

## **Chapter 75.**

### **Monopolies, Trusts and Consumer Protection.**

#### Article 1.

##### General Provisions.

#### **§ 75-1. Combinations in restraint of trade illegal.**

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class H felony. (1913, c. 41, s. 1; C.S., s. 2559; 1981, c. 764, s. 2.)

#### **§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.**

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

(c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.

(d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim. (1969, c. 833; 1977, c. 747, ss. 1, 2.)

#### **§ 75-2. Any restraint in violation of common law included.**

Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of G.S. 75-1. (1913, c. 41, s. 2; C.S., s. 2560.)

#### **§ 75-2.1. Monopolizing and attempting to monopolize prohibited.**

It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina. (1995 (Reg. Sess., 1996), c. 550, s. 1.)

#### **§ 75-3. Repealed by Session Laws 1961, c. 1153.**

#### **§ 75-4. Contracts to be in writing.**

No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the State of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the State of North Carolina, or at any point in the State of North Carolina, which

contract is now illegal, or which contract is made illegal by any other section of this Chapter. (1913, c. 41, s. 4; C.S., s. 2562.)

**§§ 75-5 through 75-7: Repealed by Session Laws 1995 (Regular Session, 1996), c. 550, s. 2.**

**§ 75-8. Continuous violations separate offenses.**

Where the things prohibited in this Chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense. (1913, c. 41, s. 7; C.S., s. 2566.)

**§ 75-9. Duty of Attorney General to investigate.**

The Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations or persons doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations or persons in North Carolina doing business in violation of law; and all other corporations of every character engaged in this State in the business of transporting property or passengers, or transmitting messages, and all other public service corporations of any kind or nature whatever which are doing business in the State for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the Utilities Commission or Commission of Banks [Commissioner of Banks] is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted. (1913, c. 41, s. 8; C.S., s. 2567; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1969, c. 833.)

**§ 75-10. Power to compel examination.**

In performing the duty required in G.S. 75-9, the Attorney General shall have power, at any and all times, to require the officers, agents or employees of any such corporation or business, and all other persons having knowledge with respect to the matters and affairs of such corporations or businesses, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations or businesses, or which are in any way connected with the business thereof; and the Attorney General is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any justice or judge of the appellate or superior court divisions, after five days' notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge. (1913, c. 41, s. 9; C.S., s. 2568; 1969, c. 44, s. 56; c. 833.)

**§ 75-11. Person examined exempt from prosecution.**

No natural person examined, as provided in G.S. 75-10, shall be subject to indictment, criminal prosecution, criminal punishment or criminal penalty by reason of or on account of anything disclosed by him upon examination, and full immunity from criminal prosecution and criminal punishment by reason of or on account of anything so disclosed is hereby extended to all natural

persons so examined. The immunity herein granted shall not apply to civil actions instituted pursuant to this Chapter. (1913, c. 41, s. 9; C.S., s. 2569; 1969, c. 833.)

**§ 75-12. Refusal to furnish information; false swearing.**

Any corporation or person unlawfully refusing or willfully neglecting to furnish the information required by this Chapter, when it is demanded as herein provided, shall be guilty of a Class 3 misdemeanor and only fined not less than one thousand dollars (\$1,000): Provided, that if any corporation or person shall in writing notify the Attorney General that it objects to the time or place designated by him for the examination or inspection provided for in this Chapter, it shall be his duty to apply to a justice or judge of the appellate or superior court division, who shall fix an appropriate time and place for such examination or inspection, and such corporation or person shall, in such event, be guilty under this section only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this Chapter. False swearing by any person examined under the provisions of this Chapter is a Class I felony. (1913, c. 41, s. 10; C.S., s. 2570; 1969, c. 44, s. 57; c. 833; 1993, c. 539, ss. 560, 1284; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 75-13. Criminal prosecution; district attorneys to assist; expenses.**

The Attorney General in carrying out the provisions of this Chapter shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this Chapter has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this Chapter, and shall have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the district attorneys in the State, who shall, upon being required to do so by the Attorney General, send bills of indictment and assist him in the performance of the duties of his office. (1913, c. 41, s. 13; C.S., s. 2571; 1973, c. 47, s. 2.)

