

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 443

Short Title: Franchise Investment Act.

(Public)

Sponsors: Representatives Wicker.

Referred to: Judiciary I.

April 1, 1991

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

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding the following new
chapter to read:

"CHAPTER 78E.

"NORTH CAROLINA FRANCHISE INVESTMENT ACT.

"§ 78E-1. Title.

This Chapter shall be known and may be cited as the 'North Carolina Franchise
Investment Act'.

"§ 78E-2. Findings and purpose.

The General Assembly finds that franchisees may suffer substantial losses when the
franchisor does not provide complete information regarding the franchisor and the
franchise relationship. The General Assembly also finds that many franchisees lack
bargaining power, and many purchase a franchise when they are unfamiliar with
operating a business, with the franchised business, and with industry practices in
franchising. This act seeks to assure that each potential franchisee receives the
information necessary to make an informed decision about the offered franchise and to
prohibit the sale of franchises when there is a likelihood that the franchisor's promises
will not be fulfilled.

"§ 78E-3. Definitions.

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

(1) 'Administrator' means the Secretary of State.

- 1 (2) 'Advertisement' means a communication published in connection with
2 an offer or sale of a franchise.
- 3 (3) 'Affiliate' means a person controlling, controlled by, or under common
4 control with another person, every officer or director of such person,
5 and every person occupying a similar status or performing similar
6 functions.
- 7 (4) 'Business day' means a day other than a Saturday, Sunday, or federal
8 holiday.
- 9 (5) 'Disclosure documents' means the Uniform Franchise Offering
10 Circular as adopted and amended by the North American Securities
11 Administrators Association, Inc.
- 12 (6) 'Franchise' means
13 a. An oral or written agreement, either express or implied, which:
14 1. Grants the right to distribute goods or provide services
15 under a marketing plan prescribed or suggested in
16 substantial part by the franchisor;
17 2. Requires payment of a franchise fee to a franchisor or its
18 affiliate; and
19 3. Allows the franchise business to be substantially
20 associated with a trademark, service mark, trade name,
21 logotype, advertising, or other commercial symbol of or
22 designating the franchisor or its affiliate; or
23 b. A master franchise.
- 24 (7) 'Franchise Fee' means a direct or indirect payment to purchase or
25 operate a franchise. Franchise fee does not include:
26 a. Payment of a reasonable service charge to the issuer of a credit
27 card by an establishment accepting the credit card;
28 b. Payment to a trading stamp company by a person issuing
29 trading stamps in connection with a retail sale; or
30 c. Agreement to purchase at a bona fide wholesale price a
31 reasonable quantity of tangible goods for resale.
- 32 (8) 'Franchisee' means a person to whom a franchise is granted.
33 Franchisee includes:
34 a. A subfranchisor with regard to its relationship with a franchisor;
35 and
36 b. A subfranchisee with regard to its relationship with a
37 subfranchisor.
- 38 (9) 'Franchisor' means a person who grants a franchise. Franchisor
39 includes a subfranchisor with regard to its relationship with a
40 franchise, unless stated otherwise in this Chapter.
- 41 (10) 'Fraud' and 'deceit' are not limited to common law fraud and deceit.
- 42 (11) 'Marketing Plan' means a plan or system concerning a material aspect
43 of conducting business. 'Marketing plan' includes:
44 a. Price specification, special pricing systems or discount plans;

- 1 b. Sales or display equipment or merchandising devices;
2 c. Sales techniques;
3 d. Promotional or advertising materials or cooperative advertising;
4 e. Training regarding the promotion, operation or management of
5 the business; or
6 f. Operational, managerial, technical or financial guidelines or
7 assistance.

8 (12) 'Master franchise' means an agreement express or implied, oral or
9 written, by which a person pays a franchisor for the right to sell or
10 negotiate the sale of franchises.

11 (13) 'Offer' or 'Offer to sell' means every attempt to offer or to dispose of,
12 or solicitation of an offer to buy, a franchise or interest in a franchise
13 for value.

14 (14) 'Order' means a consent, authorization, approval, or prohibition, issued
15 by the Administrator in a specific matter.

