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SENATE BILL 723

Commerce Committee Substitute Adopted 5/25/95

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Short Title: Telephone Consumer Protection 2/AB.

(Public)

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Sponsors:

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Referred to:

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April 13, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN  
NORTH CAROLINA, TO MAKE THE OFFERING OF TELEPHONE SALES  
RECOVERY SERVICES A CRIMINAL OFFENSE, AND TO RESTRICT THE  
TIME PERIOD WITHIN WHICH UNSOLICITED AUTOMATIC DIALING AND  
RECORDED MESSAGES MAY BE MADE BY PHONE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new  
Article to read:

**"ARTICLE 32.**

**"TELEPHONIC SELLER REGISTRATION AND BOND REQUIREMENT.**

**"§ 66-251. Definitions.**

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

- (1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

- 1           (2) 'Item' means any good or any service. 'Item' includes coupon books,  
2 vouchers, or certificates that are to be used with businesses other than  
3 the seller's business.
- 4           (3) 'Owner' means a person who owns or controls ten percent (10%) or  
5 more of the equity of, or otherwise has a claim to ten percent (10%) or  
6 more of the net income of, a telephonic seller.
- 7           (4) 'Person' includes any individual, firm, association, corporation,  
8 partnership, joint venture, or any other business entity.
- 9           (5) 'Principal' means an owner, an executive officer of a corporation, a  
10 general partner of a partnership, a sole proprietor of a sole  
11 proprietorship, a trustee of a trust, or any other individual with similar  
12 supervisory functions with respect to any person.
- 13           (6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to  
14 become obligated to a telephonic seller or to make any donation or gift  
15 to any person represented by the telephonic seller.
- 16           (7) 'Room operator' means any principal, employee, or agent responsible for  
17 the operational management and supervision of facilities from which  
18 telephonic sales calls are made or received.
- 19           (8) 'Salesperson' means any individual employed, appointed, or authorized  
20 by a telephonic seller, whether referred to by the telephonic seller as an  
21 agency, representative, or independent contractor, who attempts to  
22 solicit or solicits a sale on behalf of the telephonic seller.
- 23           (9) 'Secretary' means the Office of the Secretary of State.
- 24           (10) 'Telephone solicitation' or 'attempted telephone solicitation' means any  
25 telephonic communication designed to persuade any person to purchase  
26 goods or services, to enter a contest, or to contribute to a charity or a  
27 person represented to be a charity, regardless of whether the telephone  
28 call initiating the solicitation is placed by the (i) telephonic seller or (ii)  
29 a person responding to any unsolicited notice or notices sent or provided  
30 by or on behalf of the seller, which notice or notices represents to the  
31 recipient that he or she has won a gift or prize, that the recipient may  
32 obtain or qualify for credit by contacting the seller, or that the seller has  
33 buyers interested in purchasing the recipient's property.
- 34           (11) 'Telephonic seller' or 'seller' means a person who, directly or through  
35 salespersons, causes a telephone solicitation or attempted telephone  
36 solicitation to occur. 'Telephonic seller' and 'seller' does not include any  
37 of the following:
- 38           a. A person who is offering or selling a registered security and is  
39 licensed to sell such security in North Carolina.
- 40           b. Any person conducting sales or solicitations on behalf of a  
41 licensee of the North Carolina Utilities Commission or the  
42 Federal Communications Commission.

- 1           c.     Any insurance agent or broker who is properly licensed by the  
2           Department of Insurance and who is soliciting within the scope  
3           of the agent's or broker's license or any employee or independent  
4           contractor of an insurance company licensed by the Department  
5           of Insurance conducting sales or solicitations on behalf of that  
6           company.
- 7           d.     Any federally chartered bank or savings institution or any bank  
8           or savings institution properly licensed by the State or subject to  
9           federal regulating authorities.
- 10          e.     Any organization already accorded section 501(c)(3) nonprofit  
11          status under the Internal Revenue Code, any 'charitable solicitor'  
12          properly licensed under Article 2 of Chapter 131F of the General  
13          Statutes, or any person exempt under G.S. 131F-3 from Chapter  
14          131F of the General Statutes.
- 15          f.     A person who periodically issues and delivers catalogs to  
16          potential purchasers and the catalog:
- 17            1.     Includes a written description or illustration and the sales  
18            price of each item offered for sale;
- 19            2.     Includes at least 24 full pages of written material or  
20            illustrations;
- 21            3.     Is distributed in more than one state; and
- 22            4.     Has an annual circulation of not less than 250,000  
23            customers.
- 24          g.     A person engaging in a commercial telephone solicitation where  
25          the solicitation is an isolated transaction and not done in the  
26          course of a pattern of repeated transactions of a like nature.
- 27          h.     A person primarily soliciting the sale of a newspaper of general  
28          circulation, a publisher of a magazine or other periodical of  
29          general circulation, or an agent of such a publisher acting  
30          pursuant to a written agency agreement.
- 31          i.     A person soliciting the sale of services provided by a cable  
32          television system operating under the authority of a local  
33          franchise.
- 34          j.     Any passenger airline licensed by the Federal Aviation  
35          Administration.
- 36          k.     Any person holding a real estate broker's or sales agent's license  
37          under Chapter 93A of the General Statutes and who is soliciting  
38          within the scope of the broker's or agent's license.
- 39          l.     Any person soliciting a transaction regulated by the Commodities  
40          Futures Trading Commission, provided the person is registered  
41          or temporarily licensed by the Commodities Futures Trading  
42          Commission under the Commodity Exchange Act, 7 U.S.C. § 1  
43          et seq.

