

## **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 Repealed by Session Laws 1961, c. 1153.**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.**

## Article 2.

### Prohibited Acts by Debt Collectors.

#### **§ 75-50. Definitions.**

The following words and terms as used in this Article shall be construed as follows:

- (1) "Consumer" means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes.
- (2) "Debt" means any obligation owed or due or alleged to be owed or due from a consumer.
- (3) "Debt collector" means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 70, Chapter 58 of the General Statutes.
- (4) "Location information" means information about a consumer's place of abode, any telephone numbers used by the consumer, and information about the consumer's place of employment. (1977, c. 747, s. 4; 1989, c. 770, s. 15; 2015-177, s. 1.)

#### **§ 75-51. Threats and coercion.**

No debt collector shall collect or attempt to collect any debt alleged to be due and owing from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts include, but are not limited to, the following:

- (1) Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person.
- (2) Falsely accusing or threatening to accuse any person of fraud or any crime, or of any conduct that would tend to cause disgrace, contempt or ridicule.
- (3) Making or threatening to make false accusations to another person, including any credit reporting agency, that a consumer has not paid, or has willfully refused to pay a just debt.
- (4) Threatening to sell or assign, or to refer to another for collection, the debt of the consumer with an attending representation that the result of such sale, assignment or reference would be that the consumer would lose any defense to the debt or would be subjected to harsh, vindictive, or abusive collection attempts.
- (5) Representing that nonpayment of an alleged debt may result in the arrest of any person.
- (6) Representing that nonpayment of an alleged debt may result in the seizure, garnishment, attachment, or sale of any property or wages unless such action is in fact contemplated by the debt collector and permitted by law.



- (7) Threatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made.
- (8) Threatening to take any action not permitted by law. (1977, c. 747, s. 4.)

**§ 75-52. Harassment.**

No debt collector shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt. Such unfair acts include, but are not limited to, the following:

- (1) Using profane or obscene language, or language that would ordinarily abuse the typical hearer or reader.
- (2) Placing collect telephone calls or sending collect telegrams unless the caller fully identifies himself and the company he represents.
- (3) Causing a telephone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person.
- (4) Placing telephone calls or attempting to communicate with any person, contrary to his instructions, at his place of employment, unless the debt collector does not have a telephone number where the consumer can be reached during the consumer's nonworking hours. (1977, c. 747, s. 4.)

**§ 75-53. Unreasonable publication.**

No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

- (1) Any communication with any person other than the debtor or his attorney, except:
  - a. To designated third parties with the written permission of the debtor or his attorney.
  - b. To persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information.
  - c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such parent. If the debt collector has a good faith belief that the exception set forth in this sub-subdivision applies to a particular communication, that communication shall not be a violation of this sub-subdivision.
  - d. For the sole purpose of obtaining location information about the debtor, if no indication of indebtedness is made. A debt collector making a communication under this sub-subdivision shall:

1. Identify himself or herself, state that he or she is attempting to confirm or correct location information about the debtor, and, only if expressly requested to do so, identify his or her employer.
  2. Not state that the debtor owes a debt.
  3. Not communicate with any particular person more than once per week or a total of three times during any 30-day period unless requested to do so by the person.
- e. Through legal process.
- (2) Using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the debt collector except as otherwise provided in this Article.
  - (3) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes and the publication and distribution of otherwise permissible "stop lists" to the point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through legal process. (1977, c. 747, s. 4; 1979, c. 910; 2015-177, s. 2.)

**§ 75-54. Deceptive representation.**

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- (1) Communicating with the consumer other than in the name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.
- (2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt, unless the communication is made to a third-party pursuant to G.S. 75-53 for the purpose of obtaining location information about the debtor.
- (3) Falsely representing that the debt collector has in his possession information or something of value for the consumer.
- (4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collector is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions.
- (5) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source.

- (6) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges.
- (7) Falsely representing the status or true nature of the services rendered by the debt collector or his business.
- (8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1). (1977, c. 747, s. 4; 2009-302, s. 5; 2015-177, s. 3.)