16 (15) 'Person' means an individual or any other legal or commercial entity.

17 (16) 'Publish' means to circulate generally by mail, or print media or
18 electronic media, or otherwise to disseminate generally to the public.

19 (17) 'Registration application' means an initial franchise application on the
20 Uniform Franchise Registration Application as adopted and amended
21 by the North American Securities Administrators Association, Inc.,
22 and the amendment or renewal of the application.

23 (18) 'Sale' or 'Sell' means every contract or agreement for the sale or
24 disposition of a franchise or interest in a franchise for value.

25 (19) 'Salesperson' means a person employed by or representing a franchisor
26 in effecting or attempting to effect the offer or sale of a franchise.

27 (20) 'Subfranchisor' means a person who is granted a master franchise.

28 (21) 'Subfranchisee' means a person who is granted a franchise or a
29 subfranchise from the subfranchisor.

30 **"§ 78E-4. Scope and applicability.**

31 (1) This act applies to a franchise that is offered or sold in this State.

32 (2) A franchise is offered or sold in this State if an offer to sell is made or
33 accepted in this State or an offer to buy is accepted in this State.

34 (3) An offer to sell is made in this State if the offer is directed by the
35 offeror into this State from within or from outside this State and is
36 received where it is directed. An offer to sell is accepted in this State
37 if the offeree communicates acceptance to the offeror in this State and
38 acceptance is received where it is directed.

39 (4) This act also applies to a franchise offered or sold outside this State if
40 it is offered or sold to a resident of this State and is to be operated in
41 this State.

42 (5) An offer to sell is not made in this State solely because the offer
43 appears in a newspaper or other publication of general and regular
44 circulation which had more than two-thirds of its circulation outside

1 this State during the past 12 months or solely because the offer appears
2 in a broadcast or transaction originating outside this State.

- 3 (6) Persons required to be registered under this Chapter are exempt from
4 the requirements of Article 19 of Chapter 66 of the General Statutes.

5 **"§ 78E-5. Registration of franchises.**

6 It is unlawful for any person to offer or sell a franchise unless the offer is registered
7 under this Chapter or is exempt from registration under G.S. 78E-6.

8 **"§ 78E-6. Exemptions from registration.**

9 The following transactions are exempt from G.S. 78E-5:

- 10 (1) The offer or sale of a franchise if all of the following conditions are
11 satisfied:

12 a. (i) Either the franchisor's most recent audited financial
13 statements show a net worth of at least ten million dollars
14 (\$10,000,000), or (ii) the franchisor is at least eighty percent
15 (80%) owned by a person that unconditionally guarantees the
16 franchisor's performance, that consents to service of process in
17 this State, and whose most recent audited financial statements
18 show a net worth of at least ten million dollars (\$10,000,000);

19 b. The franchisor or person owning at least eighty percent (80%)
20 of the franchisor had and currently has at least 25 franchises
21 that have conducted substantially the same franchised business
22 to be offered or sold at no fewer than 25 locations for the entire
23 five-year period immediately preceding the offer or sale of the
24 franchise;

25 c. The offeree receives the disclosure document at least 10
26 business days prior to the execution by the offeree of any
27 binding agreement or at least 10 business days prior to the
28 direct or indirect receipt of a franchise fee by the franchisor
29 from the offeree, whichever first occurs; and

30 d. The franchisor annually files a notice of exemption with the
31 Administrator. The notice of exemption shall include the
32 disclosure document and the fee prescribed by G.S. 78E-29 and
33 shall be filed prior to an offer or sale of a franchise in this State.
34 The exemption expires 15 months from the date of the most
35 recent audited financial statement filed unless the Administrator
36 prescribes a different period by rule or order.