- 1           m.    Any person soliciting a purchase from a business, provided the  
2           person soliciting makes reasonable efforts to ensure that the  
3           person solicited has actual authority to bind the business to a  
4           purchase agreement.
- 5           n.    A foreign corporation which has for the preceding 12 months  
6           held and maintained a certificate of authority to do business in  
7           this State pursuant to Article 15 of Chapter 55 of the General  
8           Statutes and which only does business in this State using the  
9           name set forth in the certificate of authority.
- 10          o.    An issuer or a subsidiary of an issuer that has a class of securities  
11          which is subject to section 12 of the Securities Exchange Act of  
12          1934 (15 U.S.C. section 781) and which is either registered or  
13          exempt from registration under paragraph (A), paragraph (B),  
14          paragraph (C), paragraph (E), paragraph (F), paragraph (G), or  
15          paragraph (H) of subsection (g)(2) of that section.
- 16          p.    A person soliciting the sale of food, seeds, or plants when a sale  
17          does not involve an amount in excess of one hundred dollars  
18          (\$100.00) directed to a single address.
- 19          q.    A person soliciting:  
20            1.    Without intent to complete or obtain provisional  
21            acceptance of a sale during the telephone solicitation;  
22            2.    Who does not make the major sales presentation during  
23            the telephone solicitation but arranges for the major sales  
24            presentation to be made at a later face-to-face meeting  
25            between the salesperson and the purchaser; and  
26            3.    Who does not cause an individual to go to the prospective  
27            purchaser to collect payment for the purchase or to deliver  
28            any item purchased directly following the telephone  
29            solicitation; or  
30            4.    Who offers to send the purchaser descriptive literature and  
31            does not require payment prior to the purchaser's review  
32            of the descriptive literature.
- 33          r.    A person soliciting the purchase of contracts for the maintenance  
34          or repair of items previously purchased from the person making  
35          the solicitation or on whose behalf the solicitation is made.
- 36          s.    A book, video, or record club or contractual plan or arrangement:  
37            1.    Under which the seller provides the consumer with a form  
38            with which the consumer can instruct the seller not to ship  
39            the offered merchandise.  
40            2.    Which is regulated by the Federal Trade Commission  
41            trade regulation concerning 'use of negative option plans  
42            by sellers in commerce'.

- 1                   3.     Which provides for the sale of books, records, or videos  
2                   which are not covered under paragraphs 1. or 2. of this  
3                   sub-subdivision, including continuity plans, subscription  
4                   arrangements, standing order arrangements, supplements,  
5                   and series arrangements under which the seller  
6                   periodically ships merchandise to a consumer who has  
7                   consented in advance to receive such merchandise on a  
8                   periodic basis.
- 9                   t.     A person who for at least two years has been operating under the  
10                  same name as that used in connection with its telemarketing  
11                  operations and retail establishment in North Carolina where  
12                  consumer goods are displayed and offered for sale on a  
13                  continuing basis if a majority of the person's business involves  
14                  the buyers obtaining services or products at the person's retail  
15                  establishment.
- 16                  u.     A person:
- 17                    1.     Who provides telephone solicitation services under  
18                    contract to sellers;
- 19                    2.     Who has been operating continuously for at least three  
20                    years under the same business name; and
- 21                    3.     For whom at least seventy-five percent (75%) of the  
22                    person's contracts are performed on behalf of other  
23                    persons exempt under this section.
- 24                  v.     A person soliciting political contributions in accordance with  
25                  Article 22A of Chapter 163 of the General Statutes.

