, as amended by this act.

130 [(a)] (b) Prior to the sale or offer for sale of a business opportunity
131 the seller shall register [said] the business opportunity with the
132 commissioner by filing with the commissioner:

133 (1) [Filing a] A copy of the disclosure [statement] required by
134 section 36b-63, as amended by this act;

135 (2) [furnishing a] A bond [in accordance with the provisions of] as
136 required by section 36b-64, as amended by this act;

137 [(3)] providing a sworn to and certified statement containing the
138 information required by section 36b-65;]

139 [(4)] providing the commissioner in] (3) In accordance with
140 subsection [(b)] (e) of this section, [with] an irrevocable consent
141 appointing the commissioner [or the commissioner's successor in
142 office] to be such seller's attorney to receive service of any lawful

143 process in any noncriminal suit, action or proceeding which arises
144 under sections 36b-60 to 36b-80, inclusive, as amended by this act, or
145 any regulation or order adopted or issued under the provisions of said
146 sections; [and]

147 [(5) submitting a nonrefundable registration fee of four hundred
148 dollars.

149 (b) Every seller proposing to sell or offer for sale a business
150 opportunity in this state or from this state through any person acting
151 on an agency basis as determined by reference to principles of
152 common law shall file with the commissioner, in such form as the
153 commissioner by regulation or order prescribes, an irrevocable consent
154 appointing the commissioner or the commissioner's successor in office
155 to be the seller's attorney to receive service of any lawful process in
156 any noncriminal suit, action or proceeding against the seller or the
157 seller's successor executor or administrator which arises under sections
158 36b-60 to 36b-80, inclusive, or any regulation or order adopted or
159 issued under said sections after the consent has been filed, with the
160 same force and validity as if served personally on the person filing the
161 consent. Service may be made by leaving a copy of the process in the
162 office of the commissioner, but such service shall not be effective
163 unless (1) the plaintiff, who may be the commissioner in a suit, action
164 or proceeding instituted by him or her, forthwith sends notice of the
165 service and a copy of the process by registered mail, return receipt
166 requested, or by any express delivery carrier that provides a dated
167 delivery receipt, to the defendant or respondent at the defendant's or
168 respondent's last address on file with the commissioner, and (2) the
169 plaintiff's affidavit of compliance with this subsection is filed in the
170 case on or before the return day of the process, if any, or within such
171 further time as the court allows.

172 (c) When any person, including any nonresident of this state,
173 engages in conduct prohibited or made actionable by sections 36b-60 to
174 36b-80, inclusive, or any regulation or order adopted or issued under
175 said sections, and such person has not filed a consent to service of

176 process under subsection (b) of this section and personal jurisdiction
177 over such person cannot otherwise be obtained in this state, that
178 conduct shall be considered equivalent to such person's appointment
179 of the commissioner or the commissioner's successor in office to be
180 such person's attorney to receive service of any lawful process in any
181 noncriminal suit, action or proceeding against such person or such
182 person's successor executor or administrator which grows out of that
183 conduct and which is brought under said sections or any regulation or
184 order adopted or issued under said sections, with the same force and
185 validity as if served on such person personally. Service may be made
186 by leaving a copy of the process in the office of the commissioner, but
187 such service shall not be effective unless (1) the plaintiff, who may be
188 the commissioner in a suit, action or proceeding instituted by him or
189 her, forthwith sends notice of the service and a copy of the process by
190 registered mail, return receipt requested, or by any express delivery
191 carrier that provides a dated delivery receipt, to the defendant or
192 respondent at the defendant's or respondent's last known address, and
193 (2) the plaintiff's affidavit of compliance with this subsection is filed in
194 the case on or before the return day of the process, if any, or within
195 such further time as the court allows.

196 (d) The registration of a business opportunity under this section
197 shall become effective on order of the commissioner.

198 (e) (1) When any business opportunities have been sold or offered
199 for sale without compliance with the registration provisions of sections
200 36b-60 to 36b-80, inclusive, the seller thereof may apply in writing on
201 forms designated by the commissioner for the postsale registration of
202 such business opportunities.

203 (2) A seller who seeks to register a business opportunity which has
204 been sold or offered for sale without compliance with the registration
205 provisions of sections 36b-60 to 36b-80, inclusive, shall submit the
206 following to the commissioner:

207 (A) The documents, information and registration fee required by
208 subsection (a) of this section;

209 (B) A single document, signed and sworn to by an executive officer
210 of the seller, which contains an explanatory statement and a statement
211 of nonprejudice;

212 (i) The explanatory statement shall include the following
213 information:

214 (aa) A statement that business opportunities were sold or offered for
215 sale without compliance with the registration provisions of sections
216 36b-60 to 36b-80, inclusive;

217 (bb) A statement that, to induce each purchaser-investor to whom a
218 business opportunity has been sold in violation of sections 36b-60 to
219 36b-80, inclusive, to sign the statement of nonprejudice, the document
220 is being prepared for presentation to that purchaser-investor;

221 (cc) A full and complete statement of the remedies provided to the
222 purchaser-investor under section 36b-74;

223 (dd) A statement containing any other material facts relating to the
224 sale or offer for sale of the unregistered business opportunities; and

225 (ee) The most recent balance sheet and income statement of the
226 seller.

227 (ii) The statement of nonprejudice shall provide:

228 (aa) That the purchaser-investor to whom a business opportunity
229 was sold without compliance with the registration provisions of
230 sections 36b-60 to 36b-80, inclusive, has read the explanatory
231 statement;

232 (bb) That the purchaser-investor to whom a business opportunity
233 was sold without compliance with the registration provisions of
234 sections 36b-60 to 36b-80, inclusive, is satisfied that he or she will not
235 be defrauded, damaged or prejudiced by the postsale registration of
236 the business opportunity; and

237 (cc) That each purchaser-investor to whom a business opportunity

238 has been sold without compliance with the registration provisions of
239 sections 36b-60 to 36b-80, inclusive, has not waived any of his or her
240 rights under said sections by signing the statement.

241 (3) The seller shall file the document containing both the
242 explanatory statement and the statement of nonprejudice with the
243 commissioner for review before the seller mails the document to each
244 purchaser-investor to whom an unregistered business opportunity has
245 been sold. The commissioner may object to the content of the
246 document but shall in no way pass upon its truthfulness. Following
247 review by the commissioner, the seller shall send the document by
248 certified mail, return receipt requested, to each purchaser-investor to
249 whom an unregistered business opportunity has been sold and shall
250 submit copies of all return receipts to the commissioner. The seller
251 shall certify that each purchaser-investor to whom an unregistered
252 business opportunity was sold has signed the document, and shall
253 return the signed documents to the commissioner. The seller shall also
254 furnish the commissioner with a list of the names, addresses and
255 telephone numbers of those purchaser-investors to whom business
256 opportunities have been sold without compliance with the registration
257 provisions of sections 36b-60 to 36b-80, inclusive, and the amount of
258 payment furnished by each purchaser-investor for the business
259 opportunity.

260 (4) If it appears to the commissioner that no person has been
261 defrauded, prejudiced or damaged by such noncompliance or sale and
262 that no persons will be defrauded, prejudiced or damaged by such
263 postsale registration, the commissioner may permit those business
264 opportunities to be registered upon the payment of fifty dollars plus
265 the fees prescribed in section 36b-65. Registration under the provisions
266 of this subsection shall not affect the prosecution of a violation of any
267 provision of sections 36b-60 to 36b-80, inclusive.]

268 (4) Information and documents in such form as the commissioner
269 may prescribe, including, but not limited to:

270 (A) The official name, address and principal place of business of the

271 seller and of the parent firm or holding company of such seller, if any;

272 (B) The biographical data and business experience of each of the
273 seller's directors and officers;

274 (C) The business experience of the seller, including the length of
275 time such seller has: (i) Conducted a business of the type to be
276 operated by the purchaser-investor, (ii) sold any business opportunity
277 for such business, and (iii) sold any business opportunity in any other
278 line of business;

279 (D) A copy of any contracts, agreements, brochures or other
280 documents relating to the business opportunity;

281 (E) A factual description of the business opportunity offered to be
282 sold and of the services, training and assistance that will be provided
283 by the seller to the purchaser-investor;

284 (F) A statement describing any services, supplies, products, signs,
285 fixtures or equipment relating to the establishment or the operation of
286 the business opportunity that the purchaser-investor is required to
287 purchase, lease or rent directly or indirectly from the seller;

288 (G) A copy of the table of contents of any operations manual to be
289 provided to the purchaser-investor;

290 (H) (i) A balance sheet, income statement and statement of changes
291 in financial condition of the seller as of a date not more than four
292 months prior to the filing under this subsection, which financial
293 statements may be unaudited, provided, if the seller has been in
294 business for less than twelve months from the date of such filing, such
295 financial statements shall be reviewed by an independent certified
296 public accountant and shall include a written opinion from such
297 accountant stating that the accountant is not aware of any material
298 modifications that should be made to the financial statements in order
299 for them to be in conformity with generally accepted accounting
300 principles; (ii) balance sheet of the seller, an income statement and
301 statement of changes in financial position for the most recent fiscal

302 year audited by an independent public accountant or an independent
303 certified public accountant; (iii) balance sheet of the seller, an income
304 statement and statement of changes in financial position for the prior
305 two fiscal years reviewed by an independent certified public
306 accountant who provides an opinion stating that such accountant is
307 not aware of any material modifications that should be made to the
308 financial statements in order for them to be in conformity with
309 generally accepted accounting principles; or (iv) any material changes
310 in the financial condition of the seller occur after such financial
311 statements are prepared, the seller shall disclose such changes and
312 explain their significance to the operation of the business opportunity.
313 If the seller is controlled by any person who absolutely and
314 unconditionally guarantees to assume the duties and obligations of the
315 seller under the business opportunity agreement should the seller
316 become unable to perform, the commissioner may accept consolidated
317 financial statements from the seller and such person;

318 (I) Any other information that the commissioner in the
319 commissioner's discretion reasonably requires;

320 (J) A written statement signed and sworn to by the seller before a
321 person qualified to administer oaths that the information contained in
322 the documents filed pursuant to this subsection is true and correct; and

323 (K) A nonrefundable registration fee of four hundred dollars.