- 37 (2) The offer or sale of a franchise by a franchisee who is not an affiliate
38 of the franchisor for the franchisee's own account if the franchisee's
39 entire franchise is sold and the sale is not effected by or through the
40 franchisor. A sale is not effected by or through a franchisor merely
41 because a franchisee signs agreements with terms which do not
42 materially differ from the agreements with the existing franchisee or
43 because a franchisor has a right to approve or disapprove the sale or
44 requires payment of a reasonable transfer fee. This exemption applies

- 1 to the offer or sale of a master franchise if the entire master franchise
2 is sold.
- 3 (3) The offer or sale of a franchise to a person who has been for at least
4 two years, an officer, director, partner or affiliate of the franchisor for
5 that person's own account;
- 6 (4) The offer or sale of a franchise to a purchaser for the purchaser's own
7 account who:
- 8 a. Has a net worth of at least one million dollars (\$1,000,000) (in
9 the case of a natural person, including the property of the
10 purchaser's spouse but excluding primary residence, personal
11 vehicles and personal effects), or had an individual income, or
12 joint income (including the income of that person's spouse) in
13 excess of two hundred thousand dollars (\$200,000) in each of
14 the two most recent years and has a reasonable expectation of
15 reaching the same income level in the current year; and
- 16 b. Has such knowledge and experience in financial and business
17 matters that such person is capable of evaluating the merits and
18 risks of the franchise.
- 19 (5) The offer or sale to an existing franchisee of an additional franchise
20 that is substantially the same as the franchise that the franchisee has
21 operated for at least two years at the time of the offer or sale.
- 22 (6) The offer or sale of a franchise involving a renewal, extension,
23 modification or amendment of an existing franchise agreement if there
24 is no interruption in the operation of the franchised business and there
25 is no material change in the franchise relationship. For purposes of
26 this subsection, an interruption in the operation of the franchised
27 business solely for the purpose of renovating or relocating that
28 business is not a material change in the franchise relationship or an
29 interruption in the operation of the franchise business.
- 30 (7) The offer or sale of a franchise if the franchisee agrees to pay, directly
31 or indirectly, a franchise fee computed on an annual basis of two
32 hundred fifty dollars (\$250.00) or less.
- 33 (8) The offer or sale of a franchise by an executor, administrator, sheriff,
34 marshal, receiver, trustee, trustee in bankruptcy, guardian or
35 conservator on behalf of a person other than the franchisor or the estate
36 of the franchisor.
- 37 (9) The offer of a franchise by the franchisor during the period a
38 registration has expired and is pending renewal under G.S. 78E-9, or
39 during this period an application to amend a registration under G.S.
40 78E-11 is pending, if the offeree receives the newly registered
41 disclosure document at least 10 business days before the offeree's
42 execution of any binding agreement or at least 10 business days prior
43 to the receipt of a franchise fee by the franchisor from the offeree.

1 whichever first occurs. Changes from the documents last registered
2 must be marked to show changes.

3 (10) The offer or sale of rights to a person to sell goods or services within
4 or adjacent to a retail establishment as a department or division;
5 provided that the person is not required to purchase goods or services
6 from the operator of the retail establishment.

7 (11) The offer and sale of a franchise that the Administrator by rule or order
8 exempts when registration is not necessary or appropriate in the public
9 interest or for the protection of prospective franchisees.

10 **"§ 78E-7. Out-of-State sales exemption.**

11 An offer or sale of a franchise is exempted from G.S. 78E-8, 78E-9, 78E-13 through
12 E-16, inclusive if:

13 (1) It is offered or sold to a nonresident of this State;

14 (2) The franchise business will not be operated wholly or partly in this
15 State;

16 (3) The offer or sale does not violate federal law or the law of the foreign
17 jurisdiction; and

18 (4) The offeree is not actually present in this State during any offer or sale.

19 **"§ 78E-8. Disclosure delivery requirements.**

20 (a) It is unlawful to sell any franchise in this State without first delivering a copy
21 of a disclosure document reflecting all material changes together with a copy of all
22 proposed agreements relating to the sale of the franchise, unless otherwise provided in
23 subsection (b) of this section, to the prospective franchisee, at the earlier of:

24 (1) The prospective franchisee's first personal business meeting with the
25 franchisor which is held for the purpose of discussing the sale or
26 possible sale of a franchise, or

27 (2) Ten business days prior to the execution of an agreement or payment
28 of any consideration relating to the franchise relationship,

29 (b) The delivery requirements in subsection (a) of this section do not apply to the
30 offer or sale of a franchise which is exempt under G.S. 78E-6(b), 78E-6(c), 78E-6(f), or
31 78E-6(h).

