

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 253
Commerce Committee Substitute Adopted 4/8/97
House Committee Substitute Favorable 7/9/97
House Committee Substitute #2 Favorable 8/4/97

Short Title: Telephone Consumer Protection/AB.

(Public)

Sponsors:

Referred to:

February 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
3 NORTH CAROLINA, AND TO MAKE THE OFFERING OF TELEPHONE SALES
4 RECOVERY SERVICES A CRIMINAL OFFENSE.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 33.**

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

10 **"§ 66-260. Definitions.**

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

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

14 (2) 'Item' means any good or any service. 'Item' includes coupon books,
15 vouchers, or certificates that are to be used with businesses other than
16 the seller's business.

- 1 (3) 'Owner' means a person who owns or controls ten percent (10%) or
2 more of the equity of, or otherwise has a claim to ten percent (10%) or
3 more of the net income of, a telephonic seller.
- 4 (4) 'Person' includes any individual, firm, association, corporation,
5 partnership, joint venture, or any other business entity.
- 6 (5) 'Principal' means an owner, an executive officer of a corporation, a
7 general partner of a partnership, a sole proprietor of a sole
8 proprietorship, a trustee of a trust, or any other individual with similar
9 supervisory functions with respect to any person.
- 10 (6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to
11 become obligated to a telephonic seller or to make any donation or gift
12 to any person represented by the telephonic seller.
- 13 (7) 'Room operator' means any principal, employee, or agent responsible for
14 the operational management and supervision of facilities from which
15 telephonic sales calls are made or received.
- 16 (8) 'Salesperson' means any individual employed, appointed, or authorized
17 by a telephonic seller, whether referred to by the telephonic seller as an
18 agency, representative, or independent contractor, who attempts to
19 solicit or solicits a sale on behalf of the telephonic seller.
- 20 (9) 'Secretary' means the Office of the Secretary of State.
- 21 (10) 'Telephone solicitation' or 'attempted telephone solicitation' means any
22 telephonic communication designed to persuade any person to purchase
23 goods or services, to enter a contest, or to contribute to a charity or a
24 person represented to be a charity, regardless of whether the telephone
25 call initiating the solicitation is placed by the (i) telephonic seller or (ii)
26 a person responding to any unsolicited notice or notices sent or provided
27 by or on behalf of the seller, which notice or notices represent to the
28 recipient that he or she has won a gift or prize, that the recipient may
29 obtain or qualify for credit by contacting the seller, or that the seller has
30 buyers interested in purchasing the recipient's property.
- 31 (11) 'Telephonic seller' or 'seller' means a person who, directly or through
32 salespersons, causes a telephone solicitation or attempted telephone
33 solicitation to occur. 'Telephonic seller' and 'seller' do not include any
34 of the following:
- 35 a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a
36 person excluded from the definition of 'dealer' by that provision:
37 a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment
38 adviser' within the meaning of G.S. 78C-2(1) or a person
39 excluded from the definition of 'investment adviser' by that
40 provision; or an 'investment adviser representative' within the
41 meaning of G.S. 78C-2(3); provided that such persons shall be
42 excluded from the terms 'telephonic seller' and 'seller' only with
43 respect to activities regulated by Chapters 78A and 78C.

