Article 19.

Business Opportunity Sales.

§ 66-94. Definition.

For purposes of this Article, "business opportunity" means the sale or lease of any products, equipment, supplies or services 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 neither owned nor leased by the purchaser or seller; or

(2) That it may, in the ordinary course of business, 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 and pays to the seller an initial, required consideration which exceeds two hundred dollars ($200.00); or

(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 two hundred dollars ($200.00).

Provided, that "business opportunity" does not include the sale of an on-going 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 two hundred dollars ($200.00) or less. (1977, c. 884, s. 1; 1981, c. 817, s. 1; 1983, c. 421, s. 2; 1991, c. 74, s. 1.)

§ 66-94.1. Responsible sellers exemption.

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

(1) The seller has not derived net income from such sales within the State during either of its two previous fiscal years, and does not intend to derive net income from such sales during its current fiscal year; and

(2) The primary commercial activity of the seller or its affiliate is substantially different from the sale of the goods or services to the purchaser, and the gross revenues received by the seller from all such sales during the current and each of the two previous fiscal years do not exceed ten percent (10%) of the total gross revenues from all operations for the same period of the seller and any other affiliated entity contractually obligated to compensate the purchaser for the purchaser's business activities arising from the sale; and

(3) The sale results in an improvement to realty owned or leased by the purchaser which enables the purchaser to receive goods on consignment from the seller or its affiliate. An "improvement to realty" occurs when a building or other structure is constructed or when significant improvements to an existing building or structure are made; and

(4) The seller has either a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars ($5,000,000) or has obtained a surety bond from a surety company authorized to do business in this State in an amount equal to or greater than the gross revenues received from the sale or lease of products, equipment, supplies or services in this State during the preceding 12-month period which enabled the purchaser to start a business.

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

(1) The seller has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars ($5,000,000); and

(2) The primary commercial activity of the seller is motor carrier transportation and the seller is subject to the jurisdiction of the Interstate Commerce Commission or any other federal agency that regulates motor carrier transportation.

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

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

(2) The principal business address of the seller;

(3) A brief description of the products, equipment, supplies, or services being sold or leased by the seller; and

(4) A statement which explains the manner in which each of the requirements of subsections (a) or (b) of this section are met. (1983, c. 421, s. 1; 1987, c. 325.)

§ 66-95. 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 shall provide the prospective purchaser a written document, [with] a cover sheet that includes a statement 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." Only the title and required statement shall appear on the cover sheet, except that franchisors subject to this Article may include other material pursuant to 16 C.F.R. Part 436 or guidelines of the North American Securities Administrators Association. The disclosure document shall contain either of the following:

(1) A franchise disclosure document that complies in all material respects with 16 C.F.R. Part 436.

(2) 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 that takes responsibility for statements made by the seller.

b. 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 has been either of the following:

1. The subject of any legal or administrative proceeding alleging the violation of any business opportunity or franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property, or comparable allegations.

2. The subject of any bankruptcy, reorganization, or receivership proceeding or was an owner, a principal officer, or a general partner of any entity that has been subject to any of these proceedings.

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 of decree, the penalties or damages assessed, any terms of settlement, and any other information to enable the purchaser to assess the prior business activities of the seller.

c. The prior business experience of the seller relating to business opportunities including all of the following:

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

2. The length of time the seller has offered each business opportunity.

3. The length of time the seller has conducted the business opportunity 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 shall 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 equipment, products, or supplies at various locations, the disclosure statement shall 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 locations where the purchaser's equipment, products, or supplies will be placed.

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

1. "As required by North Carolina law, the seller has secured a bond issued by _____
(name and address of surety company)
a surety 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."

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 shall disclose all of the following:

1. The total number of purchasers of business opportunities involving the products, equipment, supplies, or services being offered that, 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 products, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement. (1977, c. 884, s. 1; 1981, c. 817, s. 2; 2023-130, s. 5(a).)

§ 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 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. (1977, c. 884, s. 1.)

§ 66-97. Filing with Secretary of State.

(a) The seller of every business opportunity shall file with the Secretary of State two copies of either disclosure statement used to satisfy the requirements of G.S. 66-95, accompanied by a fee in the amount of two hundred fifty dollars ($250.00) made payable to the Secretary of State, prior to placing any advertisement or making any other representations to prospective purchasers in this State. The seller shall update this filing as any material change in the required information occurs, but no less than annually.

(b) Every seller shall file, in a form the Secretary of State may prescribe, an irrevocable consent appointing the Secretary of State or his or her successors in office to be the seller's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator that 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 the Attorney General, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her 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 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, the seller 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 subsection (a) of this section.

(d) Repealed by Session Laws 2023-130, s. 5(b), effective September 29, 2023, and applicable to required disclosure statements and filings provided on or after that date.

(e) Failure to file as required by this section is a Class 1 misdemeanor. (1977, c. 884, s. 1; 1981, c. 817, s. 3; 1993, c. 539, s. 521; 1994, Ex. Sess., c. 24, s. 14(c); 2003-284, s. 35B.3(a); 2023-130, s. 5(b).)

§ 66-98. Prohibited acts.

Business opportunity sellers shall not:

(1) 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;

(2) 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;

(3) Make or authorize the making of any reference to its compliance with this Article in any advertisement or other contact with prospective purchasers. (1977, c. 884, s. 1.)

§ 66-99. 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 in addition to the Secretary of State as provided in G.S. 66-97(b);

(4) The approximate delivery date of any product(s), equipment or supplies the business opportunity seller is to deliver to the purchaser. (1977, c. 884, s. 1; 1981, c. 817, s. 4; 1983, c. 721, s. 4.)

§ 66-100. 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. 66-95, 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. 66-99, 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 provisions of this Article shall constitute an unfair practice under G.S. 75-1.1. (1977, c. 884, s. 1.)

§§ 66-101 through 66-105. Reserved for future codification purposes.