26     **"§ 66-252. Registration of telephonic sellers.**

27           (a)     Not less than 10 days before commencing telephone solicitations in this State,  
28     a telephonic seller shall register with the Secretary by filing the information required in  
29     G.S. 66-253 and paying a filing fee of one hundred dollars (\$100.00). A telephonic seller  
30     is doing business in this State if it solicits or attempts to solicit prospective purchasers  
31     from locations in this State or solicits or attempts to solicit prospective purchasers who  
32     are located in this State.

33           (b)     The information required in G.S. 66-253 shall be submitted on a form provided  
34     by the Secretary and shall contain the notarized signatures of each principal of the  
35     telephonic seller.

36           (c)     Registration of a telephonic seller shall be valid for one year from the effective  
37     date thereof and may be annually renewed by making the filing required in G.S. 66-253  
38     and paying the filing fee of one hundred dollars (\$100.00).

39           (d)     Whenever, prior to expiration of a seller's annual registration, there is a  
40     material change in the information required by G.S. 66-253, the seller shall, within 10  
41     days after the material change, file an addendum with the Secretary updating the  
42     information.

43     **"§ 66-253. Filing information.**

1 (a) Each filing submitted to the Secretary shall contain all of the following  
2 information:

- 3 (1) The name or names, including any assumed names, under which the  
4 telephonic seller is doing or intends to do business in this State.
- 5 (2) The telephonic seller's business form and place of organization and, if  
6 the seller is a corporation, copies of its articles of incorporation and  
7 bylaws and amendments thereto, or if a partnership, a copy of the  
8 partnership agreement.
- 9 (3) Complete street address of the telephonic seller's principal place of  
10 business.
- 11 (4) The complete street address of each location from which telephone  
12 solicitations are placed by the telephonic seller.
- 13 (5) A listing of all telephone numbers to be used by the telephonic seller,  
14 including area codes, and the complete street address of the business  
15 premises served by each number.
- 16 (6) The name and title of each principal.
- 17 (7) The complete street address of the residence, the date of birth, and the  
18 social security number of each principal.
- 19 (8) The true name, street address, date of birth, and the social security  
20 number of each room operator, together with the room operator's full  
21 employment history during the preceding two years.
- 22 (9) The name and address of all banks or savings institutions where the  
23 telephonic seller maintains deposit accounts.
- 24 (10) The name and address of each long-distance telephone carrier used by  
25 the telephonic seller.
- 26 (11) A summary of each civil or criminal proceeding brought against the  
27 telephonic seller, any of its principals, or any of its room operators  
28 during the preceding five years by federal, State, or local officials  
29 relating to telephonic sales practices of each. The summary shall  
30 include the date each action was commenced, the criminal or civil  
31 charges alleged, the case caption, the court file number, the court venue,  
32 and the disposition of the action. For purposes of this section, a 'civil  
33 proceeding includes' means assurances of voluntary compliance,  
34 assurances of discontinuance, consent judgments, and similar  
35 agreements executed with federal, State, or local officials.

36 (b) For purposes of this section, 'street address' does not include a private mail  
37 service address.

38 **"§ 66-254. Bond requirement; prizes and gifts.**

39 (a) At least 10 days before the commencement of any promotion offering any gift  
40 or prize with an actual or represented market value of five hundred dollars (\$500.00) or  
41 more, the telephonic seller shall notify the Secretary in writing of the details of the  
42 promotion, fully describing the nature and number of all gifts or prizes and their current  
43 market value, the seller's rules and regulations governing the promotion, and the date the

1 gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent  
2 with notifying the Secretary under this subsection, the telephonic seller shall post a bond  
3 with the Secretary for the market value or the represented value, whichever is greater, of  
4 all gifts or prizes represented as available under the promotion. The bond must be issued  
5 by a surety company authorized to do business in this State. The bond shall be in favor  
6 of the State of North Carolina for the benefit of any person entitled to receive a gift or  
7 prize under the promotion who did not receive it within 30 days of the specified date of  
8 award. The amount recoverable by any person under the bond shall not exceed the  
9 market value, the represented value of the gift or prize, or the amount of any  
10 consideration or contribution paid by that person in response to the telephone solicitation,  
11 whichever is greatest.

12 (b) Within 45 days after the specified date of the award of the gift or prize, the  
13 seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were  
14 awarded. The writing shall include the name, address, and telephone number of all  
15 persons receiving awards or prizes. The bond shall be maintained until the Secretary  
16 confirms the awards.

17 (c) The Attorney General, on behalf of any injured purchaser, or any purchaser  
18 who is injured by the bankruptcy of the telephonic seller or its breach of any agreement  
19 entered into in its capacity as a telephonic seller, may initiate a civil action to recover  
20 against the bond.

