

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 253
Commerce Committee Substitute Adopted 4/8/97

Short Title: Telephone Consumer Protection/AB.

(Public)

Sponsors:

Referred to: Finance.

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.
17 (3) 'Owner' means a person who owns or controls ten percent (10%) or
18 more of the equity of, or otherwise has a claim to ten percent (10%) or
19 more of the net income of, a telephonic seller.

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

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

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

- 1 r. A person soliciting the purchase of contracts for the maintenance
2 or repair of items previously purchased from the person making
3 the solicitation or on whose behalf the solicitation is made.
- 4 s. A book, video, recording or multimedia club or contractual plan
5 or arrangement:
- 6 1. Under which the seller provides the consumer with a form
7 with which the consumer can instruct the seller not to ship
8 the offered merchandise.
- 9 2. Which is regulated by the Federal Trade Commission
10 trade regulation concerning 'use of negative option plans
11 by sellers in commerce'.
- 12 3. Which provides for the sale of books, recordings,
13 multimedia products or goods, or videos which are not
14 covered under paragraphs 1. or 2. of this sub-subdivision,
15 including continuity plans, subscription arrangements,
16 standing order arrangements, supplements, and series
17 arrangements under which the seller periodically ships
18 merchandise to a consumer who has consented in advance
19 to receive such merchandise on a periodic basis.
- 20 t. A person who for at least two years has been operating under the
21 same name as that used in connection with its telemarketing
22 operations and retail establishment in North Carolina where
23 consumer goods are displayed and offered for sale on a
24 continuing basis if a majority of the person's business involves
25 the buyers obtaining services or products at the person's retail
26 establishment.
- 27 u. A person:
- 28 1. Who provides telephone solicitation services under
29 contract to sellers;
- 30 2. Who has been operating continuously for at least three
31 years under the same business name; and
- 32 3. For whom at least seventy-five percent (75%) of the
33 person's contracts are performed on behalf of other
34 persons exempt under this section.
- 35 v. A person soliciting political contributions in accordance with
36 Article 22A of Chapter 163 of the General Statutes.
- 37 w. The seller of a 'business opportunity' as defined in G.S. 66-94,
38 while engaged in activities subject to regulation under Article 19
39 of Chapter 66 of the General Statutes, provided that such seller
40 has complied with the provisions of G.S. 66-97.
- 41 x. A 'loan broker' as defined in G.S. 66-106, while engaged in
42 activities subject to regulation under Article 20 of Chapter 66 of

1 the General Statutes, provided that such loan broker has
2 complied with the provisions of G.S. 66-109.

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

9 **"§ 66-261. Registration of telephonic sellers.**

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

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

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

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

27 **"§ 66-262. Filing information.**

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

- 30 (1) The name or names, including any assumed names, under which the
31 telephonic seller is doing or intends to do business in this State.
32 (2) The telephonic seller's business form and place of organization and, if
33 the seller is a corporation, copies of its articles of incorporation and
34 bylaws and amendments thereto, or if a partnership, a copy of the
35 partnership agreement.
36 (3) Complete street address of the telephonic seller's principal place of
37 business.
38 (4) The complete street address of each location from which telephone
39 solicitations are placed by the telephonic seller.
40 (5) A listing of all telephone numbers to be used by the telephonic seller,
41 including area codes, and the complete street address of the business
42 premises served by each number.
43 (6) The name and title of each principal.

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

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

22 **"§ 66-263. Bond requirement; prizes and gifts.**

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

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

1 receives reliable proof that the gifts or prizes have been delivered to the intended
2 recipients.

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

8 **"§ 66-264. Calls made to minors.**

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

12 **"§ 66-265. Offers of gifts or prizes.**

13 (a) It shall be unlawful for any telephonic seller to make a telephone solicitation or
14 attempted telephone solicitation involving any gift or prize when the solicitation or
15 attempted solicitation:

16 (1) Requests or directs the consumer to further the transaction by calling a
17 900 number or a pay per call number.

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

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

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

23 **"§ 66-266. Penalties.**

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

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

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

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

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

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

42 **"§ 14-401.15. Telephone sales recovery services.**

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

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

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

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

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

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