32 **"§ 78E-9. General registration provisions.**

33 (a) A registration application must include the disclosure document, the filing
34 fee, and the consent to service of process. The Administrator may require the filing of
35 audited financial statements prepared by an independent certified public accountant and
36 prepared in accordance with generally accepted accounting principles, and of additional
37 documents or disclosures.

38 (b) If the franchisor fails to demonstrate to the Administrator the franchisor's
39 financial ability to fulfill its initial obligations to franchisees, the Administrator may
40 require an escrow of funds paid by the franchisee or subfranchisor to the franchisor or
41 its affiliate until the franchisor performs its initial obligations and the franchisee has
42 commenced operations. The Administrator may allow alternatives to escrow.

43 (c) (1) Except as provided in subdivision (2) of this subsection, if
44 no order under G.S. 78E-18 or G.S. 78E-19 is in effect, a franchise

1 registration application is effective on the thirtieth business day after
2 filing of the application or the last amendment to the application, or
3 at an earlier time ordered by the Administrator, unless the applicant
4 requests postponement of effectiveness of the application or the
5 Administrator has made a good faith effort to communicate why the
6 application does not meet the requirements of this law.

7 (2) If the Administrator requires the submission of additional information
8 under G.S. 78E-9, 78E-11, 78E-12, 78E-13, or 78E-26 before the
9 franchise registration application becomes effective under subdivision
10 (1) of this subsection, and if no order under G.S. 78E-18 or G.S. 78E-
11 19 is in effect, the application becomes effective on the fifteenth
12 business day after the additional information is filed with the
13 Administrator, or at such earlier time as the Administrator determines,
14 unless the applicant requests postponement of effectiveness of the
15 application.

16 (d) Registration of a franchise under this Chapter expires 120 calendar days after
17 the end of the franchisor's fiscal year following the application date, unless the
18 Administrator prescribes a different period by rule or order. A franchise registration
19 may be renewed for one year or a shorter period if designated by the Administrator by
20 filing an application to renew 30 days prior to the expiration of the registration.

21 (e) An applicant or registrant may withdraw a franchise registration application
22 or franchise registration if it files a written request for withdrawal with the
23 Administrator. Withdrawal is effective 15 business days from the day on which the
24 withdrawal request is filed with the Administrator.

25 (f) The Administrator may accept the examination of a registration application
26 by another state's administrator as complying with this section.

27 **"§ 78E-10. Negotiated changes permitted.**

28 This Chapter does not preclude negotiation of the terms and conditions of a
29 franchise before it is sold. After the initial offer, a franchisor need not amend its
30 disclosure document to negotiate with an offeree, or make supplementary disclosure to
31 this offeree, by reason of a change negotiated in the terms and conditions of a franchise.

32 **"§ 78E-11. Change in information.**

33 The franchisor must promptly amend its franchise registration application to reflect
34 every material change in the information filed with the Administrator.

35 **"§ 78E-12. Advertising.**

36 No person may publish in this State any advertisement offering to sell a franchise
37 required to be registered under this Chapter unless the advertisement and required filing
38 fee have been filed with the Administrator at least five business days prior to its first
39 publication.

40 **"§ 78E-13. Books and records.**

41 Every franchisor offering or selling a franchise in this State must maintain a
42 complete and accurate set of books and records of the offers and sales of franchises.
43 The books and records must include disclosure documents, advertising correspondence
44 with franchisees and prospective franchisees, past and present operations manuals,

1 training records, training manuals, copies of executed agreements, and any due
2 diligence records concerning franchisees. These books and records must be maintained
3 at an office readily accessible to the franchisor for five years. The books and records
4 may be kept on photographic or electronic media but must be printed if the
5 Administrator requests. Nothing in this section limits the investigative authority of the
6 Administrator.

