

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH11120-Mdf-118A (01/13)

Short Title: NC Franchisee Protection Act.

(Public)

Sponsors: Representative McCormick.

Referred to:

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).



1 ~~Provided, that "business opportunity" does not include the sale of an on-going business when~~  
2 ~~the owner of that business sells and intends to sell only that one business opportunity; nor does~~  
3 ~~it include the not for profit sale of sales demonstration equipment, materials, or samples, for a~~  
4 ~~total price of two hundred dollars (\$200.00) or less.~~

5 The following definitions apply in this Article:

- 6 (1) Affiliated with. – Controls, is controlled by, or is under common control  
7 with another entity, or, with respect to a business opportunity seller, any of  
8 the following:  
9 a. Directly or indirectly controls, is controlled by, or is under common  
10 control with a business opportunity seller.  
11 b. Directly or indirectly owns, controls, or holds with power to vote, ten  
12 percent (10%) or more of the outstanding voting securities of a  
13 business opportunity seller.  
14 c. Has, in common with a business opportunity seller, one or more  
15 partners, officers, directors, trustees, branch managers, or other  
16 persons occupying similar status or performing similar functions.  
17 (2) Business opportunity. – Any continuing commercial relationship created by  
18 any arrangement pursuant to which all of the following occur:  
19 a. A business opportunity purchaser offers, sells, or distributes to any  
20 person other than to a business opportunity seller, goods,  
21 commodities, or services which are supplied by any of the following:  
22 1. A business opportunity seller.  
23 2. A supplier or other third party with whom the business  
24 opportunity purchaser is directly or indirectly required to do  
25 business by a business opportunity seller.  
26 3. A supplier or other third party with whom the business  
27 opportunity purchaser is directly or indirectly advised to do  
28 business by a business opportunity seller, where the supplier  
29 or third party is affiliated with the business opportunity seller.  
30 b. The business opportunity seller does either of the following:  
31 1. Secures for the business opportunity purchaser, or provides  
32 the services of a person able to secure, retail outlets or  
33 accounts for the goods, commodities, or services referred to  
34 in sub-subdivision a. of this subdivision.  
35 2. Secures for the business opportunity purchaser, or provides  
36 the services of a person able to secure, locations or sites for  
37 vending machines, rack displays, or any other product sales  
38 displays used by the business opportunity purchaser in the  
39 offering, sale, or distribution of the goods, commodities, or  
40 services referred to in sub-subdivision a. of this subdivision.  
41 c. The business opportunity purchaser is required as a condition of  
42 obtaining or commencing the business opportunity operation to make  
43 a payment or a commitment to pay to the business opportunity seller,  
44 or to a person affiliated with the business opportunity seller.  
45 (3) Business opportunity broker. – Any person, other than a business  
46 opportunity seller or a business opportunity purchaser, who sells, offers for  
47 sale, or arranges for the sale of a business opportunity.  
48 (4) Business opportunity purchaser. – A person required, as a result of a  
49 business opportunity relationship, to make a payment or a commitment to  
50 pay to a business opportunity seller, or to a person affiliated with the

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

- 1           (13) Time for making of disclosures. – Ten business days prior to the earlier of:  
2           a. The execution by a prospective business opportunity purchaser of  
3           any business opportunity agreement or any other agreement imposing  
4           a binding legal obligation on the prospective business opportunity  
5           purchaser, about which the business opportunity seller, broker, or any  
6           agent, representative, or employee thereof, knows or should know, in  
7           connection with the sale or proposed sale of a business opportunity.  
8           b. The payment by a prospective business opportunity purchaser, about  
9           which the business opportunity seller, broker, or any agent,  
10           representative, or employee thereof, knows or should know, of any  
11           consideration in connection with the sale or proposed sale of a  
12           business opportunity.

13 **"§ 66-94.1. Responsible sellers exemption. Exemptions.**

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

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

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

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

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

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

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

48 **"§ 66-95. Required ~~disclosure statement~~disclosures.**

49       At least 48 hours prior to the time the purchaser signs a business opportunity contract, or at  
50       least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the  
51       seller must provide the prospective purchaser a written document, the cover sheet of which is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 seller has done, is doing, or intends to do business, and the name of  
2 any parent or affiliated company that will engage in business  
3 transactions with purchasers or who takes responsibility for  
4 statements made by the seller.

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

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

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

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

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

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

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

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

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

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

- 50 1. "As required by North Carolina law, the business opportunity  
51 seller has secured a bond issued by



(name and address of surety company)

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

b. "As required by North Carolina law, the business opportunity seller has established a trust account

(number of account)

with

(name and address of bank or savings institution)

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

i. The following statement:

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

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

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

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

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

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

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

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

~~If the business opportunity seller makes any of the representations set forth in G.S. 66-94(3), the seller must either have obtained a surety bond issued by a surety company authorized to do business in this State or have established a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be an amount not less than fifty thousand dollars (\$50,000). The bond or trust account shall be in favor of the State of North Carolina. Any person who is damaged by any violation of this Article, 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~~

1 ~~bond or trust account to recover damages suffered; provided, however, that the aggregate~~  
2 ~~liability of the surety or trustee shall be only for actual damages and in no event shall exceed~~  
3 ~~the amount of the bond or trust account.~~

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

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

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

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

28 **"§ 66-97. Filing with Secretary of State.**

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

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

47 (c) ~~If the seller of a business opportunity~~ seller or franchise seller is required by  
48 G.S. 66-96 to provide a bond or establish a trust account, he the seller shall file with the  
49 Secretary of State two copies of the bond or two copies of the formal notification by the  
50 depository that the trust account is established contemporaneously with compliance with  
51 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.