- 1 b. Any person conducting sales or solicitations on behalf of a
2 licensee of the Federal Communications Commission or holder
3 of a franchise or certificate of public convenience and necessity
4 from the North Carolina Utilities Commission.
- 5 c. Any insurance agent or broker who is properly licensed by the
6 Department of Insurance and who is soliciting within the scope
7 of the agent's or broker's license or any employee or independent
8 contractor of an insurance company licensed by the Department
9 of Insurance conducting sales or solicitations on behalf of that
10 company.
- 11 d. Any federally chartered bank, savings institution, or credit union
12 or any bank, savings institution, or credit union properly licensed
13 by the State or subject to federal regulating authorities.
- 14 e. Any organization that is exempt under section 501(c)(3) of the
15 Internal Revenue Code of 1986 or any successor section, or that
16 is organized exclusively for one or more of the purposes
17 specified in section 501(c)(3) of the Internal Revenue Code of
18 1986 or any successor section and that upon dissolution shall
19 distribute its assets to an entity that is exempt under section
20 501(c)(3) of the Internal Revenue Code of 1986 or any successor
21 section, the United States, or a state; any 'charitable solicitor'
22 properly licensed under Article 2 of Chapter 131F of the General
23 Statutes, or any person exempt from Chapter 131F of the General
24 Statutes under G.S. 131F-3.
- 25 f. A person who periodically issues and delivers catalogs to
26 potential purchasers and the catalog:
- 27 1. Includes a written description or illustration and the sales
28 price of each item offered for sale;
- 29 2. Includes at least 24 full pages of written material or
30 illustrations;
- 31 3. Is distributed in more than one state; and
- 32 4. Has an annual circulation of not less than 250,000
33 customers.
- 34 g. A person engaging in a commercial telephone solicitation where
35 the solicitation is an isolated transaction and not done in the
36 course of a pattern of repeated transactions of a like nature.
- 37 h. A person primarily soliciting the sale of a newspaper of general
38 circulation, a publisher of a magazine or other periodical of
39 general circulation, or an agent of such a publisher acting
40 pursuant to a written agency agreement.
- 41 i. A person soliciting the sale of services provided by a cable
42 television system operating under the authority of a local
43 franchise.

- 1 j. Any passenger airline licensed by the Federal Aviation
2 Administration.
- 3 k. Any person holding a real estate broker's or sales agent's license
4 under Chapter 93A of the General Statutes and who is soliciting
5 within the scope of the broker's or agent's license.
- 6 l. Any person soliciting a transaction regulated by the Commodities
7 Futures Trading Commission, provided the person is registered
8 or temporarily licensed by the Commodities Futures Trading
9 Commission under the Commodity Exchange Act, 7 U.S.C. § 1,
10 et seq.
- 11 m. Any person soliciting a purchase from a business, provided the
12 person soliciting makes reasonable efforts to ensure that the
13 person solicited has actual authority to bind the business to a
14 purchase agreement.
- 15 n. A foreign corporation, limited liability company, or limited
16 partnership that has obtained and maintained a certificate of
17 authority to transact business or conduct affairs in this State
18 pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of
19 the General Statutes and that only transacts business or conducts
20 affairs in this State using the name set forth in the certificate of
21 authority.
- 22 o. An issuer or a subsidiary of an issuer that has a class of securities
23 which is subject to section 12 of the Securities Exchange Act of
24 1934 (15 U.S.C. § 781) and which is either registered or exempt
25 from registration under paragraph (A), paragraph (B), paragraph
26 (C), paragraph (E), paragraph (F), paragraph (G), or paragraph
27 (H) of subsection (g)(2) of that section.
- 28 p. A person soliciting the sale of food, seeds, or plants when a sale
29 does not involve an amount in excess of one hundred dollars
30 (\$100.00) directed to a single address.
- 31 q. A person soliciting:
- 32 1. Without intent to complete or obtain provisional
33 acceptance of a sale during the telephone solicitation;
- 34 2. Who does not make the major sales presentation during
35 the telephone solicitation but arranges for the major sales
36 presentation to be made at a later face-to-face meeting
37 between the salesperson and the purchaser;
- 38 3. Who does not cause an individual to go to the prospective
39 purchaser to collect payment for the purchase or to deliver
40 any item purchased directly following the telephone
41 solicitation; or