**§ 75-14. Action to obtain mandatory order.**

If it shall become necessary to do so, the Attorney General may prosecute civil actions in the name of the State on relation of the Attorney General to obtain a mandatory order, including (but not limited to) permanent or temporary injunctions and temporary restraining orders, to carry out the provisions of this Chapter, and the venue shall be in any county as selected by the Attorney General. (1913, c. 41, s. 11; C.S., s. 2572; 1969, c. 833.)

**§ 75-15. Actions prosecuted by Attorney General.**

It shall be the duty of the Attorney General, upon his ascertaining that the laws have been violated by any trust or public service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the State, or any officer or department thereof, as provided by law, or in the name of the State on relation of the Attorney General, and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it. (1913, c. 41, s. 12; C.S., s. 2573.)

**§ 75-15.1. Restoration of property and cancellation of contract.**

In any suit instituted by the Attorney General to enjoin a practice alleged to violate G.S. 75-1.1, the presiding judge may, upon a final determination of the cause, order the restoration of any

moneys or property and the cancellation of any contract obtained by any defendant as a result of such violation. (1973, c. 614, s. 2.)

**§ 75-15.2. Civil penalty.**

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars (\$5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1977, c. 747, s. 3; 1983, c. 721, s. 1; 1998-215, s. 99.)

**§ 75-16. Civil action by person injured; treble damages.**

If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C.S., s. 2574; 1969, c. 833; 1977, c. 707.)

**§ 75-16.1. Attorney fee.**

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

- (1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (2) The party instituting the action knew, or should have known, the action was frivolous and malicious. (1973, c. 614, s. 1; 1983, c. 417, s. 2.)

**§ 75-16.2. Limitation of actions.**

Any civil action brought under this Chapter to enforce the provisions thereof shall be barred unless commenced within four years after the cause of action accrues.

When any civil or criminal proceeding shall be commenced by the Attorney General or by any of the district attorneys of the State to prevent, restrain or punish a violation of Chapter 75, the running of the period of limitation with respect to every private right of action arising under Chapter 75 and based in whole or in part on any matter complained of in said proceeding shall be

suspended during the pendency thereof and for one year thereafter; provided that when the running of the period of limitation with respect to a cause of action arising under Chapter 75 shall be suspended hereunder, any action to enforce such cause of action shall be barred unless commenced either within the period of suspension or within four years after the cause of action accrued, whichever is later. (1979, c. 169, s. 1.)

**§ 75-17. Lender may not require borrower to deal with particular insurer.**

No person, firm, or corporation engaged in lending money on the security of real or personal property, and no trustee, director, officer, agent, employee, affiliate, or associate, of any such person, firm, or corporation, shall either directly or indirectly require or impose as a condition precedent

- (1) To financing the purchase of such property, or
- (2) To lending money upon the security of a mortgage, deed of trust, or other security instrument, or
- (3) For the renewal or extension of any such loan, mortgage, or deed of trust, or
- (4) For the performance of any other act in connection therewith,

that such person, firm or corporation

- a. For whom such purchase is to be financed, or
- b. To whom the money is to be loaned, or
- c. For whom such extension, renewal, or other act is to be granted,

negotiate, procure, or otherwise obtain any policy of insurance or renewal, or extension thereof, covering such property, or a security interest therein, by or through a particular insurance company, agent, broker, or other person so specified or otherwise designated in any manner by the lenders, or their agents or employees or affiliated or related companies. (1969, c. 1032, s. 1.)