324 (c) (1) The registration of a business opportunity shall become
325 effective on order of the commissioner and may be renewed in
326 accordance with section 36b-79, as amended by this act.

327 (2) If the commissioner finds that a seller has failed to demonstrate
328 that adequate financial arrangements have been made to fulfill the
329 obligations set forth in the business opportunity agreement, the
330 commissioner may require the escrow or impoundment of fees and
331 other funds paid by the purchaser-investor or purchaser-investors
332 until such obligations have been fulfilled, or, at the option of the seller,
333 the furnishing of a surety bond as provided by regulation, adopted

334 pursuant to section 36b-77, or order of the commissioner, if the
335 commissioner finds that such requirement is necessary and
336 appropriate to protect purchaser-investors.

337 (d) The seller shall immediately notify the commissioner of any
338 material change in the information and documents required to be filed
339 under this section, and make appropriate amendments to the
340 disclosure document.

341 (e) Every seller proposing to sell or offer for sale a business
342 opportunity in this state or from this state directly or through any
343 person acting on an agency basis, as determined by reference to the
344 principles of common law, shall file with the commissioner, in such
345 form as the commissioner by regulation, adopted pursuant to section
346 36b-77, or order prescribes, an irrevocable consent appointing the
347 commissioner to be the seller's attorney to receive service of any lawful
348 process in any noncriminal suit, action or proceeding against the seller
349 or the seller's successor, executor or administrator that arises under
350 sections 36b-60 to 36b-80, inclusive, as amended by this act, or any
351 regulation or order adopted or issued under said sections after the
352 consent has been filed, with the same force and validity as if served
353 personally on the person filing the consent. Service may be made by
354 leaving a copy of the process in the office of the commissioner, but
355 such service shall not be effective unless (1) the plaintiff, who may be
356 the commissioner in a suit, action or proceeding instituted by the
357 commissioner, forthwith sends notice of the service and a copy of the
358 process by registered mail, return receipt requested, or by any express
359 delivery carrier that provides a dated delivery receipt, to the defendant
360 or respondent at the defendant's or respondent's last address on file
361 with the commissioner, and (2) the plaintiff's affidavit of compliance
362 with this subsection is filed in the case on or before the return day of
363 the process, if any, or within such further time as the court allows.

364 (f) When any person, including any nonresident of this state,
365 engages in conduct prohibited or made actionable by sections 36b-60 to
366 36b-80, inclusive, as amended by this act, or any regulation or order

367 adopted or issued under said sections, and such person has not filed a
368 consent to service of process under subsection (e) of this section and
369 personal jurisdiction over such person cannot otherwise be obtained in
370 this state, such conduct shall be considered equivalent to such person's
371 appointment of the commissioner to be such person's attorney to
372 receive service of any lawful process in any noncriminal suit, action or
373 proceeding against such person or such person's successor, executor or
374 administrator that grows out of such conduct and that is brought
375 under said sections or any regulation or order adopted or issued under
376 said sections, with the same force and validity as if served on such
377 person personally. Service may be made by leaving a copy of the
378 process in the office of the commissioner, but such service shall not be
379 effective unless (1) the plaintiff, who may be the commissioner in a
380 suit, action or proceeding instituted by the commissioner, forthwith
381 sends notice of the service and a copy of the process by registered mail,
382 return receipt requested, or by any express delivery carrier that
383 provides a dated delivery receipt, to the defendant or respondent at
384 the defendant's or respondent's last known address, and (2) the
385 plaintiff's affidavit of compliance with this subsection is filed in the
386 case on or before the return day of the process, if any, or within such
387 further time as the court allows.

388 (g) When any business opportunity has been sold or offered for sale
389 without compliance with the registration provisions of this section, the
390 seller thereof may apply for the postsale registration of such business
391 opportunity, on forms designated by the commissioner, by filing the
392 following with the commissioner:

393 (1) The documents, information and registration fee required by
394 subsection (b) of this section; and

395 (2) A single document, signed and sworn to by an executive officer
396 of the seller, which contains an explanatory statement and a statement
397 of nonprejudice. The explanatory statement shall include the following
398 information: (A) A statement that business opportunities were sold or
399 offered for sale without compliance with the registration provisions of

400 sections 36b-60 to 36b-80, inclusive, as amended by this act; (B) a
401 statement that, to induce each purchaser-investor to whom a business
402 opportunity has been sold in violation of sections 36b-60 to 36b-80,
403 inclusive, as amended by this act, to sign the statement of
404 nonprejudice, the document is being prepared for presentation to that
405 purchaser-investor; (C) a full and complete statement of the remedies
406 provided to the purchaser-investor under section 36b-74; (D) a
407 statement containing any other material facts relating to the sale or
408 offer for sale of the unregistered business opportunity; and (E) the
409 most recent balance sheet and income statement of the seller. The
410 statement of nonprejudice shall provide that: (i) The purchaser-
411 investor to whom a business opportunity was sold without compliance
412 with the registration provisions of sections 36b-60 to 36b-80, inclusive,
413 as amended by this act, has read the explanatory statement; (ii) the
414 purchaser-investor to whom a business opportunity was sold without
415 compliance with the registration provisions of sections 36b-60 to 36b-
416 80, inclusive, as amended by this act, is satisfied that he or she will not
417 be defrauded, damaged or prejudiced by the postsale registration of
418 the business opportunity; and (iii) each purchaser-investor to whom a
419 business opportunity has been sold without compliance with the
420 registration provisions of sections 36b-60 to 36b-80, inclusive, as
421 amended by this act, has not waived any of his or her rights under said
422 sections by signing the statement.

423 (h) The seller shall mail the document containing both the
424 explanatory statement and the statement of nonprejudice to each
425 purchaser-investor to whom an unregistered business opportunity has
426 been sold after such document has been reviewed by the
427 commissioner. The commissioner may object to the content of the
428 document but shall in no way pass upon its truthfulness. Following
429 review by the commissioner, the seller shall send the document by
430 certified mail, return receipt requested, to each such purchaser-
431 investor and shall submit copies of all return receipts to the
432 commissioner. The seller shall certify that each such purchaser-
433 investor has signed the document and shall return the signed
434 documents to the commissioner. The seller shall also furnish the

435 commissioner with a list of the names, addresses and telephone
436 numbers of those purchaser-investors to whom business opportunities
437 have been sold without compliance with the registration provisions of
438 sections 36b-60 to 36b-80, inclusive, as amended by this act, and the
439 amount paid by each purchaser-investor for the business opportunity.

440 (i) If it appears to the commissioner that no person has been
441 defrauded, prejudiced or damaged by such noncompliance or sale and
442 that no persons will be defrauded, prejudiced or damaged by such
443 postsale registration, the commissioner may permit the business
444 opportunity to be registered upon the payment of fifty dollars plus the
445 fee prescribed by subsection (b) of this section. Registration under the
446 provisions of this subsection shall not affect the prosecution of a
447 violation of any provision of sections 36b-60 to 36b-80, inclusive, as
448 amended by this act.

449 Sec. 3. Section 36b-63 of the general statutes is repealed and the
450 following is substituted in lieu thereof (*Effective October 1, 2009*):

451 (a) At least ten business days prior to the time the purchaser-
452 investor signs a business opportunity contract, or at least ten business
453 days prior to the receipt of any money or thing of value by the seller or
454 any person designated by the seller to receive such money or thing of
455 value, whichever occurs first, the seller shall provide the prospective
456 purchaser-investor a written disclosure document described in
457 subsection (c) of this section, the cover sheet of which shall be entitled
458 in at least ten-point boldface capital letters "DISCLOSURES
459 REQUIRED BY CONNECTICUT LAW". Under this title shall appear
460 the statement in at least ten-point type that "The State of Connecticut
461 does not approve, recommend, endorse or sponsor any business
462 opportunity. The information contained in this disclosure has not been
463 verified by the state. If you have any questions about this investment,
464 see an attorney before you sign a contract or agreement." Nothing
465 except the title, the required statement, the name of the seller and the
466 date of the disclosure document shall appear on the cover sheet.
467 [When, however, the seller uses a disclosure document in accordance

468 with the provisions of the Federal Trade Commission's trade
469 regulation rule entitled "Disclosure Requirements and Prohibitions
470 Concerning Franchising and Business Opportunity Ventures", 16 CFR
471 436, as amended from time to time, the cover sheet required by this
472 subsection shall be placed immediately after the cover sheet required
473 under such rule of the Federal Trade Commission.]

474 (b) (1) The disclosure document required by subsection (a) of this
475 section may consist of: (A) The Uniform Franchise Offering Circular
476 with associated guidelines adopted by the North American Securities
477 Administrators Association, Inc., as amended from time to time, or (B)
478 a disclosure document in accordance with the provisions of the Federal
479 Trade Commission's trade regulation rule entitled "Disclosure
480 Requirements and Prohibitions Concerning Franchising and Business
481 Opportunity Ventures", 16 CFR 436, as amended from time to time,
482 with the cover sheet required by subsection (a) of this section placed
483 immediately after the cover sheet required under such rule of the
484 Federal Trade Commission.