21 **"§ 66-255. Calls made to minors.**

22 A telephonic seller must inquire as to whether the prospective purchaser it is  
23 contacting is under 18 years of age. If the prospective purchaser is under 18 years of age,  
24 the telephonic seller must discontinue the call immediately.

25 **"§ 66-256. Offers of gifts or prizes.**

26 (a) It shall be unlawful for any telephonic seller to make a telephone solicitation or  
27 attempted telephone solicitation involving any gift or prize when the solicitation or  
28 attempted solicitation:

29 (1) Requests or directs the consumer to further the transaction by calling a  
30 900 number or a pay per call number.

31 (2) Requests or directs the consumer to send any payment or make a  
32 donation in order to collect the gift or prize.

33 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

34 (b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a  
35 gift or prize in connection with the bona fide sale of a product or service.

36 **"§ 66-257. Penalties.**

37 (a) Any violation of this Article shall constitute an unfair and deceptive trade  
38 practice in violation of G.S. 75-1.1.

39 (b) In an action by the Attorney General against a telephonic seller for violation of  
40 this Article, or for any other act or practice by a telephonic seller constituting a violation  
41 of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars  
42 (\$25,000) for each violation involving North Carolina purchasers or prospective  
43 purchasers who are 65 years of age or older.

1       (c) The remedies and penalties available under this section shall be supplemental  
2 to others available under the law, both civil and criminal.

3       (d) Compliance with this Article does not satisfy or substitute for any other  
4 requirements for license, registration, or conduct imposed by law.

5       (e) In any civil proceeding alleging a violation of this Article, the burden of  
6 proving an exemption or an exception from a definition is upon the person claiming it,  
7 and in any criminal proceeding alleging a violation of this Article, the burden of  
8 producing evidence to support a defense based upon an exemption or an exception from a  
9 definition is upon the person claiming it."

10       Sec. 2. Chapter 14 of Article 52 of the General Statutes is amended by adding  
11 a new section to read:

12 **"§ 14-401.15. Telephone sales recovery services.**

13       (a) Except as provided in subsection (c) of this section, it shall be unlawful for any  
14 person or firm to solicit or require payment of money or other consideration in exchange  
15 for recovering or attempting to recover:

16           (1) Money or other valuable consideration previously tendered to a  
17 telephonic seller, as defined in G.S. 66-251; or

18           (2) Prizes, awards, or other things of value that the telephonic seller  
19 represented would be delivered.

20       (b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any  
21 violation involving actual collection of money or other consideration from a customer  
22 shall be punishable as a Class H felony.

23       (c) This section does not apply to attorneys licensed to practice law in this State, to  
24 persons licensed by the North Carolina Private Protective Services Board, or to any  
25 collection agent properly holding a permit issued by the Department of Insurance to do  
26 business in this State."

27       Sec. 3. G.S. 75-30(a) reads as rewritten:

28       "(a) No person may make an unsolicited telephone call by the use of an automatic  
29 dialing and recorded message player unless:

30           (1) Such calling person is a charitable, civic, political or opinion polling  
31 ~~organization~~ organization, a public or private school communicating with  
32 the parents or guardians of children enrolled in the school, a public  
33 utility or affiliate of a public utility, or a radio station, television station  
34 or broadcast rating service conducting a public opinion poll required by  
35 law; and

36           (2) Such calling person clearly identifies the nature of the call and the name  
37 and address of the calling organization."

38       Sec. 4. G.S. 75-30 is amended by adding a new subsection to read:

39       "(b1) Except as otherwise provided in this subsection, no unsolicited telephone call  
40 may be made by the use of an automatic dialing and recorded message player prior to  
41 9:00 a.m. or after 6:00 p.m. eastern standard time or daylight saving time, whichever is in  
42 effect. This subsection shall not apply to a public utility, or the public utility's affiliates,  
43 or to a public or private school communicating with the parents or guardians of children



1 enrolled in the school. The provisions of this subsection shall not apply to a charitable,  
2 civic, political, or opinion polling organization, or a radio station, television station, or  
3 broadcast rating service conducting a public opinion poll."

4         Sec. 5. The provisions of this act are severable. If any portion of this act is  
5 declared unconstitutional or the application of this act to any person or circumstances is  
6 held invalid, the remaining portions and their applicability to any person or circumstances  
7 are valid.

8         Sec. 6. Section 2 of this act becomes effective January 1, 1996, and applies to  
9 offenses committed on or after that date. The remaining sections of this act become  
10 effective October 1, 1995, and apply to violations occurring on or after that date.