7 **"§ 78E-14. Jurisdiction and venue.**

8 A provision in a franchise agreement restricting jurisdiction or venue to a forum
9 outside this State or requiring the application of the laws of another state is void with
10 respect to a claim otherwise enforceable under this Chapter.

11 **"§ 78E-15. Waivers void.**

12 A provision in a franchise contract or agreement is void if that provision:

- 13 (1) Permits or requires a franchisee to waive his rights under or the
14 requirements of this Chapter; or
- 15 (2) Relieves a person of a duty or liability imposed by this Chapter.

16 An acknowledgement provision, disclaimer or integration clause or a provision
17 having a similar effect in a franchise agreement does not negate or act to remove from
18 judicial review any statement, misrepresentation or action that would violate this
19 Chapter or a rule or order under this Chapter. This section shall not affect the
20 settlement of disputes, claims or civil lawsuits arising or brought under this Chapter.

21 **"§ 78E-16. Franchisee's right to association.**

22 A franchisor shall not restrict a franchisee from associating with other franchisees or
23 from participating in a trade association, or retaliate against a franchisee for engaging in
24 these activities.

25 **"§ 78E-17. Fraudulent deceptive and prohibited practices.**

26 In connection with the offer or sale of a franchise it is unlawful for a person, directly
27 or indirectly, to:

- 28 (1) Employ a device, scheme, or artifice to defraud;
- 29 (2) Make an untrue statement of material fact or omit to state a material
30 fact necessary in order to make the statements made, in the light of the
31 circumstances under which they are made, not misleading;
- 32 (3) Engage in an act, practice, or course of business which operates or
33 would operate as a fraud or deceit on a person;
- 34 (4) Represent to an offeree of a franchise that the filing of a franchise
35 registration application or the registration of a franchise constitutes a
36 finding by the Administrator that a document filed under the Chapter is
37 true, complete, and not misleading or that the Administrator has passed
38 upon the merits of the franchise;
- 39 (5) Misrepresent that a franchise is registered or exempted from
40 registration under this Chapter;
- 41 (6) Violate an order of the Administrator after the person receives notice
42 that the order was issued; or

- 1 (7) Fail to notify the Administrator of a material change in the information
2 required in a document required to be filed by this Chapter or a rule or
3 order under this Chapter; or
4 (8) Omit to state a material fact or make or cause to be made an untrue
5 statement of material fact in any application, notice, or report filed
6 with the Administrator under this Chapter.

7 **"§ 78E-18. Enforcement.**

8 (a) The Administrator may deny a franchise registration application, or may
9 suspend or revoke the registration of a franchise if:

- 10 (1) The franchisor failed to comply with a provision of this Chapter or a
11 rule, order or condition of the Administrator under this Chapter;
12 (2) The registration application is incomplete or inaccurate in any material
13 respect;
14 (3) The registration application includes a false or misleading statement of
15 a material fact or omits to state a material fact required to be stated or
16 necessary to make a required statement not misleading;
17 (4) The sale of the franchise would constitute a misrepresentation, deceit,
18 or fraud upon an offeree;
19 (5) A person is engaging in, has engaged in or is about to engage in a
20 false, fraudulent, or deceptive practice, or a device, scheme, or artifice
21 to defraud in connection with the offer or sale of the franchise;
22 (6) A partner, officer, or director of the franchisor or a person who
23 occupies a similar status or performs similar functions, or a person
24 who directly or indirectly controls or is controlled by the franchisor is
25 or has been found guilty or liable in a proceeding required to be
26 described in the registration application and the involvement of such
27 person creates an unreasonable risk to franchisees or offerees;
28 (7) An advertisement prohibited by this Chapter has been used in
29 connection with the offer or sale of a franchise;
30 (8) The franchisor's enterprise or method of business includes activities
31 that are illegal where performed; or
32 (9) The financial condition of the franchisor impairs or would impair the
33 ability of the franchisor to fulfill obligations under the franchise
34 agreement.

35 (b) The Administrator may deny, suspend, or revoke an exemption under G.S.
36 78E-6 on any of the grounds described in subsection (a) of this section.