485 (2) Any additional information required by subsection (c) of this
486 section, which is not contained in the document filed under
487 subdivision (1) of this subsection, shall be included in an addendum to
488 the disclosure document and the seller shall file a cross-reference sheet
489 indicating the location of the disclosures required by subsection (c) of
490 this section.

491 [(b)] (c) Except as provided in subsection [(c)] (d) of this section, the
492 disclosure document shall contain at least the following information
493 which shall be presented in a single document in the order set forth in
494 this subsection and shall include a comment which either positively or
495 negatively responds to each disclosure item required to be in the
496 disclosure document by use of a statement which fully incorporates
497 the information required within such document:

498 (1) (A) The official name, business address and principal place of
499 business of the seller and of any [parent or holding company of the
500 seller, if any, or any affiliated firm] affiliate or predecessor of the seller;

501 whether such seller is [doing business as] an individual, partnership,
502 limited liability company, limited liability partnership or corporation
503 and, if the seller is an entity, the date and place of [any such
504 incorporation] organization; (B) the name under which the seller is
505 doing or intends to do business; and (C) trademarks and service marks
506 which identify the product or products, equipment, supplies or
507 services to be offered, sold or distributed by the prospective purchaser-
508 investor, or under which the prospective purchaser-investor will be
509 operating;

510 (2) The business experience during the past five years of each of the
511 seller's current directors, executive officers, trustees, general partners,
512 general managers, and any other persons charged with responsibility
513 for the seller's business activities, including but not limited to, the chief
514 operating officer and the financial, marketing, training and service
515 officers. With regard to each such listed person, for the past five years,
516 such person's principal occupations, nature and types of business in
517 which such person was engaged, names of his employers, current
518 business addresses and titles shall be provided;

519 (3) The business experience of the seller and the seller's [parent firm,
520 holding company,] affiliate or predecessor, if any, including the length
521 of time each: (A) Has conducted a business of the type to be operated
522 by the purchaser-investor; (B) has offered for sale or sold a business
523 opportunity for such business; and (C) has offered for sale or sold
524 business opportunities in any other line of business and a description
525 of such other line of business;

526 (4) A statement disclosing who, if any, of such persons listed in
527 subdivisions (1) and (2) of this subsection: (A) Has, at any time during
528 the previous [seven] ten fiscal years, been convicted of a felony or
529 pleaded nolo contendere to a felony charge if such felony involved
530 fraud, including but not limited to, a violation of any business
531 opportunity law, franchise law, securities law or unfair or deceptive
532 practices law, embezzlement, fraudulent conversion, misappropriation
533 of property or restraint of trade; (B) has, at any time during the

534 previous [seven] ten fiscal years, been held liable in a civil action
535 resulting in a final judgment, [or] has settled out of court any civil
536 action, [or] is a party to any civil action, or is or was a principal,
537 director, executive officer or partner of any other person that was so
538 held liable, settled or is a party to such action where the civil action (i)
539 [involving] involved allegations of fraud, including but not limited to,
540 a violation of any business opportunity law, franchise law, securities
541 law or unfair or deceptive practices law, embezzlement, fraudulent
542 conversion, misappropriation of property, or restraint of trade, or (ii)
543 which was brought by a present or former purchaser-investor and
544 which involves or involved the business opportunity relationship; (C)
545 is subject to any currently effective state or federal agency or court
546 injunctive or restrictive order, [or] is a party to a proceeding currently
547 pending in which such order is sought, or is or was a principal,
548 director, executive officer or partner of any other person that is subject
549 to such order or is a party to any such currently pending proceeding
550 relating to or affecting business opportunity activities or the seller-
551 purchaser-investor relationship, or involving fraud, including but not
552 limited to, a violation of any business opportunity law, franchise law,
553 securities law or unfair or deceptive practices law, embezzlement,
554 fraudulent conversion, misappropriation of property or restraint of
555 trade. The statement required by this subdivision shall include the
556 identity and location of the court or agency; the date of conviction,
557 judgment, or decision; the penalty imposed; the damages assessed; the
558 terms of settlement or the terms of the order and the date, nature, and
559 issuer of each such order or ruling. A seller may include a summary
560 opinion of counsel as to any pending litigation but only if counsel's
561 consent to use such opinion is included in the disclosure [statement]
562 document;

563 (5) A statement disclosing who, if any, of the persons listed in
564 subdivisions (1) and (2) of this subsection at any time during the
565 previous [seven] ten fiscal years has: (A) Filed [in] for bankruptcy
566 protection; (B) been adjudged bankrupt; (C) been reorganized due to
567 insolvency; or (D) been a principal, director, executive officer or
568 partner of any other person that has so filed or was so adjudged or

569 reorganized, during or within one year after the period that such
570 person held such position with such other person. [If so, the seller] The
571 statement required by this subdivision shall [set forth] include the
572 name and location of the person having so filed or having been so
573 adjudged or reorganized, the date and any other material facts;

574 (6) A factual description of the business opportunity offered to be
575 sold by the seller including a full and detailed description of (A) the
576 actual services and equipment that the business opportunity seller
577 undertakes to perform for or supply to the purchaser-investor and (B)
578 the actual services which the purchaser-investor undertakes to
579 perform, including but not limited to, compliance with procedures
580 established by the seller regarding the operation of the business;

581 (7) A statement of the total funds which shall be a sum certain and
582 which the seller requires the purchaser-investor to pay to any
583 specifically named person or any other person known to the seller who
584 receives any consideration incident to such transaction, or which the
585 seller, or any person affiliated with the seller collects in whole or in
586 part on behalf of any party in order to obtain or commence the
587 business opportunity operation such as initial fees, deposits, down
588 payments, prepaid rent, and equipment and inventory purchases,
589 provided the seller shall not be required to make such disclosures if
590 the seller merely approves the purchaser-investor's decision to do
591 business with any other person selected by the purchaser-investor. If
592 all or part of these fees or deposits are returnable under certain
593 conditions, the seller shall set forth these conditions, and if not
594 returnable, the seller shall disclose this fact;

595 (8) A statement describing any recurring funds in connection with
596 carrying on the business opportunity business the purchaser-investor
597 is required to pay to any person, including, but not limited to, royalty,
598 lease, advertising, training and sign rental fees and equipment or
599 inventory purchases;

600 (9) A statement setting forth the name of each person, including the
601 seller and its affiliates, with whom the seller directly or indirectly

602 requires or advises the purchaser-investor to do business;

603 (10) A statement describing any real estate, services, supplies,
604 products, inventories, signs, fixtures, or equipment relating to the
605 establishment or the operation of the business opportunity business
606 the seller directly or indirectly requires the purchaser-investor to
607 purchase, lease or rent, and if such purchase, lease or rental shall be
608 made from specific persons including the seller, a list of the names and
609 addresses of each such person. Such list may be set forth in a separate
610 document and delivered to the prospective purchaser-investor with
611 the disclosure document if the existence of such separate document is
612 disclosed in the disclosure document;

613 (11) A description of the basis for calculating, and, if such
614 information is readily available, the actual amount of any revenue or
615 other consideration to be received by the seller or persons affiliated
616 with the seller from suppliers to the prospective purchaser-investor in
617 consideration for goods or services which the seller requires or advises
618 the purchaser-investor to obtain from such suppliers;

619 (12) (A) A statement of all material terms and conditions of any
620 financing arrangement offered directly or indirectly by the seller or
621 any person affiliated with the seller to the prospective purchaser-
622 investor; and (B) a description of the terms by which any payment is to
623 be received by the seller from (i) any person offering financing to a
624 prospective purchaser-investor; and (ii) any person arranging for
625 financing for a prospective purchaser-investor;

626 (13) A statement describing the material facts of whether under the
627 terms of the business opportunity agreement or other device or
628 practice the purchaser-investor is: (A) Limited in the goods or services
629 he may offer for sale; (B) limited in the customers to whom he may sell
630 such goods or services; (C) limited in the geographic area in which he
631 may offer for sale or sell goods or services; or (D) granted territorial
632 protection by the seller, by which, with respect to a territory or area,
633 the seller will not establish another or more than a fixed number of
634 business opportunity or company-owned outlets either operating

635 under or selling, offering, or distributing the same or similar products,
636 equipment, supplies or services currently being offered to purchaser-
637 investors;

638 (14) A statement of the extent to which the seller requires or it is
639 necessary that the purchaser-investor, or if the purchaser-investor is [a
640 corporation] an entity any person affiliated with the purchaser-
641 investor, participates personally in the direct operation of the business
642 opportunity;

643 (15) With respect to the business opportunity agreement and any
644 related agreements, a statement disclosing: (A) The term or duration of
645 arrangement, if any, of such agreement and whether such term is or
646 may be affected by an agreement, including leases or subleases, other
647 than the one from which such term arises; (B) the conditions under
648 which the purchaser-investor may renew or extend; (C) the conditions
649 under which the seller may refuse to renew or extend; (D) the
650 conditions under which the purchaser-investor may terminate; (E) the
651 conditions under which the seller may terminate; (F) the obligations,
652 including lease or sublease obligations, of the purchaser-investor after
653 termination of the business opportunity by the seller and the
654 obligations of the purchaser-investor, including lease or sublease
655 obligations, after termination of the business opportunity by the
656 purchaser-investor and after the expiration of the business
657 opportunity; (G) the purchaser-investor's interest upon termination of
658 the business opportunity or upon refusal to renew or extend the
659 business opportunity whether by the seller or by the purchaser-
660 investor; (H) the conditions under which the seller may repurchase,
661 whether by right of first refusal or at the option of the seller, and, if the
662 seller has the option to repurchase the business opportunity, whether
663 there will be an independent appraisal of the business opportunity,
664 whether the repurchase price will be determined by a predetermined
665 formula and whether there will be a recognition of good will or other
666 such intangibles in such repurchase price; (I) the conditions under
667 which the purchaser-investor may sell or assign all or any interest in
668 the ownership of the business opportunity or of the assets of the

