

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 2036

Short Title: NC Franchisee Protection Act. (Public)

Sponsors: Representatives McCormick; Cleveland and Gulley.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

May 26, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA FRANCHISEE AND BUSINESS
3 OPPORTUNITY PURCHASERS PROTECTION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** This act shall be known and may be cited as "The North Carolina
6 Franchisee and Business Opportunity Purchasers Protection Act."

7 **SECTION 2.** Article 19 of Chapter 66 of the General Statutes reads as rewritten:

8 "Article 19.

9 "Business Opportunity and Franchise Sales.

10 "**§ 66-94. Definition.**~~Definitions.~~

11 For purposes of this Article, "~~business opportunity~~" means the sale or lease of any products,
12 equipment, supplies or services for the purpose of enabling the purchaser to start a business,
13 and in which the seller represents:

- 14 (1) ~~That the seller will provide locations or assist the purchaser in finding~~
15 ~~locations for the use or operation of vending machines, racks, display cases~~
16 ~~or other similar devices, or currency operated amusement machines or~~
17 ~~devices, on premises neither owned nor leased by the purchaser or seller; or~~
18 (2) ~~That it may, in the ordinary course of business, purchase any or all products~~
19 ~~made, produced, fabricated, grown, bred or modified by the purchaser using~~
20 ~~in whole or in part the supplies, services or chattels sold to the purchaser; or~~
21 (3) ~~The seller guarantees that the purchaser will derive income from the~~
22 ~~business opportunity which exceeds the price paid for the business~~
23 ~~opportunity; or that the seller will refund all or part of the price paid for the~~
24 ~~business opportunity, or repurchase any of the products, equipment, supplies~~
25 ~~or chattels supplied by the seller, if the purchaser is unsatisfied with the~~
26 ~~business opportunity and pays to the seller an initial, required consideration~~
27 ~~which exceeds two hundred dollars (\$200.00); or~~
28 (4) ~~That it will provide a sales program or marketing program which will enable~~
29 ~~the purchaser to derive income from the business opportunity which exceeds~~
30 ~~the price paid for the business opportunity, provided that this subsection~~
31 ~~shall not apply to the sale of a marketing program made in conjunction with~~
32 ~~the licensing of a federally registered trademark or a federally registered~~
33 ~~service mark, or when the purchaser pays less than two hundred dollars~~
34 ~~(\$200.00).~~

35 Provided, that "~~business opportunity~~" does not include the sale of an on-going business when
36 the owner of that business sells and intends to sell only that one business opportunity; nor does



1 it include the not-for-profit sale of sales demonstration equipment, materials, or samples, for a
2 total price of two hundred dollars (\$200.00) or less.

3 The following definitions apply in this Article:

4 (1) Affiliated with. – Controls, is controlled by, or is under common control
5 with another entity, or, with respect to a business opportunity seller, any of
6 the following:

7 a. Directly or indirectly controls, is controlled by, or is under common
8 control with a business opportunity seller.

9 b. Directly or indirectly owns, controls, or holds with power to vote, ten
10 percent (10%) or more of the outstanding voting securities of a
11 business opportunity seller.

12 c. Has, in common with a business opportunity seller, one or more
13 partners, officers, directors, trustees, branch managers, or other
14 persons occupying similar status or performing similar functions.

15 (2) Business opportunity. – Any continuing commercial relationship created by
16 any arrangement pursuant to which all of the following occur:

17 a. A business opportunity purchaser offers, sells, or distributes to any
18 person other than to a business opportunity seller, goods,
19 commodities, or services which are supplied by any of the following:

20 1. A business opportunity seller.

21 2. A supplier or other third party with whom the business
22 opportunity purchaser is directly or indirectly required to do
23 business by a business opportunity seller.

24 3. A supplier or other third party with whom the business
25 opportunity purchaser is directly or indirectly advised to do
26 business by a business opportunity seller, where the supplier
27 or third party is affiliated with the business opportunity seller.

28 b. The business opportunity seller does either of the following:

29 1. Secures for the business opportunity purchaser, or provides
30 the services of a person able to secure, retail outlets or
31 accounts for the goods, commodities, or services referred to
32 in sub-subdivision a. of this subdivision.

