

SECOND REGULAR SESSION

SENATE BILL NO. 917

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

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TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 409, RSMo, relating to regulation of securities by adding thereto thirteen new sections relating to regulation of business opportunities, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 409, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 409.1000, 409.1003, 409.1006, 409.1009, 409.1012, 409.1015, 409.1018, 409.1021, 409.1024, 409.1027, 409.1030, 409.1033 and 409.1036, to read as follows:

409.1000. 1. For the purposes of sections 409.1000 to 409.1036, "business opportunity" means the sale or lease of any products, equipment, supplies or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money in excess of one hundred dollars to the seller, and in which the seller represents:

(1) That the seller or a person or entity affiliated with, or referred by, the seller will provide locations, or assist the purchaser in finding locations, for the use or operation of vending machines, racks, display cases or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or the sellers;

(2) That the promoter or its affiliate or designee will refund all or a substantial part of the purchaser's initial payment if the purchaser is unsuccessful or dissatisfied with the business opportunity;

(3) That the seller guarantees in writing that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity or will repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is not satisfied

with the business opportunity;

(4) That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this subdivision shall not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States; or

(5) That the business opportunity is free from risk or certain to produce profits, which representation may arise from all of the assurances taken as a whole.

2. For purposes of subsection 1 of this section the term "assist the purchaser in finding locations", includes, but is not limited to, supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names or collecting a fee on behalf of or for a locator company.

3. For purposes of sections 409.1000 to 409.1036, "business opportunity" does not include:

(1) The sale of ongoing businesses when the owner of those businesses sells and intends to sell only those business opportunities so long as those business opportunities to be sold are no more than five in number; or

(2) The not for profit sale of sales demonstration equipment, materials or samples for a price that does not exceed five hundred dollars or any sales training course offered by the seller, the cost of which does not exceed five hundred dollars.

4. For purposes of sections 409.1000 to 409.1036, "purchaser" shall include a lessee and "seller" shall include a lessor.

5. For the purposes of sections 409.1000 to 409.1036, "sale" or "sell" includes every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

6. For the purposes of sections 409.1000 to 409.1036, "ongoing business" is an existing business that, for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

409.1003. Any person who advertises any business opportunity is subject to the provisions of sections 409.1000 to 409.1036.

409.1006. 1. At least three working days before the time the purchaser signs a business opportunity contract, or at least three working days before the payment of any consideration by the purchaser to the seller, whichever occurs first, the seller shall provide the prospective purchaser a written document, the cover sheet of which is titled in at least 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY MISSOURI LAW". Under such title shall appear the following statement in at least 10-point type: "The state of Missouri has not reviewed and does not approve, recommend,

endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement". Nothing except the title and the required statement shall appear on the cover sheet. Immediately following the cover sheet, the seller shall provide an index page that briefly lists the contents of the disclosure document as required by this section and any pages on which the prospective purchaser can find each required disclosure. At the top of the index page, the following statement shall appear in at least 10-point type: "The state of Missouri requires sellers of business opportunities to disclose certain information to prospective purchasers. This index is provided to help you locate this information." If the index contains other information not required by this section, the seller shall place a designation beside each of the disclosures required by this section and provide an explanation of the designation at the end of the statement at the top of the index page.

2. The disclosure statement required by subsection 1 of this section shall contain the following information:

(1) The name of the seller; whether the seller is doing business as an individual, partnership, corporation or other business entity; the name under which the seller has done business; and the name of any parent or affiliate company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller;

(2) The names, addresses and title of the seller's officers, directors, trustees, general partners, general managers and principal executives and of any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities;

(3) The length of time the seller has:

(a) Sold business opportunities; or

(b) Sold business opportunities involving the products, equipment, supplies or services currently being offered to the purchaser;

(4) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser;

(5) A copy of current, not older than thirteen months, financial statement of the seller, updated to reflect material changes in the seller's financial condition;

(6) If training is promised by the seller, a complete description of the training, the length of the training and the cost or incidental expenses of that training that the purchaser will be required to incur;