- 1 4. Who offers to send the purchaser descriptive literature and
2 does not require payment prior to the purchaser's review
3 of the descriptive literature.
- 4 r. A person soliciting the purchase of contracts for the maintenance
5 or repair of items previously purchased from the person making
6 the solicitation or on whose behalf the solicitation is made.
- 7 s. A book, video, recording, or multimedia club or contractual plan
8 or arrangement:
- 9 1. Under which the seller provides the consumer with a form
10 with which the consumer can instruct the seller not to ship
11 the offered merchandise.
- 12 2. Which is regulated by the Federal Trade Commission
13 trade regulation concerning 'use of negative option plans
14 by sellers in commerce'.
- 15 3. Which provides for the sale of books, recordings,
16 multimedia products or goods, or videos which are not
17 covered under paragraphs 1. or 2. of this sub-subdivision,
18 including continuity plans, subscription arrangements,
19 standing order arrangements, supplements, and series
20 arrangements under which the seller periodically ships
21 merchandise to a consumer who has consented in advance
22 to receive such merchandise on a periodic basis.
- 23 t. A person who for at least two years has been operating under the
24 same name as that used in connection with its telemarketing
25 operations and retail establishment in North Carolina where
26 consumer goods are displayed and offered for sale on a
27 continuing basis if a majority of the person's business involves
28 the buyers obtaining services or products at the person's retail
29 establishment.
- 30 u. A person:
- 31 1. Who provides telephone solicitation services under
32 contract to sellers;
- 33 2. Who has been operating continuously for at least three
34 years under the same business name; and
- 35 3. For whom at least seventy-five percent (75%) of the
36 person's contracts are performed on behalf of other
37 persons exempt under this section.
- 38 v. A person soliciting political contributions in accordance with
39 Article 22A of Chapter 163 of the General Statutes.
- 40 w. The seller of a 'business opportunity' as defined in G.S. 66-94,
41 while engaged in activities subject to regulation under Article 19
42 of Chapter 66 of the General Statutes, provided that such seller
43 has complied with the provisions of G.S. 66-97.

- 1 x. A 'loan broker' as defined in G.S. 66-106, while engaged in
2 activities subject to regulation under Article 20 of Chapter 66 of
3 the General Statutes, provided that such loan broker has
4 complied with the provisions of G.S. 66-109.
5 y. A 'membership camping operator' as defined in G.S. 66-232(10)
6 or a 'salesperson' as defined in G.S. 66-232(16), while engaged in
7 activities subject to regulation under Article 31 of Chapter 66 of
8 the General Statutes, provided that such persons have complied
9 with the provisions of G.S. 66-234 and G.S. 66-237, as
10 applicable.

11 **"§ 66-261. Registration of telephonic sellers.**

12 (a) Not less than 10 days before commencing telephone solicitations in this State,
13 a telephonic seller shall register with the Secretary by filing the information required in
14 G.S. 66-262 and paying a filing fee of one hundred dollars (\$100.00). A telephonic seller
15 is doing business in this State if it solicits or attempts to solicit prospective purchasers
16 from locations in this State or solicits or attempts to solicit prospective purchasers who
17 are located in this State.

18 (b) The information required in G.S. 66-262 shall be submitted on a form provided
19 by the Secretary and shall contain the notarized signatures of each principal of the
20 telephonic seller.

21 (c) Registration of a telephonic seller shall be valid for one year from the effective
22 date thereof and may be annually renewed by making the filing required in G.S. 66-262
23 and paying the filing fee of one hundred dollars (\$100.00). Registration shall not be
24 deemed effective unless all required information is provided and any deficiencies or
25 errors noted by the Secretary have been corrected to the satisfaction of the Secretary.

26 (d) Whenever, prior to expiration of a seller's annual registration, there is a change
27 in the information required by G.S. 66-262, the seller shall, within 10 days after the
28 change, file an addendum with the Secretary updating the information.

29 **"§ 66-262. Filing information.**

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

32 (1) The name or names, including any assumed names, under which the
33 telephonic seller is doing or intends to do business in this State.

34 (2) The telephonic seller's business form and place of organization and, if
35 the seller is a corporation, copies of its articles of incorporation and
36 bylaws and amendments thereto, or if a partnership, a copy of the
37 partnership agreement.

38 (3) Complete street address of the telephonic seller's principal place of
39 business.

40 (4) The complete street address of each location from which telephone
41 solicitations are placed by the telephonic seller.