**§ 75-18. Lender may require nondiscriminatory approval of insurer.**

Although the lender and other persons enumerated in G.S. 75-17 may not specify or designate as a condition precedent a particular insurance company or agent, those persons, firms, or corporations engaged in lending money may approve the insurer selected by the borrower on a reasonable, nondiscriminatory basis, related to the solvency of the company and the type and provisions of policy coverage. (1969, c. 1032, s. 2.)

**§ 75-19. Violators subject to fine and injunction.**

The superior court, on complaint by any person that G.S. 75-17 or G.S. 75-18 is being violated, may issue an injunction against such violation and may fine all persons, firms, corporations, and officers, directors, trustees, agents, employees, or affiliates of such up to two thousand dollars (\$2,000) per person for such violation. In event of a disregard of such injunction or other court order, the superior court shall hold such parties in contempt and prescribe such further penalties as the court in its discretion shall so determine. The clear proceeds of fines provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1969, c. 1032, s. 3; 1998-215, s. 100.)

**§ 75-20. Unsolicited checks to secure loans.**

(a) No person, firm, or corporation engaged in lending money shall deliver to a person an unsolicited check made out to the recipient that upon cashing, obligates the recipient to repay the amount of the check plus interest and fees, unless all of the following requirements are satisfied:

- (1) In addition to any disclosures otherwise required by law, the solicitation for loans using a facsimile or negotiable check shall disclose both of the following on the face of the check:
  - a. In at least 10-point boldface type a statement in substantially the following form: "THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."
  - b. In at least 6-point type a statement in substantially the following form: "By endorsing the back of this check, you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check."
- (2) Notification of the loan agreement being activated by endorsement must be conspicuously printed in at least 6-point type on the back of the check in substantially the following form: "By endorsing this check, you agree to repay this loan according to the terms of the attached loan agreement."
- (3) The check is attached to a disclosure statement that is detachable and that contains in at least 10-point boldface type a statement conspicuously placed in substantially the following form: "This is a loan solicitation. If you cash this check, you are agreeing to borrow the sum of \$\_\_\_\_ at the \_\_\_\_ % rate of interest for a period of \_\_\_\_ months. Your monthly payments will be \$\_\_\_\_ for \_\_\_\_ months. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees). All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms carefully before you cash this check. Cashing this check constitutes a loan transaction. You may cancel this loan by returning the amount of the check to the lender within 10 days of the date this check is cashed. You may prepay this loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE SIGNING."
- (4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within 10 days of the date the check is cashed. The loan is deemed refunded when a refund of the amount of the check is received by the lender within 10 days of the date the check is cashed.
  - (b) In the event an unsolicited check is stolen or otherwise obtained by someone other than the intended payee, and the check is cashed fraudulently or without authorization from the payee, the lender who issued the check shall provide the following recourse to the intended payee:
    - (1) The lender, upon receipt of notification that intended payee did not negotiate the check, shall promptly provide the intended payee with a statement or affidavit to be signed by the intended payee confirming that the intended payee did not deposit or cash the check or receive the proceeds of the check. The lender shall also provide the intended payee with the name and telephone number of a contact person designated by the lender to provide assistance to intended payees who have been victimized by the fraudulent negotiation of unsolicited checks. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.
    - (2) The intended payee shall be directed to complete and return the confirmation statement to the lender or an affiliate of the lender.

- (3) Within 30 days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine whether the check was fraudulently negotiated. Absent evidence to the contrary, the presumption shall be that the confirmation statement submitted by the intended payee is accurate. The lender shall notify the intended payee in writing of the results of the investigation. If it is determined that the check was cashed fraudulently, the lender shall take immediate action to remove the intended payee from all liability on the account and to request all credit reporting agencies to remove references to the transaction, if any, from the consumer's credit reports.
- (4) A consumer who is an intended payee of an unsolicited check under this section may bring a civil action to recover damages, costs, and attorney fees for any violation of this subsection.

