

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1226
Committee Substitute Favorable 7/11/89

Short Title: Franchise Investment Program.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE FRANCHISE INVESTMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

“PART 14. FRANCHISE INVESTMENT PROGRAM.

”§ 143B-472.35. Definitions.

Unless the context requires otherwise, as used in this Part:

- (1) ‘Enterprise’ means a business entity, including a sole proprietorship, a partnership, a limited partnership, a corporation, or a joint venture proposing to carry on a business within the State.
- (2) ‘Equity participation financing’ means any financial assistance provided under this Part including investment or guaranty of investment in an enterprise.
- (3) ‘Franchise’ means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
 - a. A franchise or distributorship grants the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor or a distributor;
 - b. The operation of the franchisee's and distributee's business pursuant to a plan or system is substantially associated with the franchisor's or distributor's trademark, service mark, trade

1 name, logotype, advertising or other commercial symbol
2 designating the franchisor or distributor or their affiliate; and

3 c. The franchisee is required to pay directly or indirectly, a
4 franchise fee in excess of one hundred dollars (\$100.00).

5 (4) 'Program' means the Franchise Investment Program.

6 (5) 'Qualified security' means:

7 a. Any note, bond, debenture, or other evidence of indebtedness;

8 b. Any stock or other form of equity participation;

9 c. Any certificate of interest or participation in a profit sharing
10 agreement;

11 d. Any investment contract;

12 e. Any certificate of deposit for a security;

13 f. Any certificate of interest of participation in a patent or patent
14 application or in royalty or other payments under a patent or
15 patent application; or

16 g. Any interest or instrument commonly known as 'security' or
17 any certificate for, receipt for, guarantee of, or option, warrant,
18 or right to subscribe to or purchase any qualified security.

19 **"§ 143B-472.36. Legislative findings.**

20 The General Assembly finds that:

21 (1) Franchises have proven to be a fast growing and reliable form of
22 successful business expansion and successful new business creation;

23 (2) Franchises play a major role in the economy of North Carolina and
24 have been a continuing source of increasing tax revenues and job
25 opportunities;

26 (3) The growth of franchises should be encouraged in the State's economy
27 and franchising should be an integral part of the State's economic
28 development effort;

29 (4) Socially or economically disadvantaged persons often lack adequate
30 capital and are unable to obtain financing from financial institutions to
31 begin and develop a franchise; and

32 (5) It is in the interest of the public welfare to promote the creation and
33 viability of franchises by socially or economically disadvantaged
34 persons.

35 **"§ 143B-472.37. Purpose.**

36 The purpose of the Franchise Investment Program is to encourage and aid in the
37 creation and development of franchises in the State by socially or economically
38 disadvantaged persons.

39 **"§ 143B-472.38. Franchise Investment Program.**

40 The Franchise Investment Program is established within the Department of
41 Commerce. The Small Business Development Division, Department of Commerce,
42 shall administer this Program.

43 **"§ 143B-472.39. Duties of the Division.**

1 (a) For the purposes of administering this Part, the Small Business Development
2 Division may:

3 (1) Provide equity participation financing for the establishment and
4 development of franchises by socially or economically disadvantaged
5 persons in the State;

6 (2) Buy, hold, and sell qualified securities;

7 (3) Prepare, publish, and distribute, with or without charge as the Division
8 may determine, technical studies, reports, and other materials it
9 considers appropriate; and

10 (4) Provide and pay for any advisory services and technical assistance
11 necessary or desirable to carry out the purposes of this Part.

12 (b) The title of any securities shall be held in the name of the State, and the State
13 Treasurer shall be the custodian of the securities. Any transactions of purchase or sale
14 shall be handled through the Department of State Treasurer.

15 (c) The Small Business Division shall develop rules and regulations necessary to
16 implement this Program and carry out its duties according to this section.

17 **"§ 143B-472.40. Franchise Investment Revolving Loan Fund.**

18 (a) The Franchise Investment Revolving Loan Fund is created. Moneys
19 appropriated by the State and other moneys made available to the Fund through federal
20 programs or private contributions shall be deposited with the State Treasurer. Any
21 investment earnings and interest shall be paid to the Fund. The Fund shall be
22 administered by the Office of State Budget and Management. This Fund shall be a
23 nonreverting, revolving loan fund.

24 (b) The Fund shall be self-sustaining and shall achieve investment returns on its
25 portfolio in the form of:

26 (1) Royalties from franchises in amounts to be determined by the Small
27 Business Development Division;

28 (2) Interest payments, when a debt security is used; and

29 (3) Appreciation of values of the investments.