33 2. Secures for the business opportunity purchaser, or provides
34 the services of a person able to secure, locations or sites for
35 vending machines, rack displays, or any other product sales
36 displays used by the business opportunity purchaser in the
37 offering, sale, or distribution of the goods, commodities, or
38 services referred to in sub-subdivision a. of this subdivision.

39 c. The business opportunity purchaser is required as a condition of
40 obtaining or commencing the business opportunity operation to make
41 a payment or a commitment to pay to the business opportunity seller,
42 or to a person affiliated with the business opportunity seller.

43 (3) Business opportunity broker. – Any person, other than a business
44 opportunity seller or a business opportunity purchaser, who sells, offers for
45 sale, or arranges for the sale of a business opportunity.

46 (4) Business opportunity purchaser. – A person required, as a result of a
47 business opportunity relationship, to make a payment or a commitment to
48 pay to a business opportunity seller, or to a person affiliated with the
49 business opportunity seller. This term includes any person to whom an
50 interest in a business opportunity is sold.

- 1 (5) Business opportunity seller. – A person who requires, in connection with a
2 business opportunity relationship, that a business opportunity purchaser
3 make a payment to the person, or to a person affiliated with the person. This
4 term includes any person who approaches or is approached by a prospective
5 business opportunity purchaser for the purpose of discussing the
6 establishment, or possible establishment, of a business opportunity
7 relationship.
- 8 (6) Franchise. – Any continuing commercial relationship or arrangement,
9 whatever it may be called, in which the terms of the offer or contract specify,
10 or the franchise seller promises or represents, orally or in writing, all of the
11 following:
- 12 a. That the franchisee will obtain the right to operate a business that is
13 identified or associated with the franchise seller's trademark, service
14 mark, name, or logo, or to offer, sell, or distribute goods, services, or
15 commodities that are identified or associated with the franchise
16 seller's trademark, service mark, name, or logo.
- 17 b. That the franchise seller will exert or has authority to exert a
18 significant degree of control over the franchisee's method of
19 operation, or provide significant assistance in the franchisee's method
20 of operation.
- 21 c. That as a condition of obtaining or commencing operation of the
22 franchise, the franchisee makes a required payment or commits to
23 make a required payment to the franchise seller or its affiliate.
- 24 (7) Franchise seller. – A person that offers for sale, sells, or arranges for the sale
25 of a franchise. It includes the franchise seller and the franchise seller's
26 employees, representatives, agents, subfranchisors, and third-party brokers
27 who are involved in franchise sales activities. It does not include existing
28 franchisees who sell only their own outlet and who are otherwise not
29 engaged in franchise sales on behalf of the franchise seller.
- 30 (8) Franchisee. – Any person who is granted a franchise.
- 31 (9) Personal meeting. – A face-to-face meeting between a business opportunity
32 seller or a business opportunity broker, or any agent, representative, or
33 employee of a business opportunity seller or business opportunity broker,
34 and a prospective business opportunity purchaser which is held for the
35 purposes of discussing the sale or possible sale of a business opportunity.
- 36 (10) Prospective business opportunity purchaser. – Any person, including any
37 representative, agent, or employee of that person, who approaches or is
38 approached by a business opportunity seller or a business opportunity
39 broker, or any representative, agent, or employee thereof, for the purpose of
40 discussing the establishment, or possible establishment, of a business
41 opportunity relationship involving that person.
- 42 (11) Prospective franchisee. – Any person, including any agent, representative, or
43 employee of that person, who approaches or is approached by a franchise
44 seller to discuss the possible establishment of a franchise relationship.
- 45 (12) Required payment. – All consideration that the franchisee must pay to the
46 franchise seller or an affiliate, either by contract or by practical necessity, as
47 a condition of obtaining or commencing operation of the franchise. A
48 required payment does not include payments for the purchase of reasonable
49 amounts of inventory at bona fide wholesale prices for resale or lease.
- 50 (13) Time for making of disclosures. – Ten business days prior to the earlier of:

- 1 a. The execution by a prospective business opportunity purchaser of
2 any business opportunity agreement or any other agreement imposing
3 a binding legal obligation on the prospective business opportunity
4 purchaser, about which the business opportunity seller, broker, or any
5 agent, representative, or employee thereof, knows or should know, in
6 connection with the sale or proposed sale of a business opportunity.
7 b. The payment by a prospective business opportunity purchaser, about
8 which the business opportunity seller, broker, or any agent,
9 representative, or employee thereof, knows or should know, of any
10 consideration in connection with the sale or proposed sale of a
11 business opportunity.