(c) The provisions of this section shall not apply to a transaction in which a consumer has submitted an application or requested an extension of credit from the lender before receiving the check or instrument, or where the lender has an existing account relationship with the consumer.

(d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article. (2001-391, s. 1.)

**§§ 75-21 through 75-26. Reserved for future codification purposes.**

**§ 75-27. Unsolicited merchandise.**

Unless otherwise agreed, where unsolicited goods are delivered to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender. (1969, c. 70, s. 1; 1977, c. 498.)

**§ 75-28. Unauthorized disclosure of tax information; violation a Class 1 misdemeanor.**

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for any person, firm or corporation employed or engaged to prepare, or who or which prepares or undertakes to prepare, for any other person or taxpayer any tax form, report or return, to disclose, divulge or make known in any manner or use for any purpose or in any manner other than in the preparation of such form, report or return, without the express consent of the taxpayer or person for whom the form or return is prepared, the name or address of the taxpayer or such other person, the amount of income, income tax or other taxes, or any other information shown on or included in such form, report or return, or any information which may be or may have been furnished by the taxpayer or such other person to the preparer of such form, report or return or to the person, firm or corporation so employed or engaged.

Nothing in this section shall be construed to prohibit the examination of any person, books, papers, records or other data in accordance with the authority provided in G.S. 105-258.

Any person, firm or corporation, or any officer, agent, clerk, employee, or former officer or employee, of any firm or corporation engaged or formerly engaged in the preparation of tax forms, reports or returns for others, whether acting for himself or as agent for such corporation, who or which shall violate the provisions of this section shall be guilty of a Class 1 misdemeanor. (1971, c. 231; 1993, c. 485, s. 32, c. 539, s. 561; 1994, Ex. Sess., c. 14, s. 43, c. 24, s. 14(c).)

**§ 75-29. Unfair and deceptive trade names; use of term "wholesale" in advertising, etc.**

(a) No person, firm or corporation shall advertise the sale of its merchandise using the term "wholesale" with regard to its sale prices, except as such word may appear in the company or firm name, unless such advertised sale or sales is, or are, to a customer or customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as required by G.S. 105-164.25 or unless the wholesale price is established by an independent agency not engaged in the manufacture, distribution or sale of such merchandise.

No person, firm or corporation shall utilize in any commercial transaction a company or firm name which contains the word "wholesale" unless such person, firm or corporation is engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of determining whether sales are made principally at wholesale or retail, all sales to employees of any such person, firm or corporation, all sales to organizations subject to refunds pursuant to G.S. 105-164.14 through G.S. 105-164.14B and all exempt sales pursuant to G.S. 105-164.13 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business shall be considered sales at wholesale for the purposes of this section.

(b) The violation of any provision of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(c) This section shall not apply to the sales of farm products, fertilizers, insecticides, pesticides or petroleum. (1973, c. 1392, ss. 1, 2; 2010-166, s. 3.1.)

**§§ 75-30, 75-30.1:** Repealed by Session Laws 2003-411, ss. 1, 2, effective October 1, 2003, and applicable to telephone solicitations made on or after that date.

**§ 75-31. Work-at-home solicitations.**

No person, firm, association, or corporation shall advertise, represent, or imply that any person can earn money by stuffing envelopes, addressing envelopes, mailing circulars, clipping newspaper and magazine articles, or performing similar work, unless the person, firm, association or corporation making the advertisement or representation:

- (1) Actually pays a wage, salary, set fee, or commission to others for performing the represented tasks; and
- (2) At no time requires the person who will perform the represented tasks to purchase from or make a deposit to the solicitor on any instructional booklets, brochures, kits, programs or similar information materials, mailing lists, directories, memberships in cooperative associations, or other items or services. (1979, c. 724, s. 1.)