37 (c) When it appears to the Administrator that any person has violated or is about
38 to violate a provision of this Chapter or a rule or order under this Chapter, the
39 Administrator may do any or all of the following:

- 40 (1) Issue an order directing the person to cease and desist from continuing
41 the act or practice;
42 (2) Bring an action in court of competent jurisdiction to enjoin the act or
43 practice and to enforce compliance with this Chapter or a rule or order
44 under this Chapter. Upon a proper showing, the court may grant a

1 permanent or preliminary injunction, restraining order or writ of
2 mandate. The court may grant appropriate ancillary relief, including
3 appointment of a receiver or conservator for the defendant or the
4 defendant's assets. The court may exercise all powers necessary or
5 appropriate for these purposes. The court may not require the
6 Administrator to post a bond; or

7 (3) Bring an action on behalf of the State in any court of competent
8 jurisdiction against any officer, director, trustee, manager, or agent of
9 the franchisor or against a franchisor to recover a penalty in a sum not
10 to exceed fifty thousand dollars (\$50,000) per violation of this
11 Chapter. The action must be brought within four years after the
12 commission of the act or practice on which it is based.

13 (d) The Administrator may impose an administrative assessment against a person
14 named in an order issued under G.S. 78E-18(a), 78E-18(c), or 78E-19. The amount of
15 the administrative assessment may not exceed five thousand dollars (\$5,000) for each
16 act or omission that constitutes the basis for issuing the order. The administrative
17 assessment may only be imposed:

18 (1) Following an opportunity for a hearing under G.S. 78E-25 if the notice
19 delivered to all named persons includes notice of the Administrator's
20 authority to impose an administrative assessment under this section, or

21 (2) As part of an order issued under G.S. 78E-18(a), 78E-18(c), or 78E-19,
22 if the order is stipulated to by each person subject to the administrative
23 assessment

24 (e) When the Administrator prevails in an action under this Chapter, the
25 Administrator is entitled to recover the costs, expenses, and experts' fees incurred
26 incident to the action.

27 (f) In connection with an action or proceeding under this section, the
28 Administrator may exercise any of the powers specified in G.S. 78E-26.

29 **"§ 78E-19. Summary action.**

30 The Administrator upon a finding that it is in the public interest may issue an order
31 summarily under G.S. 78E-18.

32 **"§ 78E-20. Criminal prosecution.**

33 (a) A person who willfully violates any provision of this Chapter or any rule
34 under this Chapter or any order of which the person has notice, commits a Class I felony
35 and upon conviction is subject to the punishment provided by law.

36 (b) A prosecution for a violation under this Chapter must be commenced within
37 four years after the commission of the violation. Nothing in this Chapter limits the
38 power of the State to punish a person for conduct which constitutes a crime under
39 another statute.

40 **"§ 78E-21. Private civil actions.**

41 (a) A person who violates any provision of this Chapter is liable to the franchisee
42 for damages, costs, and attorneys and experts' fees. In the case of a violation of G.S.
43 78E-5, 78E-8, or 78E-17(a) through 78E-17(e) inclusive, the franchisee may also sue

1 for rescission. No person will be liable under this section if the defendant proves that
2 the plaintiff knew the facts concerning the violation.

3 (b) Every person who directly or indirectly controls a person liable under this
4 section, every principal executive officer or director of a person so liable, every person
5 occupying a similar status or performing similar functions, and every agent, employee
6 of a person so liable, who materially aids in the act or transaction constituting the
7 violation, is also liable jointly and severally with and to the same extent as such person,
8 unless the person liable proves he or she did not know, and in the exercise of reasonable
9 care could not have known, of the existence of the facts by reason of which the liability
10 is alleged to exist.

11 **"§ 78E-22. Period of limitation.**

12 An action under G.S. 78E-21 must be commenced not later than the earliest of:

13 (1) Four years after the act or transaction constituting the violation; or

14 (2) Ninety days after the receipt by the franchisee of a rescission offer in a
15 form approved by the Administrator.