669 business opportunity and the amount of consideration, if any, which
670 shall be paid to the seller for such sale or assignment; (J) the conditions
671 under which the seller may sell or assign, in whole or in part, its
672 interest under such agreements; (K) the conditions under which the
673 purchaser-investor may modify; (L) the conditions under which the
674 seller may modify; (M) the rights of the purchaser-investor's heirs or
675 personal representative upon the death or incapacity of the purchaser-
676 investor; and (N) the provisions of any covenant not to compete;

677 (16) With respect to the seller and as to the particular named
678 business being offered, a statement disclosing: (A) The total number of
679 business opportunities operating within the calendar year immediately
680 preceding, and as of a date thirty days prior to, the filing of
681 information required by sections 36b-60 to 36b-80, inclusive, as
682 amended by this act; (B) the total number of company-owned outlets
683 operating within the calendar year immediately preceding, and as of a
684 date thirty days prior to, the filing of information required by said
685 sections; (C) the names, addresses, and telephone numbers of (i) the
686 ten business opportunity outlets of the named business opportunity
687 business nearest the prospective purchaser-investor's intended location
688 or (ii) all purchaser-investors of the seller, or (iii) all purchaser-
689 investors of the seller in the state in which the prospective purchaser-
690 investor lives or where the proposed business opportunity is to be
691 located, provided there are more than ten such purchaser-investors. If
692 the number of purchaser-investors to be disclosed exceeds fifty, the
693 listing may be made in a separate document and delivered to the
694 prospective purchaser-investor with the disclosure document if the
695 existence of such separate document is disclosed in the disclosure
696 document; (D) the number of business opportunities that, within the
697 calendar year immediately preceding, and as of a date thirty days prior
698 to, the filing of information required by said sections, were voluntarily
699 terminated or not renewed by purchaser-investors within or at the
700 conclusion of the term of the business opportunity agreement; (E) the
701 number of business opportunities that, within the calendar year
702 immediately preceding, and as of a date thirty days prior to, the filing
703 of information required by said sections, the seller reacquired by

704 purchase during the term of the business opportunity agreement and
705 upon the conclusion of the term of the business opportunity
706 agreement; (F) the number of business opportunities that, within the
707 calendar year immediately preceding, and as of a date thirty days prior
708 to, the filing of information required by said sections, were otherwise
709 reacquired by the seller during the term of the business opportunity
710 agreement and upon the conclusion of the term of the business
711 opportunity agreement; (G) the number of business opportunities
712 within the calendar year immediately preceding, and as of a date thirty
713 days prior to, the filing of information required by said sections, in
714 which the seller refused renewal of the business opportunity
715 agreement or other agreements relating to the business opportunity;
716 (H) the number of business opportunities that, within the calendar
717 year immediately preceding, and as of a date thirty days prior to, the
718 filing of information required by said sections, were cancelled or
719 terminated by the seller during the term of the business opportunity
720 agreement and upon conclusion of the term of the business
721 opportunity agreement; and (I) with respect to the disclosures required
722 by subparagraphs (D), (E), (F), (G) and (H) of this subdivision, the
723 disclosure [statement] document shall also include a general
724 categorization of the reasons for such reacquisitions, terminations and
725 refusals to renew and the number falling within each such category,
726 including but not limited to the following categories: Failure to comply
727 with quality control standards, failure to make sufficient sales, and
728 other breaches of contract;

729 (17) (A) If the seller promises services to be performed in connection
730 with site selection, a statement disclosing the full nature of those
731 services, (B) for each agreement entered into within the calendar year
732 immediately preceding, and as of a date thirty days prior to, the filing
733 of information required by sections 36b-60 to 36b-80, inclusive, as
734 amended by this act, a statement disclosing the range of time that has
735 elapsed between the signing of the business opportunity agreement or
736 other agreement relating to the business opportunity and the site
737 selection, (C) for each agreement entered into within the calendar year
738 immediately preceding, and as of a date thirty days prior to, the filing

739 of information required by said sections, if the seller is to provide
740 operating business opportunity outlets, a statement disclosing the
741 range of time that has elapsed between the signing of each business
742 opportunity agreement or other agreement relating to the business
743 opportunity and the commencement of the purchaser-investor's
744 business, (D) with respect to the disclosures required by
745 subparagraphs (B) and (C) of this subdivision, a seller may provide a
746 distribution chart using meaningful classifications with respect to such
747 ranges of time;

748 (18) If the seller offers an initial training program or informs the
749 prospective purchaser-investor that it intends to provide such person
750 with initial training, a statement disclosing: (A) The type and nature of
751 such training; (B) the minimum amount, if any, of training that will be
752 provided to such purchaser-investor; and (C) the amount, if any, such
753 purchaser-investor shall pay for such training or for obtaining such
754 training;

755 (19) If the name of a public figure is used in connection with a
756 recommendation to purchase a business opportunity or as a part of the
757 name of the business opportunity operation or if the public figure is
758 stated to be involved with the management of the seller, a statement
759 disclosing: (A) The nature and extent of the public figure's
760 involvement and obligations to the seller, including but not limited to,
761 the promotional assistance the public figure will provide to the seller
762 and to the purchaser-investor; (B) the total investment of the public
763 figure in the business opportunity operation; and (C) the amount of
764 any fee or fees the purchaser-investor will be obligated to pay for such
765 involvement or assistance provided by the public figure;

766 (20) If the seller intends to use estimated or projected business
767 opportunity sales or earnings, a statement of such estimates or
768 projections together with an explanation of the bases and assumptions
769 underlying such estimates or projections and any supportive data. The
770 seller shall clearly and conspicuously disclose the following statement
771 together with the information required by this subdivision in

772 immediate conjunction with such representations and in not less than
773 twelve point upper and lower case boldface type: "Caution: These
774 figures are only estimates of what we think you may earn. There is no
775 assurance you will do as well. If you rely upon our figures, you must
776 accept the risk of not doing as well";

777 (21) If the seller makes any statement concerning sales or earnings
778 or range of sales or earnings that may be made through this business
779 opportunity, the document shall disclose: (A) For the three-year period
780 prior to the date of the disclosure [statement] document, the total
781 number of purchaser-investors of business opportunities involving the
782 products, equipment, supplies or services being offered who, to the
783 seller's knowledge, have actually received earnings in the amount or
784 range specified and the length of time it took such purchaser-investors
785 to receive earnings in such amount or range; (B) for the three-year
786 period prior to the date of the disclosure [statement] document, the
787 total number of purchaser-investors of business opportunities
788 involving the products, equipment, supplies or services being offered.
789 The seller shall clearly and conspicuously disclose the following
790 statement together with the information required by this subdivision
791 in immediate conjunction with such representations and in not less
792 than twelve-point upper and lower case boldface type: "Caution: Some
793 business opportunities have (sold)(earned) this amount. There is no
794 assurance you will do as well. If you rely upon our figures, you must
795 accept the risk of not doing as well";

796 (22) If the business opportunity seller is required to secure a bond or
797 establish a trust deposit pursuant to section 36b-64, as amended by this
798 act, the document shall state either:

799 (A) "As required by Connecticut law, the seller has secured a bond
800 issued by

801

802 (Name and address of surety company)

803 a surety company authorized to do business in this state. Before
804 signing a contract to purchase this business opportunity, you should
805 check with the surety company to determine the bond's current status,"
806 or

807 (B) "As required by Connecticut law, the seller has established a
808 trust account

809

810 (Number of account)

811 with

812 (Name and address of bank or [savings] other financial institution)

813 before signing a contract to purchase this business opportunity, you
814 should check with the bank or [savings] other depository institution to
815 determine the current status of the trust account";

816 (23) The following statement: "If the seller fails to deliver the
817 products, equipment or supplies or fails to render the services
818 necessary to begin substantial operation of the business within forty-
819 five days of the delivery date stated in your contract, you may notify
820 the seller in writing and demand that the contract be cancelled";

821 (24) A financial statement as required by subsection (b) of section
822 [36b-65] 36b-62, as amended by this act;

823 (25) A table of contents shall be included within the disclosure
824 document and shall immediately follow the cover page or pages of the
825 disclosure document;

826 (26) The names of those persons who will represent the seller in
827 offering or selling business opportunities in this state. With respect to
828 each such person, a statement disclosing: (A) [His or her] Such person's
829 business address and telephone number, [; (B) his or her] present
830 employer, [; (C) his or her] and employment or occupational history
831 for the past ten years, including the names of [his or her] employers,

832 positions held and starting and termination dates for each such
833 position; [(D)] and (B) whether such person (i) has, at any time during
834 the previous [seven] ten fiscal years, been convicted of a felony or
835 pleaded nolo contendere to a felony charge if such felony involved
836 fraud, including but not limited to, a violation of any business
837 opportunity law, franchise law, securities law or unfair or deceptive
838 practices law, embezzlement, fraudulent conversion, misappropriation
839 of property or restraint of trade, or (ii) has, at any time during the
840 previous [seven] ten fiscal years, been held liable in a civil action
841 resulting in a final judgment or has settled any civil action out of court
842 or is a party to any civil action involving allegations of fraud, including
843 but not limited to a violation of any business opportunity law,
844 franchise law, securities law or unfair or deceptive practices law,
845 embezzlement, fraudulent conversion, misappropriation of property,
846 or restraint of trade, or [which] that was brought by a present or
847 former purchaser-investor and [which] that involves or involved the
848 business opportunity relationship, or (iii) is subject to any currently
849 effective injunctive or restrictive order issued by any state or federal
850 court or administrative agency, or is a party to a proceeding currently
851 pending in which such order is sought, relating to or affecting business
852 opportunity activities or the seller-purchaser-investor relationship, or
853 involving fraud, including but not limited to, a violation of any
854 business opportunity law, franchise law, securities law or unfair or
855 deceptive practices law, embezzlement, fraudulent conversion,
856 misappropriation of property or restraint of trade. Such statement shall
857 disclose the identity and location of the court or administrative agency;
858 the date of conviction, judgment, order or decision; the penalty
859 imposed; any damages assessed and the terms of settlement or the
860 terms of the order;

861 (27) A section entitled "risk factors" containing a series of short
862 concise captioned paragraphs summarizing the principal factors which
863 make the business opportunity one of high risk or of a speculative
864 nature. Such factors shall include, but not be limited to: The absence of
865 profitable operations within the previous three years; an erratic
866 financial position of the seller; the particular nature of the business in

867 which the seller is engaged or proposes to engage; any adverse
868 background information regarding executive officers and directors of
869 the seller, including prior business failures, criminal convictions or
870 personal adjudications of bankruptcy; limited experience or lack of
871 experience of the seller's management with respect to the particular
872 business; and the identity and relationship to the seller of any
873 customers, the loss of any one of whom would have a material adverse
874 effect on the seller. Where appropriate, reference shall be made to
875 other sections of the disclosure document where more detailed
876 information has been disclosed.