**§ 75-32. Representation of winning a prize.**

No person, firm or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for the sale or lease of any goods, property, or service, represent that any other person, firm or corporation has won anything of value or is the winner of any contest, unless all of the following conditions are met:

- (1) The recipient of the prize must have been selected by a method in which no more than ten percent (10%) of the names considered are selected as winners of any prize;



- (2) The recipient of the prize must be given the prize without any obligation; and
- (3) The prize must be delivered to the recipient at no expense to him, within 10 days of the representation.

The use of any language that has a tendency to lead a reasonable person to believe he has won a contest or anything of value, including but not limited to "congratulations," and "you are entitled to receive," shall be considered a representation of the type governed by this section. (1979, c. 879, s. 1.)

**§ 75-33. Representation of eligibility to win a prize.**

(a) No person, firm or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for sale or lease of any goods, property or service, represent that another person, firm, and/or corporation has a chance to receive any prize or item of value without clearly disclosing on whose behalf the contest or promotion is conducted, and all material conditions which a participant must meet. Additionally, each of the following must be clearly and prominently disclosed immediately adjacent to the description of the item or prize to which it relates:

- (1) The actual retail value of each item or prize (the price at which substantial sales of the item were made in the area within the last 90 days, or if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf the contest or promotion is conducted);
- (2) The actual number of each item or prize to be awarded;
- (3) The odds of receiving each item or prize.

It shall be unlawful to make any representation of the type governed by this section, if it has already been determined which items will be given to the person to whom the representation is made.

(b) The provisions of this section shall not apply where (i) all that is asked of participants is that they complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or call in their entry by telephone, and (ii) at no time are participants asked to listen to a sales presentation.

(c) To the extent that representations of the type governed by this section are broadcast by radio or television or carried by cable-television, the required disclosures need not be made, if the required information is made available to interested persons on request without charge or cost to them.

(d) Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section. (1979, c. 879, s. 1; 1981, c. 806; 1983, c. 721, s. 3.)

**§ 75-34. Representation of being specially selected.**

No person, firm or corporation engaged in commerce shall represent that any other person, firm or corporation has been specially selected in connection with the sale or lease or solicitation for sale or lease of any goods, property, or service, unless all of the following conditions are met:

- (1) The selection process is designed to reach a particular type or particular types of person, firm or corporation;

- (2) The selection process uses a source other than telephone directories, city directories, tax listings, voter registration records, purchased mailing lists, or similar common sources of names;
- (3) No more than ten percent (10%) of those considered are selected.

The use of any language that has a tendency to lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected" and "you have been chosen," shall be considered a representation of the type governed by this selection [section]. (1979, c. 879, s. 1.)

**§ 75-35. Simulation of checks and invoices.**

No person engaged in commerce shall in any manner issue any writing which simulates or resembles: (i) a negotiable instrument; or (ii) an invoice, unless the intended recipient has actually contracted for goods, property, or services for which the issuer seeks proper payment. (1979, c. 879, s. 1.)

**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy. Nothing in this section shall prevent any maintenance contract that warrants the performance of equipment under the contract from requiring the use of new or specified toner or inkjet cartridges in the equipment under contract. (2003-386, s. 1.)

**§ 75-37. Declaration of State public policy.**

It is the public policy of this State to protect its citizens from price gouging during states of disaster. The State also realizes the difficulty in regulating prices while not defeating the ability of the market in goods and services from bringing supply back in balance with demand and not defeating the function of price in allocating scarce resources. (2003-412, s. 1.)

**§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions.**

(a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

- (1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the triggering event.
- (2) The price charged by the seller exceeds the seller's average price in the preceding 60 days before the triggering event. If the seller did not sell or rent

or offer to sell or rent the goods or service in question prior to the time of the triggering event, the price at which the goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

- (3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.

(d) A "triggering event" means the declaration of a state of emergency pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period. (2003-412, s. 1; 2006-245, s. 1; 2006-259, s. 41; 2012-12, s. 2(o).)

### **§ 75-39. Conditioning services on electric service prohibited.**

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance, or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay, or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1. (2005-150, s. 1.)