16 **"§ 78E-23. No other civil liability.**

17 Except as expressly provided in this Chapter, no civil liability arises from a violation
18 of any provision of this Chapter. Nothing in this Chapter limits liability that may exist
19 under another statute or at common law.

20 **"§ 78E-24. Burden of proof.**

21 In an administrative, civil, or criminal proceeding arising under this Chapter, the
22 burden of proving an exemption, or an exclusion from a definition, is on the person
23 claiming it.

24 **"§ 78E-25. Hearings and judicial review.**

25 (a) Except as provided by subsection (c) of this section, the Administrator may
26 not enter an order under G.S. 78E-18 or G.S. 78E-19 without appropriate prior notice to
27 all named persons, opportunity for hearing and written findings of fact and conclusions
28 of law.

29 (b) Notice required by this Chapter is sufficient if delivered personally, or if sent
30 by registered or certified mail and addressed to the person, or the person's attorney of
31 record at the person's or attorney's last known address appearing in the records of the
32 Administrator. Notice served in accordance with G.S. 78E-28 is also sufficient.

33 (c) A person named in an order may apply to the Administrator for a hearing in
34 respect to any matter determined by the order within 30 days after the Administrator has
35 summarily issued an order. A hearing shall be held within 30 days after the
36 Administrator receives a written request for hearing unless extended by mutual consent
37 of the parties. During the pendency of any hearing requested under this subsection, the
38 order issued summarily shall remain in effect unless vacated or modified by the
39 Administrator.

40 (d) After a hearing, the Administrator may issue a final order. The final order
41 may affirm, vacate, or modify an order issued summarily in effect during the pendency
42 of the hearing, or may include such other sanctions as are provide for under G.S. 78E-
43 18. An order issued summarily against a person becomes a final order if the person fails

1 to request a hearing under subsection (c) of this section or if the person defaults after
2 requesting a hearing.

3 (e) Hearings and rehearings shall be public.

4 (f) Orders and other official acts of the Administrator are subject to judicial
5 review.

6 (g) Orders originally entered without a hearing under G.S. 78E-18 or G.S. 78E-
7 19 may be reviewed only if the person seeking review has requested a hearing within
8 the time provided by subsection (b) of this section. Petition for review under this
9 subparagraph may be filed only after service of the order finally disposing of the
10 person's request for hearing under subsection (b) of this section.

11 **"§ 78E-26. Powers of administrator.**

12 (a) The Administrator may make public or private investigations inside or
13 outside this State to determine whether a person has violated, is violating, or is about to
14 violate a provision of this Chapter or a rule or order under this Chapter. The
15 Administrator may investigate to aid in the enforcement of this Chapter or in
16 prescribing rules under this Chapter. The Administrator may publish information
17 concerning the violation of this Chapter or a rule or order under this Chapter.

18 (b) The Administrator may keep confidential any information obtained in the
19 course of an investigation.

20 (c) The Administrator may investigate suspected criminal violations of this
21 Chapter and may refer evidence to the appropriate district attorney. Upon request of the
22 district attorney, the Administrator and the Administrator's attorneys, deputies or
23 assistants may assist in presenting the law or facts at trial.

24 (d) For the purpose of an investigation or proceeding under this Chapter, the
25 Administrator may subpoena witnesses, compel their attendance, examine them under
26 oath, or require the production of any documents, or tangible things, which the
27 administrator deems relevant or material to this investigation or proceeding. The
28 subpoena must state the date, place, and time at which the person is required to appear
29 or produce documentary material.

30 (e) An Administrator's subpoena shall be served in accordance with the service
31 of process requirements of civil litigation in this State.

32 (f) Upon application of the Administrator, a court may compel compliance with
33 a subpoena through a contempt proceeding.

34 **"§ 78E-27. Rules, orders, forms, and interpretative opinions.**

35 (a) The Administrator may promulgate rules, forms, and orders necessary or
36 appropriate to administer this Chapter and may define terms, whether or not used in this
37 Chapter. The Administrator may classify franchises, persons, and matters within the
38 Administrator's jurisdiction and prescribe different rules for different classes. The
39 Chapter imposes no liability for an act or omission done in good faith in conformity
40 with an order or rule of the Administrator.

