

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

**S**

**1**

**SENATE BILL 935\***

Short Title: Telephone Solicitation.

(Public)

---

Sponsors: Senators Carter; Albertson, Clodfelter, Dannelly, and Rand.

---

Referred to: Commerce.

---

April 14, 1999

**A BILL TO BE ENTITLED**

**AN ACT TO ALLOW CONSUMERS TO BE PLACED ON A LIST OF  
RESIDENTIAL TELEPHONE SUBSCRIBERS WHO OBJECT TO TELEPHONE  
SOLICITATIONS AND PROHIBITING TELEPHONE SOLICITORS FROM  
MAKING CALLS TO PERSONS ON THAT LIST.**

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) The use of the telephone to market goods and services to consumers is increasingly pervasive now due to the availability of cost-effective telemarketing techniques;
- (2) Thousands of businesses actively telemarket goods and services to business and residential customers;
- (3) Some citizens of this State are concerned at the proliferation of calls to their homes from telemarketers;
- (4) The rights to privacy and commercial speech can be balanced in a way that accomodates both the privacy of individuals and legitimate telemarketing practices; and
- (5) The public interest requires the establishment of a mechanism under which the citizens of this State can decide whether or not they wish to receive telemarketing calls in their homes.

1 Section 2. Chapter 75 of the General Statutes is amended by adding a new  
2 section to read:

3 **"§ 75-30.1. Restrictions on telephone solicitations.**

4 (a) For purposes of this section:

5 (1) "Residential telephone subscriber" means a person who subscribes to  
6 residential telephone service from a local exchange company and uses  
7 that service primarily for residential purposes, or the persons living or  
8 residing with that person.

9 (2) "Telephone solicitation" means a voice communication over a telephone  
10 line for the purpose of soliciting or encouraging the purchase or rental  
11 of, or investment in, property, goods, or services, or for the purpose of  
12 obtaining information that will or may be used for that purpose, but  
13 does not include such communications:

14 a. In response to an express request of the person called;

15 b. Primarily in connection with an existing debt or contract, the  
16 payment or performance of which has not been completed at the  
17 time of the call;

18 c. To any person with whom the telephone solicitor, or an affiliate  
19 or related entity of the telephone solicitor, has a prior or existing  
20 business relationship; or

21 d. Made directly by organizations described in section 501(c)(3) of  
22 the Internal Revenue Code.

23 (3) "Telephone solicitor" means any legal entity doing business in this State  
24 that makes or causes to be made telephone solicitations.

25 (b) The Secretary of State shall establish a list of residential telephone subscribers  
26 who object to receiving telephone solicitations. Any residential telephone subscriber  
27 who desires to be placed on this list may notify the Secretary of State, in writing, and be  
28 placed on the list upon receipt by the Secretary of State of a fee of ten dollars (\$10.00) for  
29 the initial listing charge. The list shall be renewed annually by the Secretary of State for  
30 each subscriber upon receipt of a renewal notice and a renewal fee of five dollars (\$5.00).  
31 The Secretary of State shall issue this list of subscribers upon receipt of initial  
32 subscriptions and shall update the list at least quarterly. The Secretary of State shall  
33 provide the list to telephone solicitors upon request for a fee of ten dollars (\$10.00), in  
34 either printed or electronic format as requested by the telephone solicitor. The Secretary  
35 of State shall provide consumers who request that their names be placed on the list with  
36 information about the Telephone Preference Service offered by the Direct Marketing  
37 Association, including the way to participate in the program, and the benefits to be  
38 derived from participating.

39 In the event that the Federal Communications Commission establishes a single  
40 national database of the telephone numbers of subscribers who object to receiving  
41 telephone solicitations pursuant to the provisions of 47 U.S.C. § 227(c)(3), the Secretary  
42 of State shall include the portion of that national database covering subscribers in North  
43 Carolina within the list established under this section.

1       (c) No telephone solicitor shall make or cause to be made any telephone  
2 solicitation to any telephone number on the list published by the Secretary of State  
3 pursuant to subsection (b) of this section after the expiration of 90 days from the date that  
4 the number is initially included in the list. Any person who offers for sale any consumer  
5 information that includes telephone numbers, other than persons providing directory  
6 assistance and telephone directories or lists made available through tariffs approved by  
7 the North Carolina Utilities Commission, shall screen and exclude the numbers appearing  
8 on the current listing published by the Secretary of State pursuant to subsection (b) of this  
9 section within 90 days of each publication and shall certify compliance to purchasers of  
10 the information.

11       (d) Any telephone solicitor who makes a telephone solicitation to the telephone  
12 line of any residential telephone subscriber in this State shall, at the beginning of the call,  
13 state clearly the identity of the person or entity initiating the call.

14       (e) No telephone solicitor who makes a telephone solicitation to the telephone line  
15 of a residential telephone subscriber in this State shall knowingly use any method to  
16 block or otherwise circumvent that subscriber's use of a caller identification service. A  
17 telephone solicitor who makes a telephone solicitation to the telephone line of a  
18 residential subscriber through the use of a private branch exchange (PBX) that does not  
19 transmit caller identification information shall not be in violation of this subsection. No  
20 provider of telephone caller identification services shall be held liable for violations of  
21 this subsection committed by other persons or entities.

22       (f) The Attorney General shall investigate any complaints received alleging  
23 violations of subsections (c) through (e) of this section. If, after investigating a  
24 complaint, the Attorney General finds that there has been a violation of subsections (c)  
25 through (e) of this section, the Attorney General may bring an action to impose a civil  
26 penalty and to seek any other appropriate relief, including equitable relief to restrain the  
27 violation. The civil penalty imposed shall not exceed five hundred dollars (\$500.00) per  
28 violation. In determining the amount of the civil penalty, or whether it is appropriate to  
29 waive the civil penalty for a first violation, the court shall consider all relevant  
30 circumstances, including the extent of harm caused by the conduct constituting a  
31 violation, whether the defendant can demonstrate that the defendant has established and  
32 implemented reasonable practices and procedures and exercised due care to prevent  
33 telephone solicitations constituting violations, and whether the defendant has taken any  
34 other corrective action.

35       (g) A telephone solicitor complies with this section by participating in the Telephone  
36 Preference Service of the Direct Marketing Association and making written certification  
37 to the Secretary of State of its participation in that service. However, a telephone  
38 solicitor who elects the alternative method of compliance set forth in this subsection shall  
39 be deemed to have violated subsections (c) through (e) of this section by taking any of the  
40 actions prohibited by those subsections with respect to a residential telephone subscriber  
41 whose name has been placed on the list maintained under the Telephone Preference  
42 Service of the Direct Marketing Association.

1       (h) It shall be a defense in any action or proceeding brought under subsection (f) of  
2 this section that the defendant has established and implemented, with due care,  
3 reasonable practices and procedures to effectively prevent telephone solicitations in  
4 violation of this section."

5               Section 3. Chapter 62 of the General Statutes is amended by adding a new  
6 section to read:

7 **"§ 62-53. Notification of opportunity to object to telephone solicitation.**

8       The Commission shall require each local exchange company to notify all persons who  
9 subscribe to residential service from that company of the opportunity to be placed on the  
10 list of persons who object to receiving telephone solicitations established in G.S. 75-30.1.  
11 The notification shall be made by the later of March 1, 2000, or the time the person  
12 initially subscribes to residential service from the local exchange company."

13               Section 4. This act becomes effective October 1, 1999.