**§ 75-55. Unconscionable means.**

No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (2) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge. Nothing in this section shall be construed to prohibit the collection of filing fees, service of process fees, or other court costs actually incurred. The collection of such fees is not a violation of this Article or of Article 15 of Chapter 53 of the General Statutes.
- (3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.
- (4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim. (1977, c. 747, s. 4; 2015-177, s. 4.)

**§ 75-56. Application.**

(a) The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article.

(b) Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in an amount equal to the sum of (i) any actual damage sustained by such person as a result of such failure and (ii)

civil penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than four thousand dollars (\$4,000) for each violation.

(c) The remedies provided by this section shall be cumulative and in addition to remedies otherwise available. Any punitive damages assessed against a debt collector shall not be reduced by the amount of the civil penalty assessed against such debt collector pursuant to subsection (d) of this section.

(d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of four thousand dollars (\$4,000) shall not be imposed.

(e) The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1977, c. 747, s. 4; 1983, c. 417, s. 1; 1985 (Reg. Sess., 1986), c. 802; 1991, c. 68, s. 1; 1998-215, s. 101; 2009-573, s. 9.)

**§§ 75-57 through 75-59. Reserved for future codification purposes.**

Article 2A.

Identity Theft Protection Act.

**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act". (2005-414, s. 1.)

**§ 75-61. Definitions.**

The following definitions apply in this Article:

- (1) "Business". – A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.
- (2) "Consumer". – An individual.
- (3) "Consumer report" or "credit report". – Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:
  - a. Credit to be used primarily for personal, family, or household purposes.

- b. Employment purposes.
  - c. Any other purpose authorized under 15 U.S.C. § 1681(b).
- (4) "Consumer reporting agency". – Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
  - (5) "Credit card". – Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).
  - (6) "Debit card". – Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
  - (7) "Disposal" includes the following:
    - a. The discarding or abandonment of records containing personal information.
    - b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.
  - (8) "Encryption". – The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.
  - (9) "Person". – Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.
  - (10) "Personal information". – A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address, and telephone number, and does not include information made lawfully available to the general public from federal, state, or local government records.
  - (11) "Proper identification". – Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.

- (11a) "Protected consumer". – An individual (i) who is under the age of 16 at the time a request for the placement of a security freeze is made pursuant to G.S. 75-63.1 or (ii) who is incapacitated or for whom a guardian or guardian ad litem has been appointed.
- (11b) "Protected consumer security freeze". – A security freeze placed on a protected consumer's credit report or on a protected consumer's file pursuant to G.S. 75-63.1.
- (11c) "Protected consumer's file". – A record that (i) identifies a protected consumer, (ii) is created by a consumer reporting agency solely for the purpose of complying with the requirements of G.S. 75-63.1, and (iii) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
- (12) "Records". – Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.
- (13) "Redaction". – The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.
- (13a) "Representative". – A person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.
- (14) "Security breach". – An incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.
- (15) "Security freeze". – Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.
- (16) "Sufficient proof of authority". – Either of the following:
  - a. A certified or official copy of the protected consumer's birth certificate, if the representative is a parent of the protected consumer.

- b. Documentation that shows that a representative has authority to act on behalf of a protected consumer, including the following:
    - 1. An order issued by a court of law.
    - 2. A valid power of attorney.
    - 3. A written, notarized statement signed by the person that expressly describes the authority of the representative to act on behalf of a protected consumer.
- (17) "Sufficient proof of identification". – Information or documentation that identifies a protected consumer or representative, including the following:
- a. A Social Security number or a copy of a Social Security card issued by the Social Security Administration.
  - b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.
  - c. A copy of a drivers license, an identification card issued by the Division of Motor Vehicles, or any other government-issued identification.
  - d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas service, that shows a name and home address. (2005-414, s. 1; 2015-193, s. 1.)

**§ 75-62. Social security number protection.**

(a) Except as provided in subsection (b) of this section, a business may not do any of the following:

- (1) Intentionally communicate or otherwise make available to the general public an individual's social security number.
- (2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.
- (3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.
- (4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.
- (5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.
- (6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or in the exercise of reasonable diligence would have

reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number.