41 (b) No rule, order, or form may be made unless the Administrator finds that the
42 action is necessary or appropriate in the public interest or for the protection of
43 franchisees and consistent with the purposes fairly intended by the policy and provisions
44 of the Chapter.

1 (c) The Administrator may honor requests from interested persons for
2 interpretative opinions or may issue determinations that the Administrator will not
3 institute enforcement proceedings against a person for engaging in certain specified
4 activities where the determination is consistent with purposes fairly intended by the
5 policy and provisions of the Chapter.

6 **"§ 78E-28. Service of process.**

7 (a) A person who offers or sells a franchise subject to the registration
8 requirement of this Chapter in this State shall file with the Administrator an irrevocable
9 consent to service of process appointing the Administrator as the person's agent to
10 receive service of process in a civil action or proceeding arising under this Chapter.

11 (b) A person who offers or sells a franchise in this State without filing a consent
12 to service of process is deemed to appoint the Administrator as the person's agent to
13 receive service of process in a civil action or proceeding arising under this Chapter.

14 (c) A person may effect service of process under this section by service on the
15 Administrator. The time to respond begins to run when the person sends notice of the
16 service and a copy of the process by certified mail to the defendant or respondent or
17 attorney of record at its last address on file with the Administrator. If no address is on
18 file with the Administrator, the time to respond begins to run when the process is served
19 on the Administrator. The plaintiff shall file an affidavit of compliance with the court
20 or tribunal hearing the matter.

21 **"§ 78E-29. Fees.**

22 (a) The Administrator shall charge and collect the fees fixed by this section. The
23 Administrator shall not refund fees.

24 (b) The fee for filing an application for initial registration of a franchise under
25 G.S. 78E-9 is five hundred dollars (\$500.00).

26 (c) The fee for filing a notice of exemption under G.S. 78E-6(a) is three hundred
27 dollars (\$300.00).

28 (d) The fee for filing an application for renewal of a registration under G.S. 78E-
29 9 is two hundred fifty dollars (\$250.00).

30 (e) The fee for filing a request for an amendment to an application under G.S.
31 78E-11 is one hundred dollars (\$100.00).

32 (f) The fee for filing a request for an interpretative opinion under G.S. 78E-27(c)
33 is three hundred dollars (\$300.00).

34 (g) The fee for filing advertising is ten dollars (\$10.00) per item.

35 **"§ 78E-30. Cooperation with other agencies or organizations.**

36 To encourage uniform application and interpretation of this Chapter and effective
37 franchise regulation and enforcement, the Administrator may cooperate with federal,
38 State or foreign agencies or administrators and law enforcement agencies, including:

39 (1) Conducting joint examinations and investigations;

40 (2) Holding joint administrative hearings;

41 (3) Filing and prosecuting joint civil or administrative proceedings;

42 (4) Sharing and exchanging information and documents subject to the
43 restrictions of this State;

44 (5) Sharing and exchanging personnel;

- 1 (6) Formulating rules, regulations, statements of policy, guidelines,
2 proposed statutory changes, and interpretative opinions and releases;
3 and
4 (7) Issuing and enforcing subpoenas at the request of the Federal Trade
5 Commission or an agency administering franchise statutes in another
6 jurisdiction if the information sought would also be subject to unlawful
7 subpoena for conduct occurring in this State.

8 **"§ 78E-31. Filing of documents.**

9 A document is filed when it is received by the Administrator.

10 **"§ 78E-32. Construction.**

11 This Chapter shall be applied and construed with a view to uniformity among states
12 enacting it. This Chapter shall be liberally construed to effectuate its purposes.

13 **"§ 78E-33. Severability of provisions.**

14 If a provision of this Chapter or its application to a person or circumstances is held
15 invalid, the invalidity shall not affect other provisions or applications of this Chapter
16 which can be given effect without the invalid provision or application. To this end the
17 provisions of this Chapter are severable."

18 Sec. 2. This act becomes effective January 1, 1992, and applies to franchise
19 agreements entered into on or after that date.