30 (c) The Division shall use the Fund and income from the Fund to:

31 (1) Purchase qualified securities issued by a franchise for the purpose of
32 providing equity participation financing;

33 (2) Provide guarantees of investments to expand the capital resources of
34 qualified franchises;

35 (3) Purchase advisory services and technical assistance consistent with the
36 Program;

37 (4) Purchase any securities that may be a lawful investment for a fiduciary
38 of the State; and

39 (5) Provide equity participation financing as permitted under this Part.

40 **"§ 143B-472.41. Application and requirements for financing.**

41 (a) The enterprise shall apply for equity participation financing, including the
42 purchase of qualified securities issued by a franchise.

43 (b) If the applicant is an individual, the applicant shall satisfy the Small Business
44 Development Division that the applicant:

- 1 (1) Is of good moral character;
2 (2) Has a reputation for financial responsibility, as determined from
3 creditors, employers, and other individuals who have personal
4 knowledge of the applicant;
5 (3) Is a resident of North Carolina or has his principal place of business in
6 North Carolina;
7 (4) Is unable to obtain adequate business financing under reasonable terms
8 through normal lending channels because the applicant:
9 a. Belongs to a group that has been shown historically to have had
10 inadequate access to normal economic or financial resources
11 because of the applicant's socio-economic environment;
12 b. Has an identifiable physical handicap that severely limits the
13 ability of the applicant to obtain financial assistance, but does
14 not limit the applicant's ability to perform the government
15 contract or other activity for which the applicant would be
16 receiving financial assistance; or
17 c. Has any other social or economic impediment that is beyond the
18 personal control of the applicant, such as lack of formal
19 education or financial capacity, or geographical or regional
20 economic distress, but does not limit the ability of the applicant
21 to perform the government contract or other activity for which
22 the applicant would be receiving financial assistance.
23 (c) If the applicant is other than a sole proprietorship, at least seventy percent
24 (70%) of the enterprise shall be owned by individuals who meet the qualifications for
25 applicants who are individuals under subsection (b) of this section.
26 (d) In addition to the qualifications under this section, an applicant for a
27 guarantee of a loan shall have applied for and been denied a loan by a financial
28 institution.
29 (e) An applicant shall submit an application that contains a business plan,
30 including:
31 (1) A description of the franchisee and its management, product, and
32 market;
33 (2) A statement of the amount, immediacy of need, and projected use of
34 the capital required;
35 (3) A statement of the potential economic impact of the purchase;
36 (4) Information that shows that the applicant meets the applicable
37 qualifications under subsections (a), (b), and (c) of this section; and
38 (5) Any other information the Division requires.
39 (f) Under this Program, any equity participation financing shall satisfy the
40 following requirements:
41 (1) The Division shall not own securities representing more than forty-five
42 percent (45%) of the voting stock of any franchisee or own an interest
43 greater than forty-five percent (45%) in any franchise.

- 1 (2) The amount of the Division's equity participation financing for any
2 franchise shall not exceed one hundred thousand dollars (\$100,000)
3 and shall not exceed forty-five percent (45%) of the total initial
4 investment in the franchise.
- 5 (3) The total amount of financing disbursed within a 12-month period
6 shall not exceed one million dollars (\$1,000,000) plus any
7 accumulated funds derived from interest, royalties, and appreciation.
- 8 (4) The Division shall find that there is a reasonable probability that the
9 State will recover its initial investment and an adequate return on
10 investment, and the State's investment shall be recoverable within five
11 years of the equity participation financing.
- 12 (5) The State's recovery shall be the greater of the current value of the
13 percentage of the investment in the enterprise or the amount of the
14 initial investment in the enterprise.
- 15 (6) The value of the enterprise at the time of recovery shall be the average
16 of three independent appraisals of the value.
- 17 (g) The liability of the State in providing equity participation financing shall be
18 limited to its investments under the Program."

19 Sec. 2. There is appropriated from the General Fund to the Department of
20 Commerce the sum of \$1,000,000 for fiscal year 1989-90 for the Franchise Investment
21 Program. There is also appropriated from the General Fund to the Department of
22 Commerce the sum of \$100,000 for the fiscal year 1989-90 and the sum of \$100,000 for
23 the fiscal year 1990-91 for the administration of the Franchise Investment Program.

24 Sec. 3. This act shall become effective July 1, 1989.