Article 33.

Telephonic Seller Registration and Bond Requirement.

§ 66-260. Definitions.

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

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

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

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

(4) "Person" includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) "Principal" means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) "Purchaser" or "prospective purchaser" means a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.

(7) "Room operator" means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.

(8) "Salesperson" means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.

(9) "Secretary" means the Office of the Secretary of State.

(10) "Telephone solicitation" or "attempted telephone solicitation" means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice or notices sent or provided by or on behalf of the seller, which notice or notices represent to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.

(11) "Telephonic seller" or "seller" means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. "Telephonic seller" and "seller" do not include any of the following:

a. A securities "dealer" within the meaning of G.S. 78A-2(2) or a person excluded from the definition of "dealer" by that provision: a "salesman" within the meaning of G.S. 78A-2(9); an "investment adviser" within the meaning of G.S. 78C-2(1) or a person excluded from the definition of "investment adviser" by that provision; or an "investment adviser representative" within the meaning of G.S. 78C-2(3); provided that such

persons shall be excluded from the terms "telephonic seller" and "seller" only with respect to activities regulated by Chapters 78A and 78C.

b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.

c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.

d. Any federally chartered bank, savings institution, or credit union or any bank, savings institution, or credit union properly licensed by the State or subject to federal regulating authorities.

e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any "charitable solicitor" properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.

f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:
    1. Includes a written description or illustration and the sales price of each item offered for sale;
    2. Includes at least 24 full pages of written material or illustrations;
    3. Is distributed in more than one state; and
    4. Has an annual circulation of not less than 250,000 customers.

g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.

h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.

i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.

j. Any passenger airline licensed by the Federal Aviation Administration.

k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.

l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or

temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.

m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.

n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57D or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.

o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.

q. A person soliciting:
   1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;
   2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;
   3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or
   4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.

r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

s. A book, video, recording, or multimedia club or contractual plan or arrangement:
   1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.
   2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".
   3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under

paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.

u. A person:
   1. Who provides telephone solicitation services under contract to sellers;
   2. Who has been operating continuously for at least three years under the same business name; and
   3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.

v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.

w. The seller of a "business opportunity" as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided that such seller has complied with the provisions of G.S. 66-97.

x. A "loan broker" as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.

y. A "membership camping operator" as defined in G.S. 66-232(10) or a "salesperson" as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and 66-237, as applicable. (1997-482, s. 1; 2013-157, s. 17; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 66-261. Registration of telephonic sellers.

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

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

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

(d) Whenever, prior to expiration of a seller's annual registration, there is a change in the information required by G.S. 66-262, the seller shall, within 10 days after the change, file an addendum with the Secretary updating the information. (1997-482, s. 1.)

§ 66-262. Filing information.

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

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

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

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

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

(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.

(6) The name and title of each principal.

(7) The complete street address of the residence, the date of birth, and the social security number of each principal.

(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.

(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.

(10) The name and address of each long-distance telephone carrier used by the telephonic seller.

(11) A summary of each civil or criminal proceeding brought against the telephonic seller, any of its principals, or any of its room operators during the preceding five years by federal, State, or local officials relating to telephonic sales practices of each. The summary shall include the date each action was commenced, the criminal or civil charges alleged, the case caption, the court file number, the court venue, and the disposition of the action. For purposes of this section, a "civil proceeding includes" means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.

(b) For purposes of this section, "street address" does not include a private mail service address. (1997-482, s. 1; 2016-100, s. 9.)

§ 66-263. Bond requirement; prizes and gifts.

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

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

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the telephonic seller or its breach of any agreement entered into in its capacity as a telephonic seller, may initiate a civil action to recover against the bond. (1997-482, s. 1.)

§ 66-264. Calls made to minors.

A telephonic seller must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser purports to be under 18 years of age, the telephonic seller must discontinue the call immediately. (1997-482, s. 1.)

§ 66-265. Offers of gifts or prizes.

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

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

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

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

(b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a gift or prize in connection with the bona fide sale of a product or service. (1997-482, s. 1.)

§ 66-266. Penalties.

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

(b) In an action by the Attorney General against a telephonic seller for violation of this Article, or for any other act or practice by a telephonic seller constituting a violation of G.S. 75-1.1,

the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

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

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

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it. (1997-482, s. 1.)

§§ 66-267 through 66-269. Reserved for future codification purposes.