877 [(c)] (d) The information contained in the disclosure document may
878 be supplemented by more detailed information contained in other
879 documents [which] that shall be made a part of the disclosure
880 document; provided, any such supplementary documents [must be]
881 are given to the purchaser-investor at the time the disclosure
882 document is given to the purchaser-investor.

883 Sec. 4. Section 36b-64 of the general statutes is repealed and the
884 following is substituted in lieu thereof (*Effective October 1, 2009*):

885 If the business opportunity seller makes any of the representations
886 set forth in subparagraph (C) of subdivision [(6)] (2) of section 36b-61,
887 as amended by this act, the seller shall have obtained a surety bond
888 issued by a surety company authorized to do business in this state or
889 shall have established a trust account with a licensed and insured bank
890 or [savings] other depository institution located in Connecticut. The
891 amount of such bond or trust account shall be an amount not less than
892 fifty thousand dollars, but the commissioner may require a greater
893 amount if he believes it necessary for the protection of purchaser-
894 investors. Such bond or trust account shall be in favor of the state of
895 Connecticut. Any person who is damaged by any violation of sections
896 36b-60 to 36b-80, inclusive, as amended by this act, or by the seller's
897 breach of the contract for the business opportunity sale or of any
898 obligation arising under such contract may bring an action against the
899 bond or trust account to recover damages suffered.

900 Sec. 5. Section 36b-65 of the general statutes is repealed and the
901 following is substituted in lieu thereof (*Effective October 1, 2009*):

902 [(a) Unless exempted by subsection (e) of this section, any person
903 who advertises, sells, contracts, offers for sale or promotes any
904 business opportunity in this state or from this state must register with
905 the commissioner and file, in a form prescribed by said commissioner,
906 an application which shall contain the following documents and
907 information: (1) The official name and address and principal place of
908 business of the seller and the parent firm or holding company of such
909 seller, if any; (2) the business experience stated individually of each of
910 the seller's directors and officers including the biographical data
911 concerning all such persons; (3) the business experience of the seller,
912 including the length of time such seller has conducted a business of the
913 type to be operated by the purchaser-investor, has granted business
914 opportunities for such business, and has granted business
915 opportunities in other lines of business; (4) a copy of any contracts,
916 agreements, brochures or other documents relating to the business
917 opportunity; (5) a factual description of the business opportunity
918 offered to be sold and of the services, training and assistance which
919 will be provided by the seller to the purchaser-investor; (6) a statement
920 describing any services, supplies, products, signs, fixtures or
921 equipment relating to the establishment or the operating of the
922 business opportunity which the purchaser-investor is required to
923 purchase, lease or rent directly or indirectly from the seller; (7) a copy
924 of the table of contents of any operations manual to be provided to the
925 purchaser-investor; and (8) any other information the commissioner in
926 his discretion reasonably requires. The application shall contain the
927 seller's statement sworn to before a person qualified to administer
928 oaths that the information contained in the application is true to the
929 seller's knowledge.

930 (b) The seller shall file with the commissioner: (1) A balance sheet,
931 income statement and statement of changes in financial condition of
932 such seller as of a date not more than four months prior to the filing of
933 the registration statement, which financial statements may be

934 unaudited, provided if the seller has been in business for less than
935 twelve months from the date of the filing of the registration statement,
936 such financial statements shall be reviewed by an independent
937 certified public accountant and shall include a written opinion from
938 said accountant stating that he is not aware of any material
939 modifications that should be made to the financial statements in order
940 for them to be in conformity with generally accepted accounting
941 principles; (2) a balance sheet of such seller, an income statement and
942 statement of changes in financial position for the most recent fiscal
943 year audited by an independent public accountant or an independent
944 certified public accountant; and (3) a balance sheet and income
945 statement and statement of changes in financial position for the prior
946 two fiscal years reviewed by an independent certified public
947 accountant who provides an opinion stating that he is not aware of any
948 material modifications that should be made to the financial statements
949 in order for them to be in conformity with generally accepted
950 accounting principles. If any material changes in the financial
951 condition of such seller occur after such statements are prepared, such
952 seller shall disclose such changes and explain their significance to the
953 operation of a business opportunity. If the seller is controlled by any
954 person who absolutely and unconditionally guarantees to assume the
955 duties and obligations of such seller under the business opportunity
956 agreement should such seller become unable to perform, the
957 commissioner may accept consolidated financial statements from such
958 seller and such person. If the commissioner finds that a seller has failed
959 to demonstrate that adequate financial arrangements have been made
960 to fulfill the obligations set forth in the business opportunity
961 agreement, the commissioner may require the escrow or impoundment
962 of fees and other funds paid by the purchaser-investor or purchaser-
963 investors until such obligations have been fulfilled, or, at the option of
964 such seller, the furnishing of a surety bond as provided by regulation
965 or order of the commissioner, if he finds that such requirement is
966 necessary and appropriate to protect purchaser-investors.

967 (c) Upon satisfactory submission of the information and documents
968 required by subsections (a) and (b) of this section and all the

969 information and documents required by section 36b-64 and the
970 payment of a registration fee of four hundred dollars, the
971 commissioner shall issue a certificate stating that the business
972 opportunity has been registered.

973 (d) The commissioner may accept the uniform franchise offering
974 circular adopted by The Midwest Securities Commissioners
975 Association on September 2, 1975, with associated guidelines amended
976 by The North American Securities Administrators Association from
977 time to time, in lieu of the disclosure document required by section
978 36b-63, provided that (1) the disclosure document contains the cover
979 sheet required by subsection (a) of said section 36b-63, (2) any
980 additional information required by said section 36b-63 which is not
981 contained in the uniform franchise offering circular is included in an
982 addendum to the disclosure document, and (3) the seller files a cross-
983 reference sheet indicating the location of the disclosures required by
984 said section 36b-63.]

985 [(e)] (a) The following business opportunities are exempt from
986 [subsections (a) and (b)] subsection (a) of section 36b-62, as amended
987 by this act; [sections] section 36b-63, as amended by this act, and
988 section 36b-64, as amended by this act; [subsections (a), (b), (c), (d) and
989 (f) of this section;] section 36b-66 and [subdivisions] subdivision (1) [,
990 (2) and (3)] of section 36b-67: (1) (A) Subject to the provisions of
991 subparagraph (B) of this subdivision, any business opportunity for
992 which the initial payment made by the purchaser-investor per business
993 opportunity does not exceed two hundred dollars, if no
994 representations are made that the seller guarantees, either
995 conditionally or unconditionally, that the purchaser-investor will
996 derive income from the business opportunity. For purposes of this
997 subparagraph, "initial payment" means the total amount the
998 purchaser-investor becomes obligated to pay to the seller or to any
999 third party either prior to or at the time of delivery of the products,
1000 equipment, supplies or services or within one year of the
1001 commencement of operation of the business by the purchaser-investor.
1002 If payment is over a period of time, "initial payment" [shall include]

1003 includes the sum of the down payment and the total periodic
1004 payments. "Initial payment" does not include periodic payments where
1005 the amount or rate of the payment is based on net revenue or gross
1006 revenue generated by the business. (B) The commissioner may, by
1007 regulation, adopted pursuant to section 36b-77, or order as to any
1008 business opportunity or type of business opportunity or transaction
1009 exempt under subdivision (1) (A) of this subsection, modify,
1010 withdraw, further condition or waive such conditions, in whole or in
1011 part, conditionally or unconditionally, on a finding that such
1012 regulation or order is necessary and appropriate, in the public interest
1013 or for the protection of purchaser-investors; (2) any business
1014 opportunity sold in this state exclusively to purchaser-investors each
1015 of whom has a net worth of not less than one million dollars exclusive
1016 of principal residence, home furnishings, and personal automobiles;
1017 and (3) any other business opportunity that the commissioner by
1018 regulation, adopted pursuant to section 36b-77, or order may exempt,
1019 conditionally or unconditionally, if the commissioner finds that
1020 enforcement of all the provisions of sections 36b-60 to 36b-80,
1021 inclusive, as amended by this act, with respect to such business
1022 opportunity is not necessary to protect the public interest, and for the
1023 protection of purchaser-investors due to the limited character of the
1024 business opportunity, or because such business opportunity is, in the
1025 judgment of the commissioner, adequately regulated by federal law.
1026 The commissioner may by order deny, suspend or revoke any
1027 exemption with respect to a particular offering of one or more business
1028 opportunities in accordance with the provisions of section 36b-68, as
1029 amended by this act. No order under this subsection may operate
1030 retroactively. No person may be considered to have violated any order
1031 issued under this subsection by reason of any offer or sale effected
1032 after the entry of such order if such person sustains the burden of
1033 proof that such person did not know, and in the exercise of reasonable
1034 care could not have known, of such order. [In any proceeding under
1035 this subsection, the burden of proving an exemption is upon the
1036 person claiming it.]