12 **"§ 66-94.1. Responsible sellers exemption. Exemptions.**

13 (a) ~~The provisions of Article 19 shall not apply to the sale or lease of any products,~~
14 ~~equipment, supplies or services where:~~any of the following:

- 15 (1) ~~The seller has not derived net income from such sales within the State during~~
16 ~~either of its two previous fiscal years, and does not intend to derive net~~
17 ~~income from such sales during its current fiscal year; and~~
18 (2) ~~The primary commercial activity of the seller or its affiliate is substantially~~
19 ~~different from the sale of the goods or services to the purchaser, and the~~
20 ~~gross revenues received by the seller from all such sales during the current~~
21 ~~and each of the two previous fiscal years do not exceed ten percent (10%) of~~
22 ~~the total gross revenues from all operations for the same period of the seller~~
23 ~~and any other affiliated entity contractually obligated to compensate the~~
24 ~~purchaser for the purchaser's business activities arising from the sale; and~~
25 (3) ~~The sale results in an improvement to realty owned or leased by the~~
26 ~~purchaser which enables the purchaser to receive goods on consignment~~
27 ~~from the seller or its affiliate. An "improvement to realty" occurs when a~~
28 ~~building or other structure is constructed or when significant improvements~~
29 ~~to an existing building or structure are made; and~~
30 (4) ~~The seller has either a net worth on a consolidated basis, according to its~~
31 ~~most recent audited financial statement, of not less than five million dollars~~
32 ~~(\$5,000,000) or has obtained a surety bond from a surety company~~
33 ~~authorized to do business in this State in an amount equal to or greater than~~
34 ~~the gross revenues received from the sale or lease of products, equipment,~~
35 ~~supplies or services in this State during the preceding 12-month period~~
36 ~~which enabled the purchaser to start a business.~~

37 (b) ~~The provisions of Article 19 shall not apply to the sale or lease of any products,~~
38 ~~equipment, supplies, or services where:~~

- 39 (1) ~~The seller has a net worth on a consolidated basis, according to its most~~
40 ~~recent audited financial statement, of not less than five million dollars~~
41 ~~(\$5,000,000); and~~
42 (2) ~~The primary commercial activity of the seller is motor carrier transportation~~
43 ~~and the seller is subject to the jurisdiction of the Interstate Commerce~~
44 ~~Commission or any other federal agency that regulates motor carrier~~
45 ~~transportation.~~

46 (c) ~~Any seller satisfying the requirements of subsections (a) or (b) of this section shall~~
47 ~~file with the Secretary of State two copies of a document signed under oath by the seller or one~~
48 ~~authorized to sign on behalf of the seller containing the following information:~~

- 49 (1) ~~The name of the seller and whether the seller is doing business as an~~
50 ~~individual, partnership, or corporation;~~
51 (2) ~~The principal business address of the seller;~~

- 1 (3) ~~A brief description of the products, equipment, supplies, or services being~~
2 ~~sold or leased by the seller; and~~
- 3 (4) ~~A statement which explains the manner in which each of the requirements of~~
4 ~~subsections (a) or (b) of this section are met.~~
- 5 (1) The sale or lease of any products, equipment, supplies, or services where all
6 of the following are true:
- 7 a. The business opportunity seller has not derived net income from such
8 sales within the State during either of its two previous fiscal years,
9 and does not intend to derive net income from such sales during its
10 current fiscal year.
- 11 b. The primary commercial activity of the business opportunity seller or
12 its affiliate is substantially different from the sale of the goods or
13 services to the business opportunity purchaser, and the gross
14 revenues received by the seller from all such sales during the current
15 and each of the two previous fiscal years do not exceed ten percent
16 (10%) of the total gross revenues from all operations for the same
17 period of the seller and any other affiliated entity contractually
18 obligated to compensate the purchaser for the purchaser's business
19 activities arising from the sale.
- 20 c. The sale results in an improvement to realty owned or leased by the
21 purchaser which enables the purchaser to receive goods on
22 consignment from the seller or its affiliate. An "improvement to
23 realty" occurs when a building or other structure is constructed or
24 when significant improvements to an existing building or structure
25 are made.
- 26 d. The seller has either a net worth on a consolidated basis, according to
27 its most recent audited financial statement, of not less than five
28 million dollars (\$5,000,000) or has obtained a surety bond from a
29 surety company authorized to do business in this State in an amount
30 equal to or greater than the gross revenues received from the sale or
31 lease of products, equipment, supplies, or services in this State
32 during the preceding 12-month period which enabled the purchaser
33 to start a business.
- 34 (2) The sale or lease of any products, equipment, supplies, or services where all
35 of the following are true:
- 36 a. The seller has a net worth on a consolidated basis, according to its
37 most recent audited financial statement, of not less than five million
38 dollars (\$5,000,000).
- 39 b. The primary commercial activity of the seller is motor carrier
40 transportation and the seller is subject to the jurisdiction of the
41 Interstate Commerce Commission or any other federal agency that
42 regulates motor carrier transportation.
- 43 (3) Any franchise exempted or excluded from the provisions of 16 C.F.R. Part
44 436.
- 45 (4) Any business opportunity exempted or excluded from the provisions of 16
46 C.F.R. Part 437.

