Article 30.

Credit Repair Services Act.

§ 66-220. Short title and purpose.

(a) This Article shall be known and may be cited as the Credit Repair Services Act.

(b) The General Assembly recognizes that many of its citizens rely heavily on favorable credit ratings in order to obtain goods and services, and that some of these citizens are unable to secure credit because of unfavorable credit histories. The General Assembly further recognizes that consumers sometimes need assistance in obtaining credit or in correcting erroneous credit histories, and that this need has given rise to the establishment of businesses organized for the purpose of providing credit repair services. The purpose of this Article is to ensure that businesses offering credit repair services are providing these services in a manner that is fair and reasonable to the consuming public. (1991, c. 327, s. 1.)

§ 66-221. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Credit repair business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:
   a. Improving, repairing, or correcting a consumer's credit record, history, or rating;
   b. Obtaining revolving charge card credit or retail installment credit;
   c. Providing advice or assistance to a consumer with regard to either sub-subdivision a. or b. above.

(2) "Credit repair business" does not include:
   a. Any bank, credit union, or savings institution organized and chartered under the laws of this State or the United States, or any consumer finance lender licensed pursuant to Article 15 of Chapter 53 of the General Statutes;
   b. Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));
   c. Any person licensed as a real estate broker or real estate salesman by this State where the person is acting within the course and scope of the license;
   d. Any person licensed to practice law in this State where the person renders services within the course and scope of that person's practice as a lawyer;
   e. Any broker-dealer registered with the Securities and Exchange Commission or the Commodities Future Trading Commission where the broker-dealer is acting within the course and scope of that regulation; or
   f. Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act.

(3) "Consumer" means any individual who is solicited to purchase or who purchases the services of a credit repair business. (1991, c. 327, s. 1.)

§ 66-222. Bond or trust account required.

Every credit repair business shall obtain a surety bond issued by a surety company authorized to do business in this State, or shall establish 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 ten thousand dollars ($10,000). The bond or trust account shall be in favor of the State of North Carolina. Any person damaged by the credit repair business' breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the bond or trust account to recover damages suffered. 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. (1991, c. 327, s. 1.)

§ 66-223. Prohibited acts.

A credit repair business and its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit repair business, shall not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit repair business has agreed to perform for or on behalf of the consumer;

(2) Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

(3) Represent that it can directly or indirectly arrange for the removal of derogatory credit information from the consumer's credit report or otherwise improve the consumer's credit report or credit standing, provided, this shall not prevent truthful, unexaggerated statements about the consumer's rights under existing law regarding his credit history or regarding access to his credit file;

(4) Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

(5) Make or use any untrue or misleading representations in the offer or sale of the services of a credit repair business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit repair business. (1991, c. 327, s. 1.)

§ 66-224. Contractual requirements.

(a) Effective October 1, 1991, every contract between a consumer and a credit repair business for the purchase of the services of the credit repair business shall be in writing, dated, signed by the consumer, and shall include the following:

(1) A conspicuous statement in size equal to at least 10-point boldface type, in immediate proximity to the space reserved for the signature of the consumer, as follows:
"YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit repair business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit repair business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit repair business expects to have modified;

(4) The principal business address of the credit repair business and the name and address of its agent in this State authorized to receive service of process; and

(5) One of the following statements, as appropriate, in substantially the following form:

a. "As required by North Carolina law, this credit repair business has secured a bond by _____(name and address of surety company), a surety authorized to do business in this State. Before signing a contract with this business, you should check with the surety company to determine the bond's current status.", or

b. "As required by North Carolina law, this credit repair business has established an escrow account _____(number) with _____(name and address of bank or savings institution). Before signing a contract with this business, you should check with the bank or savings institution to determine the current status of the account."

(b) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point boldface type the following statement:

"NOTICE OF CANCELLATION

YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THE CONTRACT IS SIGNED.

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THIS CONTRACT WILL BE RETURNED WITHIN 10 DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE, TO

_____(Name of Seller)

AT _____ (Address of Seller)
_____ (Place of Business) NOT LATER
THAN MIDNIGHT _____(Date).

I HEREBY CANCEL THIS TRANSACTION.

_____
Date Buyer's Signature".

A copy of the fully completed contract and all other documents the credit repair business requires the consumer to sign shall be given by the credit repair business to the consumer at the time they are signed. (1991, c. 327, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 19.)

§ 66-225. Violations.

(a) If a credit repair business uses any untrue or misleading statements in connection with a credit repair contract, fails to fully comply with the requirements of this Article, or fails to comply with the terms of the contract or any obligation arising therefrom, then, upon written notice to the credit repair business, the consumer may void the contract, and shall be entitled to receive from the credit repair business all sums paid to the credit repair business, and recover any additional damages including reasonable attorneys' fees.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a credit repair business.

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

(d) In a proceeding involving this Article, the burden of proving an exemption or an exception from the definition of a credit repair business shall be borne by the person claiming the exemption or exception.

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

(f) The violation of any provision of this Article shall constitute an unfair trade practice under G.S. 75-1.1 and the violation of any provision of this Article shall constitute a Class I felony. (1991, c. 327; 1993, c. 539, s. 1283; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 66-226. Scope.

The provisions of this Article shall apply in all circumstances in which any party to the contract conducted any contractual activity, including but not limited to solicitation, discussion, negotiation, offer, acceptance, signing, or performance in this State. (1991, c. 327.)

§§ 66-227 through 66-229. Reserved for future codification purposes.