Article 22.

Discount Buying Clubs.

§ 66-131. Definition.

For the purpose of this Article, a "discount buying club" is any person, firm or corporation, which in exchange for any valuable consideration offers to sell or to arrange the sale of goods or services to its customers at prices represented to be lower than are generally available. "Discount buying club" shall not include any cooperative buying association or other group in which no person is intended to profit or actually profits beyond the benefit that all members receive from buying at a discount; nor shall any person, firm or corporation be deemed "a discount buying club" solely by virtue of the fact that (i) for fifty dollars ($50.00) or less it sells tickets or coupons valid for use in obtaining goods or services from a retail merchant, or (ii) as a service collateral to its principal business, and for no additional charge it arranges for its members or customers to purchase or lease directly from particular merchants at a specified discount. (1981, c. 594, s. 1.)

§ 66-132. Contracts to be in writing.

(a) Every contract between a discount buying club and its customers shall be in writing, fully completed, dated and signed by all contracting parties. A copy of the completed contract shall be given to the buyer at the time he signs it. The contract shall in clear, conspicuous and simple language:

(1) State the duration of the contract in a definite period of years or months. If the contract may be periodically renewed, the contract shall state specifically the terms under which it may be renewed; and the amount of any renewal fees must be stated unless the contract meets the requirements of subsection (b) of this section.

(2) State that the buying club will maintain a trust account and bond in compliance with G.S. 66-135, and identify the location of the trust account and the name and address of the surety company.

(3) Contain, immediately above the customer's signature in boldface type of not less than 10 points size, a statement substantially as follows:

"You, the customer, may cancel this contract at any time prior to midnight of the third business day after the date of this contract. To cancel you must notify the company in writing of your intent to cancel."

(4) List the categories of goods and services the buying club contracts to make available.

(5) State the procedures by which the customer can select, order, and pay for merchandise or services and state the time and manner of delivery.

(6) State the method the discount buying club will use in setting the price customers will pay for goods or services.

(7) List any charges, however denominated, which are incidental to the purchase of goods or services and which must be paid by the customer.

(8) State the discount buying club's obligations with respect to warranties on goods or services ordered.

(9) State the customer's rights and obligations with respect to the cancellation or return of ordered goods.

(b) The written contract required by subsection (a) above need not be signed or dated by the customer if the following requirements are met:

(1) The total consideration paid by each member or customer does not exceed a one-time or annual fee of one hundred dollars ($100.00);
(2) The member or customer has the unconditional right to cancel the contract at any time and receive within 10 days a full refund of the one-time membership fee, or the annual membership fee covering the current membership period, whichever the case may be;
(3) Instead of the notice required in subsection (a)(3), above, the written contract contains on its first page in boldface type of not less than 10 points size, or not less than the point size of the contract terms or information printed immediately adjacent thereto, whichever point size shall be larger, a statement substantially as follows:

"You, the customer, may cancel this contract at any time and receive a total refund of any fees or consideration already paid for the current membership period. To cancel you must notify the company in writing of your intent to cancel."; and

(4) The written contract is mailed to the buyer on or before the date the membership is first charged or billed. (1981, c. 594, s. 1; 1989, c. 495, s. 1.)

§ 66-133. Customer's right to cancel.

(a) In addition to any other right to revoke an offer or cancel a sale or contract, the customer has the right to cancel a contract for the services of a discount buying club until midnight of the third business day after the buyer signs a contract which complies with G.S. 66-132.

(b) Cancellation occurs when the customer gives written notice of cancellation to the discount buying club at the address stated in the contract.

(c) Notice of cancellation, if given by mail, is given when it is deposited in the United States mail properly addressed with postage prepaid.

(d) Notice of cancellation need not take any particular form and is sufficient if it indicates by any form of written expression that the customer intends or wishes not to be bound by the contract.

(e) For purposes of this Article, business days are all days other than Saturdays, Sundays, holidays, and days on which the discount buying club is not open for business. (1981, c. 594, s. 1.)

§ 66-134. Prohibited acts.

Discount buying clubs shall not:

(1) Represent to any potential customer that his opportunity to join is limited in time or that his delay in joining may subject him to an increased price. This shall not preclude reference to a general price increase that will take effect on a specified date.
(2) Discourage or refuse to allow potential customers to inspect all of their current merchandise catalogs and price lists during normal business hours at their place of business.
(3) Compare their prices for goods or services with other prices unless the comparison prices are prices at which substantial sales of the same goods or services were made in the same area within the past 90 days, and unless a written copy of the comparison is given to the buyer to keep.

(4) Fail upon the customer's request to cancel without charge any purchase order for:
   a. Services, if such services have not been substantially performed;
   b. Goods to be specially manufactured, if such manufacture has not been substantially performed; or
   c. Any other goods, if they have not been delivered to the customer or consigned to a certified public carrier for delivery;

within 90 days after the purchase order was received by the buying club. This provision shall not be construed to limit a customer's right to earlier performance created by contract or by any other applicable law or regulation.

(5) Charge any amount in excess of demonstrable actual damages upon a customer's cancellation of an order. (1981, c. 594, s. 1.)

§ 66-135. Bond and trust account required.

(a) Every discount buying club shall obtain and maintain a bond from a surety company licensed to do business in North Carolina. Such bond shall be in an amount not less than one hundred times the one-time or annual membership fee, or fifty thousand dollars ($50,000), whichever is greater.

(b) Every discount buying club shall hold advance payments for goods and services in trust in a separate account used solely for that purpose. The funds in such account shall be held free from all liens. Records of such account shall be kept by the buying club in the regular course of its business sufficient to identify the amount held for each customer, the dates of the receipt and withdrawal of funds, and the purpose of withdrawal. Such records must be retained for a period not less than four years following withdrawal. Funds may not be withdrawn from the trust account unless and until (i) the ordered goods have been actually delivered to the customer or consigned to a certified public carrier, or (ii) ordered services have been provided in full, or (iii) the buying club has refunded the customer's payment. Provided, the discount buying club shall not be required to comply with the foregoing trust account requirements if the discount buying club meets the requirements of G.S. 66-132(b), bills its customers through a credit card account and obtains and maintains an additional bond in the amount of fifty thousand dollars ($50,000) from a surety company licensed to do business in North Carolina.

(c) Any person who is damaged by any violation of this Article, or by any breach by the discount buying club of its contract, may bring an action against the bond, provided that the aggregate liability of the surety shall not exceed the amount of the bond.

(d) Violations of subsections (a) or (b) of this section shall constitute a Class I felony. (1981, c. 594, s. 1; 1989, c. 495, ss. 2, 3; 1993, c. 539, s. 1282; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 66-136. Remedies.

(a) Any person injured by a violation of this Article, or breach of any obligation created by this Article or contract subject thereto, may bring an action for recovery of damages, including reasonable attorneys' fees.

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

(c) The remedies provided herein shall be in addition to any other remedies provided by law or equity. (1981, c. 594, s. 1.)

§ 66-137. Taxes.

Discount buying clubs must pay North Carolina sales taxes and other applicable North Carolina taxes. (1989, c. 495, s. 4.)

§§ 66-138 through 66-141: Reserved for future codification purposes.