47 **"§ 66-95. Required ~~disclosure statement~~disclosures.**

48 ~~At least 48 hours prior to the time the purchaser signs a business opportunity contract, or at~~
49 ~~least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the~~
50 ~~seller must provide the prospective purchaser a written document, the cover sheet of which is~~
51 ~~entitled in at least 10 point bold face capital letters "DISCLOSURES REQUIRED BY NORTH~~

1 CAROLINA LAW." Under this title shall appear the statement in at least 10-point type that
2 "The State of North Carolina has not reviewed and does not approve, recommend, endorse or
3 sponsor any business opportunity. The information contained in this disclosure has not been
4 verified by the State. If you have any questions about this investment, see an attorney before
5 you sign a contract or agreement." Nothing except the title and required statement shall appear
6 on the cover sheet. The disclosure document shall contain the following information:

7 (1) The name of the seller, whether the seller is doing business as an individual,
8 partnership, or corporation, the names under which the seller has done, is
9 doing or intends to do business, and the name of any parent or affiliated
10 company that will engage in business transactions with purchasers or who
11 takes responsibility for statements made by the seller.

12 (2) The names and addresses and titles of the seller's officers, directors,
13 trustees, general partners, general managers, principal executives, and any
14 other persons charged with responsibility for the seller's business activities
15 relating to the sale of business opportunities. The disclosure document shall
16 additionally contain a statement disclosing who, if any, of the above persons:

17 a. Has been the subject of any legal or administrative proceeding
18 alleging the violation of any business opportunity or franchise law, or
19 fraud, embezzlement, fraudulent conversion, restraint of trade, unfair
20 or deceptive practices, misappropriation of property or comparable
21 allegations;

22 b. Has been the subject of any bankruptcy, reorganization or
23 receivership proceeding, or was an owner, a principal officer or a
24 general partner of any entity which has been subject to such
25 proceeding.

26 The disclosure document shall set forth the name of the person, the penalties
27 or damages assessed and/or terms of settlement, and nature of and the parties
28 to the action or proceeding, the court or other forum, the date, the current
29 status of the action or proceeding, the terms and conditions of any order of
30 decree, the any other information to enable the purchaser to assess the prior
31 business activities of the seller.

32 (3) The prior business experience of the seller relating to business opportunities
33 including:

34 a. The name, address, and a description of any business opportunity
35 previously offered by the seller;

36 b. The length of time the seller has offered each such business
37 opportunity;

38 e. The length of time the seller has conducted the business opportunity
39 currently being offered to the purchaser.

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

42 (5) A copy of a current (not older than 13 months) financial statement of the
43 seller, updated to reflect any material changes in the seller's financial
44 condition.

45 (6) If training of any type is promised by the seller, the disclosure statement
46 must set forth a complete description of the training and the length of the
47 training.