(7) If the seller promises services to be performed in connection with the placement of the equipment, product or supplies at a location, the full nature of those

services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product or supplies will be placed;

(8) If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to section 5 of this act, either of the following statements:

(a) "As required by Missouri law, the seller has secured a bond issued by, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(b) "As required by Missouri law, the seller has established a trust account or guaranteed letter of credit(number of account) with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account or guaranteed letter of credit.";

(9) The following statement: "If the seller fails to deliver the product, equipment or supplies necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract.";

(10) If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:

(a) The total number of purchasers of business opportunities involving the product, equipment, supplies or services being offered who have actually achieved sales of, or received earnings in, the amount or range specified, within three years prior to the date of the disclosure statement;

(b) The total number of purchasers of business opportunities involving the product, equipment, supplies or services being offered within three years prior to the date of the disclosure statement;

(c) The total number of purchasers of business opportunities involving the product, equipment, supplies or services being offered within three years before the date of the disclosure statement;

(11) A statement disclosing who, if any, of the persons listed in subdivisions (1) and (2) of this subsection:

(a) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded guilty or nolo contendere to a felony charge in this state or any other state or territory of the United States, if the felony involved fraud, including violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of

trade;

(b) Has, at any time during the previous seven fiscal years, 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 involving allegations of fraud, including, violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade, or any civil action which was brought by a present or former franchisee and which involves the franchise relationship; except that, only material individual civil actions need to be listed pursuant to this paragraph, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to, or affecting, business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud, including violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade. Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement;

(12) A statement disclosing who, if any, of the persons listed in subdivisions (1) and (2) of this subsection at any time during the previous seven fiscal years has:

- (a) Filed in bankruptcy;
- (b) Been adjudged bankrupt;
- (c) Been reorganized due to insolvency;

(d) Been a principal, director, executive officer or partner of any other person that has filed in bankruptcy or was adjudged bankrupt or reorganized due to insolvency during, or within one year, after the period that such person held such position in relation to such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof and any other material facts relating thereto shall be set forth;

(13) A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

3. If any seller of business opportunities prepares a disclosure statement pursuant to 16 C.F.R. section 436.1 et seq., a Trade Regulation Rule of the Federal Trade

Commission regarding disclosure requirements and prohibitions concerning franchising and business opportunity ventures, the seller may file such disclosure statement in lieu of the document required pursuant to this section. If the seller is required pursuant to 16 C.F.R. to prepare any other documents to be presented to the prospective purchaser, such document shall also be filed with the securities division of the secretary of state's office.

409.1009. 1. In order to register a business opportunity, the seller shall file with the securities division of the secretary of state's office a copy of the disclosure statement required by section 409.1006, a consent to service of process as specified in subsection 2 of this section, and the appropriate fee as required by subsection 4 of this section. A document is filed when it is received by the securities division of the secretary of state. All original documents so filed shall be kept by the commissioner as a part of the permanent records of the commissioner's office.

2. Every seller shall file, in the form as the commissioner of securities may prescribe, an irrevocable consent appointing the commissioner or the successor in office to be the seller's attorney to receive service of any lawful process in any noncriminal suit or proceeding against the seller or the seller's successor, executor or administrator which arises under this act after the consent has been filed. Service of lawful process on the commissioner shall have the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the commissioner, but is not effective unless the plaintiff promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant's address on file with the commissioner and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

3. A registration automatically becomes effective upon the expiration of the thirtieth full business day after a complete filing, provided that no order has been issued or proceeding is pending pursuant to sections 409.1000 to 409.1036. The commissioner of securities may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The commissioner may by order defer the effective date until the expiration of the thirtieth full business day after the filing of any amendment.

4. Any seller governed by sections 409.1000 to 409.1036 shall pay the securities division of the secretary of state's office an annual fee of three hundred dollars for the administration and enforcement of sections 409.1000 to 409.1036. If any material change in the information submitted to the securities division of the secretary of state's office occurs before the date for annual registration, a seller shall submit a fee of fifty dollars for any update filing required by this section.