1037 [(f) The seller shall immediately notify the commissioner of any

1038 material change in information contained in the application for
1039 registration, amend financial statements not less than quarterly and
1040 make appropriate amendment of the disclosure document.]

1041 (b) In any proceeding under sections 36b-60 to 36b-80, inclusive, as
1042 amended by this act, the burden of proving an exemption, exclusion or
1043 an exception from a definition is upon the person claiming it.

1044 Sec. 6. Section 36b-68 of the general statutes is repealed and the
1045 following is substituted in lieu thereof (*Effective October 1, 2009*):

1046 (a) The commissioner may issue a stop order denying effectiveness
1047 to, or suspending or revoking the effectiveness of, any business
1048 opportunity registration if [he] the commissioner finds that: (1) [That
1049 such] Such order is in the public interest; (2) [that] such order is
1050 necessary for the protection of purchaser-investors or prospective
1051 purchaser-investors; (3) [that] the registration of the business
1052 opportunity is incomplete in any material respect but is not abandoned
1053 pursuant to subsection (e) of this section or contains any statement
1054 which was, in the light of the circumstances under which it was made,
1055 false or misleading with respect to any material fact; [or] (4) [that] any
1056 provision of sections 36b-60 to 36b-80, inclusive, as amended by this
1057 act, or any regulation, order or condition lawfully adopted, issued or
1058 imposed under said sections has been wilfully violated by any person;
1059 (5) the seller, or any partner, officer or director, any person occupying
1060 a similar status or performing similar functions, or any person directly
1061 or indirectly controlling the seller or charged with responsibility for
1062 the seller's business activities (A) has, at any time during the previous
1063 ten fiscal years, been convicted of a felony or pleaded nolo contendere
1064 to a felony charge or a misdemeanor if such misdemeanor involved
1065 fraud, including, but not limited to, a violation of any business
1066 opportunity law, franchise law, securities law or unfair or deceptive
1067 practices law, embezzlement, fraudulent conversion, misappropriation
1068 of property or restraint of trade, provided any denial, suspension or
1069 revocation hereunder shall be in accordance with the provisions of
1070 section 46a-80; (B) is permanently or temporarily enjoined by any court

1071 of competent jurisdiction from engaging in or continuing any conduct
1072 or practice involving business opportunity or securities activities, the
1073 seller-purchaser-investor relationship or fraudulent conduct,
1074 including, but not limited to, a violation of any business opportunity
1075 law, franchise law, securities law or unfair or deceptive practices law,
1076 embezzlement, fraudulent conversion, misappropriation of property
1077 or restraint of trade; (C) is the subject of a cease and desist order,
1078 consent order or order imposing fines entered by the commissioner
1079 within the past ten years and involving a violation of this chapter or
1080 chapter 672a; or (D) is the subject of any state or federal agency order
1081 or any securities or commodities self-regulatory organization sanction
1082 entered within the past ten years and involving (i) business
1083 opportunity activities or the seller-purchaser-investor relationship, or
1084 (ii) fraud, including, but not limited to, a violation of any business
1085 opportunity law, franchise law, securities law or unfair or deceptive
1086 practices law, embezzlement, fraudulent conversion, misappropriation
1087 of property or restraint of trade; (6) the seller's enterprise or method of
1088 business, or that of the business opportunity, includes or would
1089 include activities that are illegal where performed; (7) the business
1090 opportunity or the offering of the business opportunity has worked or
1091 tended to work a fraud upon purchaser-investors or would so operate;
1092 or (8) the seller's literature or advertising is misleading, incorrect,
1093 incomplete or deceptive.

1094 (b) The commissioner may by order summarily postpone or
1095 suspend the effectiveness of the registration of a business opportunity
1096 pending final determination of any proceeding under this section.
1097 Upon the entry of such order, said commissioner shall promptly notify
1098 the registrant or applicant of the business opportunity that it has been
1099 entered and of the reasons for such entry and that within fifteen days
1100 after receipt by said commissioner of a written request the matter will
1101 be set down for a hearing. If no hearing is requested and none is
1102 ordered by the commissioner, such order will remain in effect until
1103 modified or vacated by said commissioner. If a hearing is requested,
1104 said commissioner may modify or vacate such order or extend it until
1105 final determination.

1106 (c) No stop order may be entered under this section except as
1107 provided in subsection (b) of this section without: (1) Appropriate
1108 prior notice to the applicant or registrant of a business opportunity; (2)
1109 opportunity for a hearing; and (3) the issuance of written findings of
1110 fact and conclusions of law by the commissioner, provided, if the
1111 commissioner has previously entered a stop order under this section,
1112 the commissioner, in the commissioner's discretion, may deny any
1113 subsequent application for registration of such business opportunity
1114 without such notice, opportunity for a hearing and written findings of
1115 fact and conclusions of law, if the commissioner makes the findings in
1116 subsection (a) of this section and notifies the seller in writing of such
1117 denial.

1118 (d) The commissioner may vacate or modify a stop order if he finds
1119 that the conditions which prompted its entry have changed or that it is
1120 otherwise in the public interest to do so.

1121 (e) Notwithstanding the provisions of this section, the commissioner
1122 may deem an application for registration of any business opportunity
1123 to be abandoned if the applicant fails to respond to any request for
1124 information required under sections 36b-60 to 36b-80, inclusive, as
1125 amended by this act, or any regulations adopted pursuant to said
1126 sections. The commissioner shall notify the applicant in writing that if
1127 such information is not submitted within sixty days of such written
1128 notification, the application shall be deemed abandoned. Any
1129 registration fee paid prior to the date an application is deemed
1130 abandoned pursuant to this subsection shall not be refunded.
1131 Abandonment of an application pursuant to this subsection shall not
1132 preclude the applicant from submitting a new application for
1133 registration under this chapter. The hearing requirement in subsection
1134 (c) of this section shall not apply to abandonment pursuant to this
1135 subsection.

1136 Sec. 7. Subsection (b) of section 36b-72 of the general statutes is
1137 repealed and the following is substituted in lieu thereof (*Effective*
1138 *October 1, 2009*):

1139 (b) (1) Whenever the commissioner finds as the result of an
1140 investigation that any person [or persons have] has violated any of the
1141 provisions of sections 36b-60 to 36b-80, inclusive, as amended by this
1142 act, or any regulation, rule or order adopted or issued under said
1143 sections, the commissioner may send a notice to such person [or
1144 persons] by certified mail, return receipt requested, or by any express
1145 delivery carrier that provides a dated delivery receipt. The notice shall
1146 be deemed received by the person on the earlier of the date of actual
1147 receipt or the date seven days after the date on which such notice was
1148 mailed or sent. Any such notice shall include: (A) A reference to the
1149 title, chapter, regulation, rule or order alleged to have been violated;
1150 (B) a short and plain statement of the matter asserted or charged; (C)
1151 the maximum fine that may be imposed for such violation; [and] (D)
1152 [the time and place for the hearing. Such hearing shall be fixed for a
1153 date not earlier] a statement indicating that such person may file a
1154 written request for a hearing on the matters asserted not later than
1155 fourteen days after receipt of the notice; [is mailed] and (E) the time
1156 and place for the hearing.

1157 (2) [The] If a hearing is requested within the time specified in the
1158 notice, the commissioner shall hold a hearing upon the charges made
1159 unless such person [or persons fail] fails to appear at the hearing. Such
1160 hearing shall be held in accordance with the provisions of chapter 54.
1161 After the hearing if the commissioner finds that the person [or persons
1162 have] has violated any of the provisions of sections 36b-60 to 36b-80,
1163 inclusive, as amended by this act, or any regulation, rule or order
1164 adopted or issued under said sections, the commissioner may, in
1165 addition to any other remedy authorized by said sections, order that a
1166 fine not exceeding one hundred thousand dollars per violation be
1167 imposed upon such person. [or persons.] If such person [or persons
1168 fail] fails to appear at the hearing, the commissioner may, as the facts
1169 require, order that a fine not exceeding one hundred thousand dollars
1170 per violation be imposed upon such person. [or persons.] The
1171 commissioner shall send a copy of any order issued pursuant to this
1172 subsection by certified mail, return receipt requested, or by any
1173 express delivery carrier that provides a dated delivery receipt, to any

1174 person [or persons] named in such order.

1175 Sec. 8. Section 36b-79 of the general statutes is repealed and the
1176 following is substituted in lieu thereof (*Effective October 1, 2009*):

1177 [Within] Not later than one hundred and twenty days [following]
1178 after the end of the seller's most recent fiscal year and each year
1179 thereafter, each seller whose business opportunity has been registered
1180 under sections 36b-60 to 36b-80, inclusive, as amended by this act, shall
1181 renew the registration by submitting to the commissioner: (1) An
1182 annual renewal registration fee of one hundred dollars, which shall be
1183 nonrefundable; (2) [an application filed] a filing in accordance with the
1184 requirements of subsection [(a)] (b) of section [36b-65] 36b-62, as
1185 amended by this act, reflecting all amendments as of the date of filing;
1186 (3) a disclosure document filed in accordance with the requirements of
1187 sections 36b-62, as amended by this act, and 36b-63, as amended by
1188 this act, reflecting all amendments, clearly marked, since the date of
1189 the most recent disclosure document that was filed with the
1190 commissioner, or, if no such amendments have been made, an affidavit
1191 so stating; and (4) financial statements in accordance with the
1192 requirements of subsection (b) of section [36b-65] 36b-62, as amended
1193 by this act. In the event that the seller fails to submit the fee and
1194 information within the time period and in accordance with
1195 requirements of this section, the registration of such seller's business
1196 opportunity shall terminate.