48 (7) If the seller promises services to be performed in connection with the
49 placement of the equipment, product(s) or supplies at various location(s), the
50 disclosure statement must set forth the full nature of those services as well as
51 the nature of the agreements to be made with the owners or managers of

- 1 these location(s) where the purchaser's equipment, product(s) or supplies
2 will be placed.
- 3 (8) ~~If the business opportunity seller is required to secure a bond or establish a~~
4 ~~trust deposit pursuant to G.S. 66-96, the document shall state either:~~
- 5 a. ~~"As required by North Carolina law, the seller has secured a bond~~
6 ~~issued by _____~~
7 ~~(name and address of surety company)~~
8 ~~a surety company authorized to do business in this State. Before~~
9 ~~signing a contract to purchase this business opportunity, you should~~
10 ~~check with the surety company to determine the bond's current~~
11 ~~status," or~~
- 12 b. ~~"As required by North Carolina law, the seller has established a trust~~
13 ~~account _____~~
14 ~~(number of account)~~
15 ~~with _____~~
16 ~~(name and address of bank or savings institution)~~
17 ~~Before signing a contract to purchase this business opportunity, you~~
18 ~~should check with the bank or savings institution to determine the~~
19 ~~current status of the trust account."~~
- 20 (9) ~~The following statement:~~
21 ~~"If the seller fails to deliver the product(s), equipment or supplies~~
22 ~~necessary to begin substantial operation of the business within 45 days of the~~
23 ~~delivery date stated in your contract, you may notify the seller in writing and~~
24 ~~demand that the contract be cancelled."~~
- 25 (10) ~~If the seller makes any statement concerning sales or earnings, or range of~~
26 ~~sales or earnings that may be made through this business opportunity, the~~
27 ~~document must disclose:~~
- 28 a. ~~The total number of purchasers of business opportunities involving~~
29 ~~the product(s), equipment, supplies or services being offered who to~~
30 ~~the seller's knowledge have actually received earnings in the amount~~
31 ~~or range specified, within three years prior to the date of the~~
32 ~~disclosure statement.~~
- 33 b. ~~The total number of purchasers of business opportunities involving~~
34 ~~the product(s), equipment, supplies or services being offered within~~
35 ~~three years prior to the date of the disclosure statement.~~
- 36 (a) At the earlier of the time for making of disclosures or the first personal meeting, a
37 business opportunity seller must provide a prospective business opportunity purchaser with all
38 of the following:
- 39 (1) A written document, the cover sheet of which is entitled in at least 10-point
40 bold face capital letters "DISCLOSURES REQUIRED BY NORTH
41 CAROLINA LAW." Under this title shall appear the statement in at least
42 10-point type that "The State of North Carolina has not reviewed and does
43 not approve, recommend, endorse, or sponsor any business opportunity. The
44 information contained in this disclosure has not been verified by the State. If
45 you have any questions about this investment, see an attorney before you
46 sign a contract or agreement." Nothing except the title and required
47 statement shall appear on the cover sheet. The disclosure document shall
48 contain the following information:
- 49 a. The name of the seller, whether the seller is doing business as an
50 individual, partnership, or corporation, the names under which the
51 seller has done, is doing, or intends to do business, and the name of

1 any parent or affiliated company that will engage in business
2 transactions with purchasers or who takes responsibility for
3 statements made by the seller.

4 b. The names and addresses and titles of the seller's officers, directors,
5 trustees, general partners, general managers, principal executives,
6 and any other persons charged with responsibility for the seller's
7 business activities relating to the sale of business opportunities. The
8 disclosure document shall additionally contain a statement disclosing
9 who, if any, of the above persons:

- 10 1. Has been the subject of any legal or administrative
11 proceeding alleging the violation of any business opportunity
12 or franchise law, or fraud, embezzlement, fraudulent
13 conversion, restraint of trade, unfair or deceptive practices,
14 misappropriation of property, or comparable allegations; and
15 2. Has been the subject of any bankruptcy, reorganization, or
16 receivership proceeding, or was an owner, a principal officer,
17 or a general partner of any entity which has been subject to
18 such proceeding.

19 The disclosure document shall set forth the name of the person, the penalties
20 or damages assessed and/or terms of settlement, and nature of and the parties
21 to the action or proceeding, the court or other forum, the date, the current
22 status of the action or proceeding, the terms and conditions of any order of
23 decree, or any other information to enable the purchaser to assess the prior
24 business activities of the seller.

25 c. The prior business experience of the seller relating to business
26 opportunities, including:

- 27 1. The name, address, and a description of any business
28 opportunity previously offered by the seller;
29 2. The length of time the seller has offered each such business
30 opportunity;
31 3. The length of time the seller has conducted the business
32 opportunity currently being offered to the purchaser.

33 d. A full and detailed description of the actual services that the business
34 opportunity seller undertakes to perform for the purchaser.