5. Any moneys collected pursuant to the provisions of sections 409.1000 to 409.1036 shall be deposited in the "Business Opportunities Regulation Fund" which is hereby created to be used to administer the provisions of sections 409.1000 to 409.1036. Any moneys remaining in the business opportunities regulation fund at the end of any biennium shall be exempt from the provisions of section 33.080, RSMo, and shall not be deposited in the general revenue fund unless the balance in the fund exceeds two times the amount appropriated in the previous fiscal year for the administration of the provisions of sections 409.1000 to 409.1036.

6. The registration is effective for one year commencing on the date of effectiveness and may be renewed annually upon the filing of a current disclosure document accompanied by the filing fee and any documents or information that the commissioner may by rule or order require. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration.

7. The commissioner may by rule or order require the filing of a sales report. The commissioner of securities may by rule require the filing of all proposed literature or advertising prior to its use.

409.1012. If the business opportunity seller makes any representations as provided in subdivision (3) of subsection 1 of section 409.1000, the seller shall either obtain a surety bond issued by a surety company authorized to do business in this state or establish a trust account or a guaranteed letter of credit with a licensed and insured bank or savings institution located in this state. The amount of the bond, trust account or guaranteed letter of credit shall be an amount not less than fifty thousand dollars. The bond or trust account shall be in the favor of the securities division of the secretary of state's office. Any person who is damaged by any violation of sections 409.1000 to 409.1036 or by the seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond, trust account or guaranteed letter of credit to recover damages suffered; except that, the aggregate liability of the surety or trustee shall be only for actual damages and shall never exceed the amount of the bond, trust account or guaranteed letter of credit.

409.1015. A business opportunity seller shall not:

(1) Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity;

(2) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than it is reasonable to expect the market or market area for the particular business opportunity to sustain;

(3) Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity;

(4) Misrepresent the training and management assistance available to the business opportunity purchaser;

(5) Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity;

(6) Misrepresent, by failure to disclose or otherwise, the termination, transfer or renewal provision of a business opportunity agreement;

(7) Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity;

(8) Assign a so-called exclusive territory encompassing the same area to more than one business opportunity purchaser;

(9) Provide vending locations for which written authorizations have not been granted by the property owners or lessees;

(10) Provide machines or display of a brand or kind substantially different from and inferior to those promised by the business opportunity seller;

(11) Fail to provide the purchaser a written contract;

(12) Misrepresent the seller's ability or the ability of a person or entity providing services as defined in subdivision (1) of subsection 1 of section 409.1000 to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity; or

(13) Misrepresent a material fact or create a false or misleading impression in the sale of a business opportunity.

409.1018. 1. If a business opportunity seller uses untrue or misleading statements in the sale of a business opportunity, fails to give the proper disclosures in the manner required by section 409.1006, or fails to deliver the equipment, supplies or products necessary to begin substantial operation of the business within forty-five days of the delivery date stated in the business opportunity contract, the purchaser may, within one year of the date of the execution of the contract and upon written notice to the seller, rescind the contract and the purchaser shall be entitled to receive from the business opportunity seller all sums paid to the business seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address, or at the places at which the purchaser is located at the time notice is given, all products, equipment or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

2. Whenever it appears to the commissioner, either upon complaint or otherwise, that a business opportunity seller, during the sale of a business opportunity required to be registered pursuant to sections 409.1000 to 409.1036:

(1) Uses untrue or misleading statements of material facts;

(2) Fails to give the proper disclosures as required pursuant to sections 409.1000

to 409.1036;

(3) Provides to the buyer literature or advertising that is misleading, incomplete or deceptive; or

(4) Violates any other provision of sections 409.1000 to 409.1036;

and if the commissioner deems it in the public interest to do so, the commissioner may require such person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the subject matter, which the commissioner believes it to be in the public interest to investigate.

