

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 817
SENATE BILL 552

AN ACT TO AMEND THE BUSINESS OPPORTUNITY SALES LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-94 is amended by deleting the words "which are sold to the purchaser" in line 2; by deleting the brackets around the word "neither" in line 4 of subsection (1); by deleting the word "will" in line 1 of subsection (2) and inserting the words "may, in the ordinary course of business," in lieu thereof; and by rewriting subsection (4) to read as follows:

"(4) That it 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 federally registered trademark or a federally registered service mark, or when the purchaser pays less than fifty dollars (\$50.00)."

Sec. 2. G.S. 66-95 is amended by rewriting subsections (2) and (3) to read as follows:

- "(2) The names and 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. The disclosure document shall additionally contain a statement disclosing who, if any, of the above persons:
- (a) has been the subject of any legal or administrative proceeding alleging the violation of any business opportunity or franchise law, or fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations;
 - (b) has been the subject of any bankruptcy, reorganization or receivership proceeding, or was an owner, a principal officer or a general partner of any entity which has been subject to such proceeding.

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

- (3) The prior business experience of the seller relating to business opportunities including:
- (a) the name, address, and a description of any business opportunity previously offered by the seller;
 - (b) the length of time the seller has offered each such business opportunity;
 - (c) the length of time the seller has conducted the business opportunity currently being offered to the purchaser."

Sec. 3. G.S. 66-97 is amended by deleting the words "a copy" in line 2 of subsection (a) and inserting in lieu thereof the words "two copies"; by inserting a comma following the term "G.S. 66-95" in line 2 of subsection (a) and inserting the following words "accompanied by a fee in the amount of ten dollars (\$10.00) made payable to the Secretary of State,"; by deleting the comma and the word "and" following the word "State" in line 4 of subsection (a) and inserting in lieu thereof a period and the words "The seller"; by deleting the language following the period on line 5 of subsection (a) and the language on lines 6 through 9 of subsection (a); by redesignating subsection (b) as subsection (e); and by inserting the following as subsections (b), (c), and (d):

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

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

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

Sec. 4. G.S. 66-99 is amended by inserting the words "in addition to the Secretary of State as provided in G.S. 66-95(b)" following the word "process" in line 3 of subsection (b)(3).

Sec. 5. This act shall become effective September 1, 1981, provided that sellers who have filed disclosure documents before September 1, 1981, need not incorporate the changes required by this act until they next update their disclosure document as required by G.S. 66-97(a).

In the General Assembly read three times and ratified, this the 3rd day of July, 1981.