35 e. A copy of a current (not older than 13 months) financial statement of
36 the seller, updated to reflect any material changes in the seller's
37 financial condition.

38 f. If training of any type is promised by the seller, the disclosure
39 statement must set forth a complete description of the training and
40 the length of the training.

41 g. If the seller promises services to be performed in connection with the
42 placement of the equipment, product(s), or supplies at various
43 location(s), the disclosure statement must set forth the full nature of
44 those services as well as the nature of the agreements to be made
45 with the owners or managers of these location(s) where the
46 purchaser's equipment, product(s), or supplies will be placed.

47 h. If the seller is required to secure a bond or establish a trust deposit
48 pursuant to G.S. 66-96, the document shall state either:

- 49 1. "As required by North Carolina law, the business opportunity
50 seller has secured a bond issued by
51 (name and address of surety company)

1 a surety company authorized to do business in this State.
2 Before signing a contract to purchase this business
3 opportunity, you should check with the surety company to
4 determine the bond's current status," or

5 b. "As required by North Carolina law, the business opportunity
6 seller has established a trust account
7 (number of account)

8 with _____
9 (name and address of bank or savings institution)

10 Before signing a contract to purchase this business
11 opportunity, you should check with the bank or savings
12 institution to determine the current status of the trust
13 account."

14 i. The following statement:

15 "If the seller fails to deliver the product(s), equipment or
16 supplies necessary to begin substantial operation of the business
17 within 45 days of the delivery date stated in your contract, you may
18 notify the seller in writing and demand that the contract be
19 cancelled."

20 j. If the seller makes any statement concerning sales or earnings, or
21 range of sales or earnings that may be made through this business
22 opportunity, the document must disclose:

23 1. The total number of business opportunity purchasers
24 involving the product(s), equipment, supplies or services
25 being offered who to the seller's knowledge have actually
26 received earnings in the amount or range specified, within
27 three years prior to the date of the disclosure statement.

28 2. The total number of business opportunity purchasers
29 involving the product(s), equipment, supplies or services
30 being offered within three years prior to the date of the
31 disclosure statement.

32 (2) Any disclosures required by 16 C.F.R. 437.1.

33 (b) At least 14 calendar days before a prospective franchisee signs a binding agreement
34 with, or makes any payment to, the franchise seller or an affiliate in connection with the a
35 franchise sale or proposed franchise sale, a franchise seller must provide the prospective
36 franchisee with any disclosures required by 16 C.F.R. Part 436. These disclosures shall be
37 made and updated in accordance with the requirements set forth in 16 C.F.R. Part 436 and must
38 be provided to a prospective franchisee earlier upon reasonable request by the prospective
39 franchisee.

40 (c) Where a particular disclosure is required both by subdivision (a)(1) and pursuant to
41 subdivision (a)(2) of this section, a single disclosure shall satisfy both requirements.

42 **"§ 66-96. Bond or trust account required.**

43 ~~If the business opportunity seller makes any of the representations set forth in~~
44 ~~G.S. 66-94(3), the seller must either have obtained a surety bond issued by a surety company~~
45 ~~authorized to do business in this State or have established a trust account with a licensed and~~
46 ~~insured bank or savings institution located in the State of North Carolina. The amount of the~~
47 ~~bond or trust account shall be an amount not less than fifty thousand dollars (\$50,000). The~~
48 ~~bond or trust account shall be in favor of the State of North Carolina. Any person who is~~
49 ~~damaged by any violation of this Article, or by the seller's breach of the contract for the~~
50 ~~business opportunity sale or of any obligation arising therefrom may bring an action against the~~
51 ~~bond or trust account to recover damages suffered; provided, however, that the aggregate~~

1 liability of the surety or trustee shall be only for actual damages and in no event shall exceed
2 the amount of the bond or trust account.

3 (a) If a business opportunity seller or franchise seller makes any of the representations
4 set forth in subsection (b) of this section, the seller must either have obtained a surety bond
5 issued by a surety company authorized to do business in this State or have established a trust
6 account with a licensed and insured bank or savings institution located in the State of North
7 Carolina. The amount of the bond or trust account shall be an amount not less than fifty
8 thousand dollars (\$50,000). The bond or trust account shall be in favor of the State of North
9 Carolina. Any person who is damaged by any violation of this Article, or by the seller's breach
10 of the contract for the business opportunity or franchise sale or of any obligation arising
11 therefrom may bring an action against the bond or trust account to recover damages suffered.
12 However, the aggregate liability of the surety or trustee shall be only for actual damages and in
13 no event shall exceed the amount of the bond or trust account. Nothing in this section shall be
14 construed to limit the amount of damages recoverable by a person who is damaged by a
15 violation of this Article, or by the seller's breach of contract.