3. The commissioner may make or have made such further investigation as the commissioner may deem necessary. And if the commissioner shall believe, from evidence satisfactory to the commissioner, that such person is engaged or about to engage in any of the practices referred to in subsection 2 of this section, the commissioner may issue and cause to be served upon such person and any other concerned person or persons who are in any way participating in or about to participate in such transactions, an order prohibiting such person or persons from continuing such practices, or engaging therein or doing any act or acts in furtherance of such practices. The commissioner shall have full power in each case to make such order or orders pursuant to this section as the commissioner may deem just. The refusal to furnish information as required by order of the commissioner pursuant to this subsection, within a reasonable time to be fixed by the commissioner, shall be proper grounds for the entry of an order by the commissioner suspending or canceling the registration of the business opportunity. No person, having been served with any such order, or having knowledge of the issuance of such order, and while such order remains in effect, either as originally issued or as modified, shall violate any of its provisions.

4. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of sections 409.1000 to 409.1036 or any rule or order issued pursuant to sections 409.1000 to 409.1036, the commissioner may bring an action in the circuit court of any county of the state or the city of St. Louis to enjoin the acts or practices and to enforce compliance with sections 409.1000 to 409.1036 or any rule or order issued pursuant to sections 409.1000 to 409.1036. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The court may grant appropriate ancillary relief, including appointment of a receiver or conservator for the defendant or the defendant's assets. The court may exercise all powers necessary or appropriate for these purposes. The court may not require the commissioner to post a bond.

5. The commissioner, upon a finding that it is in the public interest, may issue

an order summarily pursuant to subsection 3 of this section.

6. In an administrative, civil or criminal proceeding arising pursuant to sections 409.1000 to 409.1036, the burden of proving an exclusion from a definition is on the person claiming it.

409.1021. 1. Any person who fails to file with the securities division of the secretary of state and pay the fee as required in section 409.1009 is guilty of a class A misdemeanor.

2. Any person who willfully violates any provision of sections 409.1000 to 409.1036 or any person who has been personally served with any cease and desist order pursuant to sections 409.1000 to 409.1036 who thereafter willfully violates such order shall upon conviction be fined not more than one hundred thousand dollars or imprisoned not more than ten years, or both.

3. The commissioner of securities may refer such evidence as is available concerning violations of sections 409.1000 to 409.1036 or of any order issued pursuant to sections 409.1000 to 409.1036 to the attorney general or the proper prosecuting attorney or circuit attorney, who may, with or without such reference, institute the appropriate criminal proceedings pursuant to sections 409.1000 to 409.1036.

4. Nothing in sections 409.1000 to 409.1036 limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

5. An action pursuant to this section shall be commenced not later than the earliest of:

(1) Four years after the act or transaction constituting the violation; or

(2) Ninety days after the receipt by the offeree of a rescission offer in a form approved by the securities division of the secretary of state or the office of the attorney general.

409.1024. 1. A provision in a business opportunity agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable pursuant to sections 409.1000 to 409.1036.

2. A condition, stipulation or provision requiring a business opportunity purchaser to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by sections 409.1000 to 409.1036 or a rule or order issued pursuant to sections 409.1000 to 409.1036 is void. An acknowledgment provision, disclaimer or integration clause or a provision having a similar effect in a business opportunity agreement does not negate or act to remove from judicial review any statement, misrepresentation or action that would violate sections 409.1000 to 409.1036 or a rule or order issued pursuant to sections 409.1000 to 409.1036. However, this subsection shall not affect the settlement of disputes, claims or civil lawsuits arising or

brought pursuant to sections 409.1000 to 409.1036.

3. Sections 409.1000 to 409.1036 shall be liberally construed to effectuate its purposes.

4. Neither the fact that an application for registration has been filed pursuant to sections 409.1000 to 409.1036 nor the fact that a business opportunity seller is effectively registered:

(1) Constitutes a finding by the commissioner of securities that any document filed pursuant to sections 409.1000 to 409.1036 is true, complete and not misleading; or

(2) That the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any business opportunity offering or any business opportunity seller.

