

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 884
SENATE BILL 863

AN ACT TO PREVENT FRAUDULENT AND DECEPTIVE PRACTICES IN THE SALE
OF BUSINESS OPPORTUNITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is hereby amended by adding a new Article as follows:

"ARTICLE 19.

"Business Opportunity Sales.

"§ 66-89. Definition. — For purposes of this Article, 'business opportunity' means the sale or lease of any products, equipment, supplies or services which are sold to the purchaser for the purpose of enabling the purchaser to start a business, and in which the seller represents:

- (1) that 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 owned nor leased by the purchaser or seller; or
- (2) that it will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part, the supplies, services or chattels sold to the purchaser; or
- (3) the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity; or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
- (4) that upon payment by the purchaser of a fee or sum of money which exceeds fifty dollars (\$50.00) to the seller, the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity, provided that this subsection shall not apply to the sale of a marketing program made in conjunction with the licensing of a registered trademark or service mark.

Provided, that 'business opportunity' does not include the sale of an ongoing business when the owner of that business sells and intends to sell only that one business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials, or samples, for a total price of one hundred dollars (\$100.00) or less.

"§ 66-90. Required disclosure statement. — At least 48 hours prior to the time the purchaser signs a business opportunity contract, or at least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled in at least 10-point bold face capital letters 'DISCLOSURES REQUIRED BY NORTH CAROLINA LAW'. Under this title shall appear the statement in at least 10-point type that 'The State of North Carolina 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 required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

- (a) The name of the seller, whether the seller is doing business as an individual, partnership, or corporation, the names under which the seller has done, is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with purchasers or who takes responsibility for statements made by the seller.
- (b) The names, addresses and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the seller's business activities relating to the sale of business opportunities.
- (c) The length of time the seller has:
 - (1) sold business opportunities;
 - (2) sold business opportunities involving the product(s), equipment, supplies or services currently being offered to the purchaser.
- (d) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.
- (e) A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect any material changes in the seller's financial condition.
- (f) If training of any type is promised by the seller, the disclosure statement must set forth a complete description of the training and the length of the training.
- (g) If the seller promises services to be performed in connection with the placement of the equipment, product(s) or supplies at various location(s), the disclosure statement must set forth the full nature of those services as well as the nature of the agreements to be made with the owners or managers of these location(s) where the purchaser's equipment, product(s) or supplies will be placed.
- (h) If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to Section 66-91, the document shall state either:
 - (1) 'As required by North Carolina law, the seller has secured a bond issued by

a surety

(name and address of surety company)

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

(2) 'As required by North Carolina law, the 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 purchasers of business opportunities 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 purchasers of business opportunities involving the product(s), equipment, supplies or services being offered within three years prior to the date of the disclosure statement.

"§ 66-91. Bond or trust account required. — If the business opportunity seller makes any of the representations set forth in G.S. 66-89(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 bond or trust account to recover damages suffered; provided, however, that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

"§ 66-92. Filing with Secretary of State. — (a) The seller of every business opportunity shall file with the Secretary of State a copy of the disclosure statement required by G.S. 66-90 prior to placing any advertisement or making any other representations to prospective purchasers in this State, and shall update this filing as any material change in the required information occurs, but no less than annually. If the seller is required by G.S. 66-91 to provide a bond or establish a trust account, he shall contemporaneously file with the Secretary of State a copy of the bond or a copy of the formal notification by the depository that the trust account is established.

(b) Failure to so file shall be a misdemeanor.

"§ 66-93. Prohibited acts. — Business opportunity sellers shall not:

- (a) represent that the business opportunity provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses this data to the prospective purchaser at the time such representations are made;
- (b) use the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity;
- (c) make or authorize the making of any reference to its compliance with this Article in any advertisement or other contact with prospective purchasers.

"§ 66-94. Contracts to be in writing; form; provisions. — (a) Every business opportunity contract shall be in writing and a copy shall be given to the purchaser at the time he signs the contract.

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

- (1) the terms and conditions of payment;
- (2) a full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;

- (3) the seller's principal business address and the name and address of its agent in the State of North Carolina authorized to receive service of process;
- (4) the approximate delivery date of any product(s), equipment or supplies the business opportunity seller is to deliver to the purchaser.

"§ 66-95. Remedies. — (a) If a business opportunity seller uses any untrue or misleading statements in the sale of a business opportunity, or fails to give the proper disclosures in the manner required by G.S. 66-90, or fails to deliver the equipment, supplies or product(s) necessary to begin substantial operation of the business within 45 days of the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of G.S. 66-94, then, within one year of the date of the contract, upon written notice to seller, the purchaser may void the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at purchaser's address or at the places at which they are located at the time notice is given, all product(s), equipment or supplies received by the purchaser. Provided, that purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

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

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

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

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

Sec. 2. This act shall become effective October 1, 1977.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.