- 1 (5) A listing of all telephone numbers to be used by the telephonic seller,
2 including area codes, and the complete street address of the business
3 premises served by each number.
- 4 (6) The name and title of each principal.
- 5 (7) The complete street address of the residence, the date of birth, and the
6 social security number of each principal.
- 7 (8) The true name, street address, date of birth, and the social security
8 number of each room operator, together with the room operator's full
9 employment history during the preceding two years.
- 10 (9) The name and address of all banks or savings institutions where the
11 telephonic seller maintains deposit accounts.
- 12 (10) The name and address of each long-distance telephone carrier used by
13 the telephonic seller.
- 14 (11) A summary of each civil or criminal proceeding brought against the
15 telephonic seller, any of its principals, or any of its room operators
16 during the preceding five years by federal, State, or local officials
17 relating to telephonic sales practices of each. The summary shall
18 include the date each action was commenced, the criminal or civil
19 charges alleged, the case caption, the court file number, the court venue,
20 and the disposition of the action. For purposes of this section, a 'civil
21 proceeding includes' means assurances of voluntary compliance,
22 assurances of discontinuance, consent judgments, and similar
23 agreements executed with federal, State, or local officials.

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

26 **"§ 66-263. Bond requirement; prizes and gifts.**

27 (a) At least 10 days before the commencement of any promotion offering any gift
28 or prize with an actual or represented market value of five hundred dollars (\$500.00) or
29 more, the telephonic seller shall notify the Secretary in writing of the details of the
30 promotion, fully describing the nature and number of all gifts or prizes and their current
31 market value, the seller's rules and regulations governing the promotion, and the date the
32 gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent
33 with notifying the Secretary under this subsection, the telephonic seller shall post a bond
34 with the Secretary for the market value or the represented value, whichever is greater, of
35 all gifts or prizes represented as available under the promotion. The bond must be issued
36 by a surety company authorized to do business in this State. The bond shall be in favor
37 of the State of North Carolina for the benefit of any person entitled to receive a gift or
38 prize under the promotion who did not receive it within 30 days of the specified date of
39 award. The amount recoverable by any person under the bond shall not exceed the
40 market value, the represented value of the gift or prize, or the amount of any
41 consideration or contribution paid by that person in response to the telephone solicitation,
42 whichever is greatest.

1 (b) Within 45 days after the specified date of the award of the gift or prize, the
2 seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were
3 awarded. The writing shall include the name, address, and telephone number of all
4 persons receiving awards or prizes. The bond shall be maintained until the Secretary
5 receives reliable proof that the gifts or prizes have been delivered to the intended
6 recipients.

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

11 **"§ 66-264. Calls made to minors.**

12 A telephonic seller must inquire as to whether the prospective purchaser it is
13 contacting is under 18 years of age. If the prospective purchaser purports to be under 18
14 years of age, the telephonic seller must discontinue the call immediately.

15 **"§ 66-265. Offers of gifts or prizes.**

16 (a) It shall be unlawful for any telephonic seller to make a telephone solicitation or
17 attempted telephone solicitation involving any gift or prize when the solicitation or
18 attempted solicitation:

19 (1) Requests or directs the consumer to further the transaction by calling a
20 900 number or a pay-per-call number.

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

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

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

26 **"§ 66-266. Penalties.**

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

29 (b) In an action by the Attorney General against a telephonic seller for violation of
30 this Article, or for any other act or practice by a telephonic seller constituting a violation
31 of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars
32 (\$25,000) for each violation involving North Carolina purchasers or prospective
33 purchasers who are 65 years of age or older.

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

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

38 (e) In any civil proceeding alleging a violation of this Article, the burden of
39 proving an exemption or an exception from a definition is upon the person claiming it,
40 and in any criminal proceeding alleging a violation of this Article, the burden of
41 producing evidence to support a defense based upon an exemption or an exception from a
42 definition is upon the person claiming it."

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

3 **"§ 14-401.15. Telephone sales recovery services.**

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

7 (1) Money or other valuable consideration previously tendered to a
8 telephonic seller, as defined in G.S. 66-260; or

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

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

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

18 Section 3. Section 2 of this act becomes effective January 1, 1998, and applies
19 to offenses committed on or after that date. The remaining sections of this act become
20 effective October 1, 1997, and apply to violations occurring on or after that date.