5. It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with subsection 1 of this section.

409.1027. 1. Except as provided in section 409.1030, any interested person aggrieved by any order of the commissioner pursuant to any provision of sections 409.1000 to 409.1036, or by any refusal or failure of the commissioner to make an order pursuant to any of such provisions, shall be entitled to a hearing before the commissioner in accordance with the provisions of chapter 536, RSMo.

2. The circuit court of Cole County shall have jurisdiction in equity to review, modify, amend or annul any ruling, finding or order of the commissioner. At any hearing in the course of such proceeding, a transcript of any testimony before the commissioner in such case, duly certified by the commissioner, shall be admitted as evidence.

3. Any such final order or decree of the circuit court of Cole County may be reexamined and affirmed, reversed or modified by the supreme court of the state of Missouri upon appeal by either party to be taken in the same manner and pursuant to the same rules as exist or may be provided in cases of appeals from decrees rendered in circuit court.

4. The commencement of proceedings pursuant to subsection 1 of this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

5. Every hearing in an administrative proceeding shall be public unless the commissioner grants a request joined by all the respondents that the hearing be conducted privately.

409.1030. 1. The commissioner of securities may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any business opportunity registration if the commissioner finds that the order is in the public interest and that:

(1) The registration is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact on the effective date of registration, or in the case of an order denying effectiveness on any earlier date, or in the case of an amendment on the effective date;

(2) Any provision of sections 409.1000 to 409.1036 or any rule, order, or condition lawfully imposed pursuant to sections 409.1000 to 409.1036 has been willfully violated, in connection with the business opportunity:

(a) By the person filing the registration; or

(b) By the seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller;

(3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction. But the commissioner may not institute a proceeding against an effective registration pursuant to this subdivision more than one year from the date of the order or injunction relied on, and the commissioner may not enter an order pursuant to this subdivision on the basis of an order or injunction entered pursuant to any other state law unless that order or injunction was based on facts which would currently constitute a ground for an order pursuant to this section;

(4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed;

(5) The business opportunity or the offering of a business opportunity would tend to work a fraud upon purchasers, or has worked or intended to work a fraud upon purchasers;

(6) There has been failure to file any documents or information required pursuant to sections 409.1000 to 409.1036;

(7) The seller has failed to pay the proper registration fee but the commissioner may enter only a denial order pursuant to this subdivision and the commissioner shall vacate any such order when the deficiency has been corrected; or

(8) The seller's literature or advertising is misleading, incorrect, incomplete or deceptive.

2. The commissioner may not institute a proceeding pursuant to this section against an effective registration on the basis of a fact or transaction known to the commissioner when the registration became effective unless the proceeding is instituted within the next thirty days after the effective date.

3. The commissioner may by order summarily postpone or suspend the effectiveness of the registration pending final determination of any proceeding pursuant to this section. Upon the entry of the order, the commissioner shall promptly notify the seller that the order has been entered and of the reasons therefore and that within sixty days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within thirty days after the order and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to the seller, may modify or vacate the order or extend it until final determination.

4. No stop order may be entered pursuant to any part of this section, except the first sentence of subsection 3 of this section, without appropriate prior notice to the seller, notice of an opportunity for hearing, and written findings of fact and conclusions of law.

5. The commissioner may vacate or modify an order issued pursuant to this section if the commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

409.1033. An exemplification of the record under the hand and the seal of the commissioner of securities shall be good and sufficient evidence of any records made or entered by the commissioner. A certificate under the hand and seal of the commissioner showing that the business opportunity or opportunities in question have not been registered pursuant to sections 409.1000 to 409.1036 shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of sections 409.1000 to 409.1036, and shall be admissible in evidence in any proceeding to enforce the provisions of sections 409.1000 to 409.1036.

409.1036. 1. The commissioner of securities may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of sections 409.1000 to 409.1036, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in sections 409.1000 to 409.1036. For the purpose of rules and forms, the commissioner may classify business opportunities, persons and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes.

2. No rule, order or form may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of business opportunity purchasers, and is consistent with the purposes fairly intended by the policy and provisions of this act.

3. All rules and forms of the commissioner shall be published.

4. No rule or portion of a rule promulgated pursuant to the authority of this

section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

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