1197 Sec. 9. Section 36b-80 of the general statutes is repealed and the
1198 following is substituted in lieu thereof (*Effective October 1, 2009*):

1199 No person shall make or cause to be made orally or in any
1200 document filed with the commissioner or in any proceeding,
1201 investigation or examination under sections 36b-60 to 36b-80, inclusive,
1202 as amended by this act, any statement which is, at the time and in the
1203 light of the circumstances under which it is made, false or misleading
1204 in any material respect or, in connection with the statement, omit to
1205 state a material fact necessary to make the statement made, in the light
1206 of the circumstances under which it was made, not false or misleading.

1207 Sec. 10. Subsection (a) of section 36b-15 of the general statutes is
1208 repealed and the following is substituted in lieu thereof (*Effective*
1209 *October 1, 2009*):

1210 (a) The commissioner may, by order, deny, suspend or revoke any
1211 registration or, by order, restrict or impose conditions on the securities
1212 or investment advisory activities that an applicant or registrant may
1213 perform in this state if the commissioner finds that (1) the order is in
1214 the public interest, and (2) the applicant or registrant or, in the case of a
1215 broker-dealer or investment adviser, any partner, officer, or director,
1216 any person occupying a similar status or performing similar functions,
1217 or any person directly or indirectly controlling the broker-dealer or
1218 investment adviser: (A) Has filed an application for registration which
1219 as of its effective date, or as of any date after filing in the case of an
1220 order denying effectiveness, was incomplete in any material respect or
1221 contained any statement which was, in light of the circumstances
1222 under which it was made, false or misleading with respect to any
1223 material fact; (B) has wilfully violated or wilfully failed to comply with
1224 any provision of sections 36b-2 to 36b-33, inclusive, as amended by this
1225 act, or a predecessor statute or any regulation or order under said
1226 sections or a predecessor statute; (C) has been convicted, within the
1227 past ten years, of any misdemeanor involving a security, any aspect of
1228 [the securities business] a business involving securities, commodities,
1229 investments, franchises, business opportunities, insurance, banking or
1230 finance, or any felony, provided any denial, suspension or revocation
1231 of such registration shall be in accordance with the provisions of
1232 section 46a-80; (D) is permanently or temporarily enjoined by any
1233 court of competent jurisdiction from engaging in or continuing any
1234 conduct or practice involving any aspect of [the securities or
1235 commodities business] a business involving securities, commodities,
1236 investments, franchises, business opportunities, insurance, banking or
1237 finance; (E) is the subject of a cease and desist order of the
1238 commissioner or an order of the commissioner denying, suspending,
1239 or revoking registration as a broker-dealer, agent, investment adviser
1240 or investment adviser agent; (F) is the subject of any of the following
1241 sanctions that are currently effective or were imposed within the past

1242 ten years: (i) An order issued by the securities administrator of any
1243 other state [Canadian province or territory,] or by the Securities and
1244 Exchange Commission or the Commodity Futures Trading
1245 Commission denying, suspending or revoking registration as a
1246 broker-dealer, agent, investment adviser, investment adviser agent or a
1247 person required to be registered under the Commodity Exchange Act,
1248 7 USC 1 et seq., as from time to time amended, and the rules and
1249 regulations thereunder, or the substantial equivalent of those terms, as
1250 defined in sections 36b-2 to 36b-33, inclusive, as amended by this act,
1251 (ii) an order of the Securities and Exchange Commission or
1252 Commodity Futures Trading Commission suspending or expelling
1253 such applicant, registrant or person from a national securities or
1254 commodities exchange or national securities or commodities
1255 association registered under the Securities Exchange Act of 1934 or the
1256 Commodity Exchange Act, 7 USC 1 et seq., as from time to time
1257 amended, or, in the case of an individual, an order of the Securities
1258 and Exchange Commission or an equivalent order of the Commodity
1259 Futures Trading Commission barring such individual from association
1260 with a broker-dealer or an investment adviser, (iii) a suspension,
1261 expulsion or other sanction issued by a national securities exchange or
1262 other self-regulatory organization registered under federal laws
1263 administered by the Securities and Exchange Commission or the
1264 Commodity Futures Trading Commission if the effect of the sanction
1265 has not been stayed or overturned by appeal or otherwise, (iv) a
1266 United States Post Office fraud order, [or] (v) a denial, suspension,
1267 revocation or other sanction issued by the commissioner or any other
1268 state or federal financial services regulator based upon nonsecurities
1269 violations of any state or federal law under which a business involving
1270 investments, franchises, business opportunities, insurance, banking or
1271 finance is regulated, or (vi) a cease and desist order entered by the
1272 Securities and Exchange Commission, a self-regulatory organization or
1273 the securities agency or administrator of any other state or Canadian
1274 province or territory; but the commissioner may not (I) institute a
1275 revocation or suspension proceeding under this subparagraph more
1276 than five years from the date of the sanction relied on, and (II) enter an

1277 order under this subparagraph on the basis of an order under any
1278 other state act unless that order was based on facts which would
1279 constitute a ground for an order under this section; (G) may be denied
1280 registration under federal law as a broker-dealer, agent, investment
1281 adviser, investment adviser agent or as a person required to be
1282 registered under the Commodity Exchange Act, 7 USC 1 et seq., as
1283 from time to time amended, and the rules and regulations
1284 promulgated thereunder, or the substantial equivalent of those terms
1285 as defined in sections 36b-2 to 36b-33, inclusive, as amended by this
1286 act; (H) has engaged in fraudulent, dishonest or unethical practices in
1287 the securities, [or] commodities, investment, franchise, business
1288 opportunity, banking, finance or insurance business, including abusive
1289 sales practices in the business dealings of such applicant, registrant or
1290 person with current or prospective customers or clients; (I) is insolvent,
1291 either in the sense that the liabilities of such applicant, registrant or
1292 person exceed the assets of such applicant, registrant or person, or in
1293 the sense that such applicant, registrant or person cannot meet the
1294 obligations of such applicant, registrant or person as they mature; but
1295 the commissioner may not enter an order against a broker-dealer or
1296 investment adviser under this subparagraph without a finding of
1297 insolvency as to the broker-dealer or investment adviser; (J) is not
1298 qualified on the basis of such factors as training, experience, and
1299 knowledge of the securities business, except as otherwise provided in
1300 subsection (b) of this section; (K) has failed reasonably to supervise: (i)
1301 The agents or investment adviser agents of such applicant or
1302 registrant, if the applicant or registrant is a broker-dealer or investment
1303 adviser; or (ii) the agents of a broker-dealer or investment adviser
1304 agents of an investment adviser, if such applicant, registrant or other
1305 person is or was an agent, investment adviser agent or other person
1306 charged with exercising supervisory authority on behalf of a
1307 broker-dealer or investment adviser; (L) in connection with any
1308 investigation conducted pursuant to section 36b-26 or any examination
1309 under subsection (d) of section 36b-14, has made any material
1310 misrepresentation to the commissioner or upon request made by the
1311 commissioner, has withheld or concealed material information from,

1312 or refused to furnish material information to the commissioner,
1313 provided, there shall be a rebuttable presumption that any records,
1314 including, but not limited to, written, visual, audio, magnetic or
1315 electronic records, computer printouts and software, and any other
1316 documents, that are withheld or concealed from the commissioner in
1317 connection with any such investigation or examination are material,
1318 unless such presumption is rebutted by substantial evidence; (M) has
1319 wilfully aided, abetted, counseled, commanded, induced or procured a
1320 violation of any provision of sections 36b-2 to 36b-33, inclusive, as
1321 amended by this act, or a predecessor statute or any regulation or
1322 order under such sections or a predecessor statute; [or] (N) after notice
1323 and opportunity for a hearing, has been found within the previous ten
1324 years: (i) By a court of competent jurisdiction, to have wilfully violated
1325 the laws of a foreign jurisdiction under which the business of
1326 securities, commodities, investments, franchises, business
1327 opportunities, insurance, banking or finance is regulated; (ii) to have
1328 been the subject of an order of a securities regulator of a foreign
1329 jurisdiction denying, revoking or suspending the right to engage in the
1330 business of securities as a broker-dealer, agent, investment adviser,
1331 investment adviser agent or similar person; or (iii) to have been
1332 suspended or expelled from membership by or participation in a
1333 securities exchange or securities association operating under the
1334 securities laws of a foreign jurisdiction. As used in this subparagraph,
1335 "foreign" means a jurisdiction outside of the United States; or (O) has
1336 failed to pay the proper filing fee; but the commissioner may enter
1337 only a denial order under this subparagraph, and the commissioner
1338 shall vacate any such order when the deficiency has been corrected.
1339 The commissioner may not institute a suspension or revocation
1340 proceeding on the basis of a fact or transaction known to the
1341 commissioner when the registration became effective unless the
1342 proceeding is instituted within one hundred eighty days of the
1343 effective date of such registration.