16 (b) A business opportunity seller or franchise seller must comply with the requirements
17 of subsection (a) of this section if it guarantees to a prospective business opportunity purchaser
18 or prospective franchisee any of the following:

19 (1) That the prospective business opportunity purchaser or prospective
20 franchisee will derive income from the business opportunity or franchise
21 which exceeds the price paid for the business opportunity or franchise.

22 (2) That it will refund all or part of the price paid for the business opportunity or
23 franchise, or repurchase any of the products, equipment, supplies or chattels
24 supplied by the seller if the purchaser or franchisee is unsatisfied with the
25 business opportunity or franchise and pays to the seller an initial, required
26 consideration which exceeds two hundred dollars (\$200.00).

27 **"§ 66-97. Filing with Secretary of State.**

28 (a) ~~The seller of every business opportunity~~Every business opportunity and franchise
29 ~~seller~~ shall file with the Secretary of State two copies of the ~~disclosure statement~~disclosures
30 required by ~~G.S. 66-95~~,G.S. 66-95, accompanied by a fee in the amount of two hundred fifty
31 dollars (\$250.00) made payable to the Secretary of State, ~~prior to placing any advertisement or~~
32 ~~making any other representations to prospective purchasers in this State.~~ The seller shall update
33 this filing as any material change in the required information occurs, but no less than annually.

34 (b) Every business opportunity or franchise seller shall file, in such form as the
35 Secretary of State may prescribe, an irrevocable consent appointing the Secretary of State or his
36 successors in office to be his attorney to receive service of any lawful process in any
37 noncriminal suit, action or proceeding against the business opportunity or franchise seller or his
38 successor, executor or administrator which arises under this Article after the consent has been
39 filed, with the same force and validity as if served personally on the person filing the consent.
40 Service may be made by leaving a copy of the process in the office of the Secretary of State,
41 but is not effective unless (i) the plaintiff, who may be the Attorney General in a suit, action or
42 proceeding instituted by him, forthwith sends notice of the service and a copy of the process by
43 registered mail to the defendant or respondent at his address on file with the Secretary of State,
44 and (ii) the plaintiff 's affidavit of compliance with this section is filed in the case on or before
45 the return date of the process, if any, or within such further time as the court allows.

46 (c) ~~If the seller of a business opportunity~~ seller or franchise seller is required by
47 G.S. 66-96 to provide a bond or establish a trust account, ~~he~~the seller shall file with the
48 Secretary of State two copies of the bond or two copies of the formal notification by the
49 depository that the trust account is established contemporaneously with compliance with
50 subsections ~~(a) or (d)~~(a).

1 (c1) Any business opportunity or franchise seller exempt from the provisions of this
2 Article pursuant to G.S. 66-94.1 shall file with the Secretary of State two copies of a document
3 signed under oath by the seller or one authorized to sign on behalf of the seller containing all of
4 the following information:

5 (1) The name of the seller and whether the seller is doing business as an
6 individual, partnership, or corporation.

7 (2) The principal business address of the seller.

8 (3) A brief description of the products, equipment, supplies, or services being
9 sold or leased by the seller.

10 (4) A statement which explains the manner in which the seller qualifies for an
11 exemption under G.S. 66-94.1. If the particular exemption contains several
12 requirements, the seller must explain the manner in which each of the
13 requirements of the applicable exemption are satisfied.

14 (d) ~~The Secretary of State may accept the Uniform Franchise Offering Circular (UFOC)~~
15 ~~or the Federal Trade Commission Basic Disclosure Document, provided, that the alternative~~
16 ~~disclosure document shall be accompanied by a separate sheet setting forth the caption and~~
17 ~~statement and any other information required by G.S. 66-95.~~

18 (e) ~~Failure to so file~~ make any of the filings required by this section shall be a Class 1
19 misdemeanor.

20 (f) Any filing required by this section must be made prior to placing any advertisement
21 or making any other representations to prospective business opportunity purchasers or
22 prospective franchisees in this State.