**§ 75-40. Deadline for mailing consumer rebates.**

(a) Any person, firm, or corporation engaged in commerce that offers a rebate shall provide the rebate to the consumer within 60 days of the date of receipt by the person, firm, or corporation of the completed rebate form submitted by the consumer. If the rebate claim is submitted electronically, the rebate shall be provided to the consumer within 60 days of the date upon which the claim is submitted. However, a person, firm, or corporation shall not be responsible for delays in providing rebates to consumers caused by conditions beyond their reasonable control including, but not limited to, natural disasters, wars, terrorist acts, and states of emergency. As used in this section, the following apply:

- (1) The term "rebate" means the return of a portion of the purchase price paid by a consumer for goods or services that is conditioned upon the consumer submitting a request for redemption after satisfying the terms and conditions of the offer.
- (2) The term "rebate" shall not include any refund that may be given to a consumer in accordance with a company's frequent shopper customer rewards program.
- (3) The term "consumer" does not apply to those individuals who are eligible for rebates as result of their eligibility under Medicaid.

(b) Rebate forms shall include the telephone number or e-mail address of the person, firm, or corporation that is offering the rebate. Rebate forms shall also include all of the following conspicuously printed on the rebate form:

- (1) The terms of the rebate.
- (2) Requirements for a valid claim, including any additional information to be submitted with the rebate form.
- (3) The expiration date of the rebate offer, if applicable.

(c) A rebate offer shall provide a period of at least 30 days during which the consumer may submit the rebate form. The time period allowed for submission shall begin as soon as reasonably possible, but no later than six months, after the date of purchase.

(d) Nothing in this section shall apply to a rebate offer of five dollars (\$5.00) or less.

(e) Nothing in this section shall be construed to create liability on the part of a retailer for a rebate offered by a manufacturer or liability on the part of a manufacturer for a rebate offered by a retailer.

(f) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article. (2007-170, s. 1.)

**§ 75-41. Contracts with automatic renewal clauses.**

(a) Any person engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract, where the contract automatically renews unless the consumer cancels the contract, shall do all of the following:

- (1) Disclose the automatic renewal clause clearly and conspicuously in the contract or contract offer.

- (2) Disclose clearly and conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery of products or services.
- (3) For any automatic renewal exceeding 60 days, provide written notice to the consumer by personal delivery, electronic mail, or first-class mail, at least 15 days but no earlier than 45 days before the date the contract is to be automatically renewed, stating the date on which the contract is scheduled to automatically renew and notifying the consumer that the contract will automatically renew unless it is cancelled by the consumer prior to that date.
- (4) If the terms of the contract will change upon the automatic renewal of the contract, disclose the changing terms of the contract clearly and conspicuously on the notification in at least 12 point type and in bold print.

(b) Repealed by Session Laws 2016-113, s. 16(a), effective July 26, 2016, and applicable to contracts entered into on or after that date.

(c) A person that fails to comply with the requirements of this section is in violation of this section unless the person demonstrates that all of the following are its routine business practice:

- (1) The person has established and implemented written procedures to comply with this section and enforces compliance with the procedures.
- (2) Any failure to comply with this section is the result of error.
- (3) Where an error has caused the failure to comply with this section, the person provides a full refund or credit for all amounts billed to or paid by the consumer from the date of the renewal until the date of the termination of the contract, or the date of the subsequent notice of renewal, whichever occurs first.

(d) This section does not apply to insurers licensed under Chapter 58 of the General Statutes, or to banks, trust companies, savings and loan associations, savings banks, or credit unions licensed or organized under the laws of any state or the United States, or any foreign bank maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or affiliate thereof, nor does this section apply to any entity subject to regulation by the Federal Communications Commission under Title 47 of the United States Code or by the North Carolina Utilities Commission under Chapter 62 of the General Statutes, or to any entity doing business directly or through an affiliate pursuant to a franchise, license, certificate, or other authorization issued by a political subdivision of the State or an agency thereof.