1344 Sec. 11. Subsection (d) of section 36b-27 of the general statutes is
1345 repealed and the following is substituted in lieu thereof (*Effective*
1346 *October 1, 2009*):

1347 (d) (1) Whenever the commissioner finds as the result of an
1348 investigation that any person has violated any of the provisions of
1349 sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order
1350 adopted or issued under said sections, the commissioner may send a
1351 notice to (A) such person, (B) any other person that directly or
1352 indirectly controls such person and that was a cause of the violation of
1353 said sections or any such regulation, rule or order, due to an act or
1354 omission such other person knew or should have known would
1355 contribute to such violation, or (C) any other person that has materially
1356 aided in such violation, by registered or certified mail, return receipt
1357 requested, or by any express delivery carrier that provides a dated
1358 delivery receipt. The notice shall be deemed received by the person on
1359 the earlier of the date of actual receipt or the date seven days after the
1360 date on which such notice was mailed or sent. Any such notice shall
1361 include: (i) A reference to the title, chapter, regulation, rule or order
1362 alleged to have been violated; (ii) a short and plain statement of the
1363 matter asserted or charged; (iii) the maximum fine that may be
1364 imposed for such violation; [and] (iv) [the time and place for the
1365 hearing. Any such hearing shall be fixed for a date not earlier] a
1366 statement indicating that such person may file a written request for a
1367 hearing on the matters asserted not later than fourteen days after
1368 receipt of the notice; [is mailed] and (v) the time and place for the
1369 hearing.

1370 (2) [The] If a hearing is requested within the time specified in the
1371 notice, the commissioner shall hold a hearing upon the charges made
1372 unless such person fails to appear at the hearing. Any such hearing
1373 shall be held in accordance with the provisions of chapter 54. After the
1374 hearing if the commissioner finds that the person has violated, caused
1375 a violation or materially aided in the violation of any of the provisions
1376 of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any
1377 regulation, rule or order adopted or issued under said sections, the
1378 commissioner may, in the commissioner's discretion and in addition to
1379 any other remedy authorized by said sections, order that a fine not
1380 exceeding one hundred thousand dollars per violation be imposed
1381 upon such person. If such person fails to appear at the hearing, the

1382 commissioner may, as the facts require, order that a fine not exceeding
1383 one hundred thousand dollars per violation be imposed upon such
1384 person. The commissioner shall send a copy of any order issued
1385 pursuant to this subsection by registered or certified mail, return
1386 receipt requested, or by any express delivery carrier that provides a
1387 dated delivery receipt, to any person named in such order.

| | | |
|---|------------------------|-----------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2009</i> | 36b-61 |
| Sec. 2 | <i>October 1, 2009</i> | 36b-62 |
| Sec. 3 | <i>October 1, 2009</i> | 36b-63 |
| Sec. 4 | <i>October 1, 2009</i> | 36b-64 |
| Sec. 5 | <i>October 1, 2009</i> | 36b-65 |
| Sec. 6 | <i>October 1, 2009</i> | 36b-68 |
| Sec. 7 | <i>October 1, 2009</i> | 36b-72(b) |
| Sec. 8 | <i>October 1, 2009</i> | 36b-79 |
| Sec. 9 | <i>October 1, 2009</i> | 36b-80 |
| Sec. 10 | <i>October 1, 2009</i> | 36b-15(a) |
| Sec. 11 | <i>October 1, 2009</i> | 36b-27(d) |

BA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6232*****AN ACT CONCERNING THE CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT.*****SUMMARY:**

The bill makes changes to the Connecticut Business Opportunity Act. It adds definitions, consolidates existing registration procedures, and expands disclosure requirements. It eliminates exclusions and expands the situations under which the commissioner can issue a stop order.

The bill also specifies that a trust account associated with selling a business opportunity can be with a licensed bank or other depository institution. Current law says the trust account has to be with a bank or a savings institution.

The bill prohibits a person, in connection with any procedures under the Act, from omitting to state a material fact so as to make the statement, in light of the circumstances under which it was made, false or misleading.

The bill makes minor changes to the Uniform Securities Act and other minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2009

§ 1 — DEFINITIONS

This bill defines the term “affiliate,” as used in the Connecticut Business Opportunity Investment Act, as a person who:

1. directly or indirectly controls, is controlled by, or is under common control with, a seller;

2. directly or indirectly owns, controls or holds with power to vote 10% or more of a seller's outstanding voting securities; or
3. has, in common with a seller, one or more partners, officers, directors, trustees, branch managers or other persons occupying similar status or performing similar functions.

The bill also changes the definition of "seller" in the context of a business opportunity, to clarify that the Act applies to the seller of a single opportunity, rather than more than one, as appears to be the case under current law.

§ 3 — DISCLOSURES

By law, the disclosure document must include, relative to certain individuals, a statement disclosing who at any time during the previous seven years:

1. has been convicted of a felony or pleaded nolo contendere to a felony charge if it involved fraud;
2. has been held liable in a civil action resulting in a final judgment or has settled out of court any civil action, or is a party to any civil action (a) involving allegations of fraud or (b) which was brought by a present or former purchaser-investor and which involves or involved the business opportunity relationship;
3. is subject to any currently effective state or federal agency or court injunctive or restrictive order, is a party to a proceeding currently pending in which such an order is sought, affecting business opportunity activities or the seller-purchaser-investor relationship, or involving fraud.

This information must be provided generally for the seller, its affiliate, predecessor, current directors, executive officers, trustees, general partners, general managers, persons who will represent the seller in offering or selling business opportunities in the state, and any other persons charged with responsibility for the seller's business

activities. The bill instead requires the information to be provided going back 10 fiscal years instead of seven. It also requires information to be provided for these individuals if they are or were a principal, director, executive officer or partner of any other person that was held liable, settled, or is a party to the civil action or pending proceedings discussed above.

The bill also changes, from seven to 10 fiscal years, the look-back period for those that have (1) filed bankruptcy or been adjudged bankrupt; (2) been reorganized due to insolvency; or (3) been a principal, director, executive officer or partner of any other person that has so filed or was so adjudged or reorganized, during or within one year after the period that such a person held that position with the other person.

The bill also makes a number of other minor changes to the disclosure requirements. For instance, it specifies that the document must contain the seller's business address, rather than just an address. Additionally, it must specify whether the seller is a limited liability company or partnership, rather than just an individual, partnership, or corporation.

§ 5 — EXEMPTIONS

By law, a number of business opportunities are exempt from complying with certain requirements under the Act. The bill eliminates the exemption as to the laws:

1. requiring sellers to file with the commissioner an irrevocable consent appointing the commissioner as the seller's attorney for service of process;
2. prohibiting a person from representing that the business opportunity will provide income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earnings potential and discloses this data to the prospective purchaser-investor at the time the representations are made, and

3. prohibiting the use of the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol knows of and consents to the use and is not involved in the sale of the business opportunity.

By law, the burden of proving an exemption is on the person claiming it. The bill expands this requirement to cover any exclusion or exception from a definition.

§ 6 — STOP ORDERS

The bill adds to the circumstances under which the commissioner can issue a stop order relative to a business opportunity. The bill allows the commissioner to issue stop orders relative to business opportunity registrations if he finds that the seller, or any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the seller or charged with responsibility for the seller's business activities:

1. has, at any time during the previous 10 fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge or a misdemeanor that involved fraud, provided any denial, suspension or revocation for this reason must be in accordance with the statutes governing the denial of employment based on a prior conviction;
2. is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving business opportunity or securities activities, the seller-purchaser-investor relationship or fraudulent conduct;
3. is the subject of a cease and desist order, consent order or order imposing fines entered by the commissioner within the past 10

years and involving a violation of the Act or the Uniform Securities Act; or

4. is the subject of any state or federal agency order or any securities or commodities self-regulatory organization sanction entered within the past 10 years and involving (a) business opportunity activities or the seller-purchaser-investor relationship, or (b) fraud, including a violation of any business opportunity law, franchise law, securities law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade.

The commissioner can also issue a stop order if he finds that (1) the seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed; (2) the business opportunity or the offering of the business opportunity has worked or tended to work a fraud upon purchaser-investors or would do so; or (3) the seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

By law, a stop order cannot generally be entered without notice, opportunity for hearing, and the issuance of written findings of fact and conclusions of law by the commissioner. However, the bill provides that if the commissioner has entered a stop order denying effectiveness to a business opportunity under this provision, the commissioner, in his discretion, can deny any subsequent application for registration of the business opportunity without the notice, opportunity for a hearing and written findings and conclusions, if the commissioner makes the findings necessary to grant a stop order and notifies the seller in writing of the denial.

§§ 7 & 11 — HEARINGS UNDER THE ACT AND THE UNIFORM SECURITIES ACT

By law, whenever it appears, as the result of an investigation, that a person has violated the Act or the Uniform Securities Act or any regulation, rule or order adopted or issued under those acts, the commissioner can send a notice to the person by certified mail or by

any express delivery carrier that provides a dated delivery receipt. The notice must include, among other things, the time and place for the hearing. The hearing must be fixed for a date not earlier than 14 days after the notice is mailed. The bill instead requires the notice to include (1) a statement indicating that the person may file a written request for a hearing on the matters asserted not later than 14 days after receipt of the notice and (2) the time and place for the hearing. The bill specifies that notice must be deemed received on the earlier of the actual receipt date or seven days after the notice was sent. The commissioner does not have to hold the hearing unless it is requested in the specified time period.

The bill also adds that the notice under the Uniform Securities Act can be provided by certified, rather than just registered, mail.

§ 10 — UNIFORM SECURITIES ACT

By law, the commissioner can deny, suspend, or revoke a registration under the Uniform Securities Act if he makes certain findings. Among other reasons, he can take such action if the person has been convicted of a misdemeanor involving, or is enjoined from engaging in, the securities or commodities business. The bill expands this to include a business involving investments, franchises, business opportunities, insurance, banking, or finance.

The commissioner can also take these actions if a person is subject to certain sanctions. The bill eliminates from consideration an order by the securities administrator of a Canadian province or territory and adds a denial, suspension, revocation or other sanction issued by the commissioner or any other state or federal financial services regulator based upon nonsecurities violations of any state or federal law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/10/2009)