23 **"§ 66-98. Prohibited acts.**

24 ~~Business opportunity sellers shall not:~~

25 (1) ~~that the business opportunity provides income or earning potential of any~~
26 ~~kind unless the seller has documented data to substantiate the claims of~~
27 ~~income or earning potential and discloses this data to the prospective~~
28 ~~purchaser at the time such representations are made;~~

29 (2) ~~Use the trademark, service mark, trade names, logotype, advertising or other~~
30 ~~commercial symbol of any business which does not either control the~~
31 ~~ownership interest in the seller or accept responsibility for all representations~~
32 ~~made by the seller in regard to the business opportunity, unless it is clear~~
33 ~~from the circumstances that the owner of the commercial symbol is not~~
34 ~~involved in the sale of the business opportunity;~~

35 (3) ~~Make or authorize the making of any reference to its compliance with this~~
36 ~~Article in any advertisement or other contact with prospective purchasers.~~

37 (a) Business opportunity sellers and brokers shall not engage in any conduct prohibited
38 by 16 C.F.R. Part 437 or fail to engage in any conduct required by 16 C.F.R. Part 437.

39 (b) Franchise sellers shall not engage in any conduct prohibited by 16 C.F.R. Part 436
40 or fail to engage in any conduct required by 16 C.F.R. Part 436.

41 (c) Business opportunity sellers and franchise sellers shall not make or authorize the
42 making of any reference to its compliance with this Article in any advertisement or other
43 contact with prospective business opportunity purchasers or prospective franchisees.

44 **"§ 66-99. Contracts to be in writing; form; provisions.**

45 (a) Every business opportunity contract or franchise contract shall be in writing and a
46 copy shall be given to the business opportunity purchaser or franchisee at the time he signs the
47 contract.~~the contract is signed.~~

48 (b) Every contract for a business opportunity or franchise shall include the following:

49 (1) The terms and conditions of payment;

- 1 (2) A full and detailed description of the acts or services that the business
2 opportunity or franchise seller undertakes to perform for the business
3 opportunity purchaser or franchisee;
- 4 (3) The business opportunity or franchise seller's principal business address and
5 the name and address of its agent in the State of North Carolina authorized to
6 receive service of process in addition to the Secretary of State as provided in
7 G.S. 66-97(b);
- 8 (4) The approximate delivery date of any product(s), equipment or supplies the
9 business opportunity or franchise seller is to deliver to the business
10 opportunity purchaser or franchisee.

11 "**§ 66-100. Remedies.**

12 (a) If a business opportunity ~~seller~~ seller, business opportunity broker, or franchise
13 seller uses any untrue or misleading statements in the sale of a business opportunity or
14 franchise, or fails to give the proper disclosures in the manner required by G.S. 66-95, or fails
15 to deliver the equipment, supplies or product(s) necessary to begin substantial operation of the
16 business within 45 days of the delivery date stated in the business opportunity or franchise
17 contract, or if the contract does not comply with the requirements of G.S. 66-99, then, within
18 one year of the date of the contract, upon written notice to seller, the business opportunity
19 purchaser or franchisee may void the contract and shall be entitled to receive from the business
20 opportunity or franchise seller all sums paid to the business opportunity or franchise seller.
21 Upon receipt of such sums, the purchaser or franchisee shall make available to the seller at
22 purchaser's address or at the places at which they are located at the time notice is given, all
23 product(s), equipment or supplies received by the purchaser. Provided, that purchaser shall not
24 be entitled to unjust enrichment by exercising the remedies provided in this subsection.

25 (b) Any ~~purchaser~~ business opportunity purchaser, prospective business opportunity
26 purchaser, franchisee, or prospective franchisee injured by a violation of this Article or by the
27 business opportunity seller's or broker's breach of a contract subject to this Article or any
28 obligation arising therefrom may bring an action for recovery of damages, including reasonable
29 attorneys' fees.

30 (c) Upon complaint of any person that a business opportunity ~~seller~~ seller, business
31 opportunity broker, or franchise seller has violated the provisions of this Article, the superior
32 court shall have jurisdiction to enjoin the defendant from further such violations.

33 (d) The remedies provided herein shall be in addition to any other remedies provided
34 for by law or in equity.

35 (e) The violation of any provisions of this Article shall constitute an unfair practice
36 under G.S. 75-1.1."

37 **SECTION 3.** This act becomes effective October 1, 2010.