(d1) This section does not apply to real estate professionals licensed under Chapter 93A of the General Statutes.

(e) A violation of this section renders the automatic renewal clause void and unenforceable. (2007-288, s. 1; 2007-507, s. 17; 2016-113, s. 16(a); 2018-114, s. 4(a).)

**§ 75-42. Deceptive representation of geographical location in telephone directory, print advertisement, or on the Internet.**

(a) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in the listing of the business in a telephone directory, other directory assistance database, or on the Internet. A person misrepresents the geographical location of the business under this subsection if the name of the business, or any other part of the listing, indicates that the business is located in a geographical area and all of the following apply:

- (1) The business is not located within the geographical area indicated.
- (2) The listing fails to identify the municipality and state of the business's geographical location.

- (3) A telephone call to the local telephone number listed in the telephone directory, directory assistance database, or on the Internet routinely is forwarded or transferred to a location that is outside the calling area covered by the telephone directory or directory assistance database in which the number is listed, or outside the local calling area for the local telephone number posted on the Internet.

(b) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in print advertisement. A person misrepresents the geographical location of the business under this subsection if a fictitious business name, an assumed business name, or any other part of the advertisement is listed in print advertisement and all of the following apply:

- (1) The name or any other part of the advertisement misrepresents the geographic location of the supplier.
- (2) A telephone call to the local telephone number listed on the print advertisement routinely is forwarded or transferred to a location that is outside the calling area in which the number is listed.

(c) A person who misrepresents the geographical location of the business under subsection (a) or subsection (b) of this section is not in violation of this section if a conspicuous notice in the listing or in the print advertisement states the municipality and state in which the business is located and identifies this as the location of the business.

(d) For purposes of this section, a newspaper publisher, magazine or other publication, telephone directory or directory assistance service, its officer or agent, the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to listing phone numbers or to advertising who publishes, broadcasts, or otherwise disseminates a directory, a database, or print advertisement in good faith without knowledge of its false, deceptive, or misleading character is immune from liability under this section unless the directory service, the database service, or the advertiser is the same person as the person, firm, or corporation that has committed the act prohibited by this section.

(e) A violation of this section is an unfair trade practice under G.S. 75-1.1. (2007-545, s. 1; 2009-199, s. 1.)

#### **§ 75-43. Solicitation of a fee for copy of recorded documents.**

(a) Any person, firm, or corporation soliciting a fee in exchange for providing a copy of a record available at the register of deeds office shall state on the top of the document used for the solicitation, in conspicuous type, all of the following:

- (1) That the solicitation is not from a State agency or a local unit of government.
- (2) That no action is legally required by the person being solicited.
- (3) The fee for obtaining a copy of the record directly from the register of deeds that has custody of the record.
- (4) The information necessary to contact the register of deeds that has custody of the record.
- (5) The name and physical address of the person, firm, or corporation soliciting the fee.

(b) A document used for a solicitation governed by this section shall not contain deadline dates or be in a form or contain language designed to make the document appear to be issued by a

State agency or local unit of government or to appear to impose a legal duty on the person being solicited.

(c) A person, firm, or corporation soliciting a fee in exchange for providing a copy of a record may not charge a fee that is greater than four times the amount the register of deeds with custody of the record would charge for a copy of the same record.

(d) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions under this Article.

(e) For the purposes of this section, the term "solicit" means to advertise or market to a nonbusiness entity with whom the solicitor has no preexisting business relationship. (2018-80, s. 3.1.)

**§ 75-44. Reserved for future codification purposes.**

**§ 75-45. Reserved for future codification purposes.**

**§ 75-46. Reserved for future codification purposes.**

**§ 75-47. Reserved for future codification purposes.**

**§ 75-48. Reserved for future codification purposes.**

**§ 75-49. Reserved for future codification purposes.**