(b) Subsection (a) of this section shall not apply in the following instances:

- (1) When a social security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.
- (2) To the collection, use, or release of a social security number for internal verification or administrative purposes.
- (3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.
- (4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.
- (5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.
- (6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.
- (7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented.

(d) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1.)

### **§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request to a consumer reporting agency in accordance with this subsection. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report, provided that the



consumer reporting agency does not state or otherwise imply to the third party that the consumer's security freeze reflects a negative credit score, history, report, or rating. A consumer reporting agency shall place a security freeze on a consumer's credit report if the consumer requests a security freeze by any of the following methods:

- (1) First-class mail.
- (2) Telephone call.
- (3) Secure Web site or secure electronic mail connection.

(a1) A nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., that receives a request from a consumer residing in this State to place a security freeze on the consumer's file, shall provide a notice communicating to the consumer that the freeze is only placed with the consumer reporting agency to which the consumer directed the request. The notice shall provide to the consumer the Web site, postal address, and telephone number of the other nationwide consumer reporting agencies and of the North Carolina Attorney General's Office and shall inform the consumer that he or she may use this information to contact other nationwide consumer reporting agencies to make security freeze requests and obtain information on combating identity theft. No part of the notice to the consumer shall be used to make a solicitation for other goods and services.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than three business days after receiving a written request from the consumer by mail. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 24 hours of receiving the request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within three business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time, or to a specific party, or for permanently lifting the freeze.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time or by a specific party while a freeze is in place, the consumer shall contact the consumer reporting agency by mail, phone, or electronically, request that the freeze be lifted or lifted with respect to a specific party, and provide all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.
- (3) The proper information regarding the third party who is authorized to receive the consumer credit report or the time period for which the report shall be available to users of the credit report.

(e) Repealed by Session Laws 2009-355, s. 1, effective October 1, 2009.

(f) A consumer reporting agency that receives a request by mail from a consumer to lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request. A consumer

reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(g) A consumer reporting agency shall remove, temporarily lift, or lift with respect to a specific third party a freeze placed on a consumer's credit report only in the following cases:

- (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.
- (2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

- (1) The consumer fails to meet the requirements of subsection (d) or (j) of this section.
- (2) The consumer reporting agency's ability to remove, place, temporarily lift, or lift with respect to a specific party the security freeze is prevented by any of the following:
  - a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.
  - b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.
  - c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
  - d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
  - e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.
  - f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
  - g. Receipt of a request outside of normal business hours.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. A consumer reporting agency shall remove a security freeze within 15 minutes of receiving an electronic request for removal from the consumer or within three business days of receiving a written or telephonic request for removal from the consumer, who provides all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

- (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.
- (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.
- (3) Any person acting pursuant to a court order, warrant, or subpoena.
- (4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.
- (5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.
- (6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.
- (7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.
- (8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.
- (9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

- (10) Any depository financial institution for checking, savings, and investment accounts.
- (11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.
- (12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).
- (13) A person for the purpose of criminal background record information.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

- (1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.
- (2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
- (3) A consumer reporting agency that does all of the following:
  - a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.
  - b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) A consumer reporting agency shall not charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to subsection (d) or (j) of this section, provided that any such request is made electronically. If a request to put a security freeze in place is made by telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to exceed three dollars (\$3.00), except that a consumer reporting agency

may not charge any fee to a consumer over the age of 62, to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person, or to the victim's spouse. A consumer reporting agency shall not charge an additional fee to a consumer who requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not charge a consumer for a onetime reissue of a replacement personal identification number. A consumer reporting agency may charge a fee not to exceed three dollars (\$3.00) to provide any subsequent replacement personal identification number.

(o1) Repealed by Session Laws 2015-193, s. 2, effective January 1, 2016.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

"North Carolina Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze can be requested in writing by first-class mail, by telephone, or electronically. You also may request a freeze by visiting the following Web site: [URL] or calling the following telephone number: [NUMBER].

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within three business days if you request it by mail, or within 24 hours if you request it by telephone or electronically. When you place a security freeze on your credit report, within three business days, you will be sent a personal identification number or a password to use when you want to remove the security freeze, temporarily lift it, or lift it with respect to a particular third party.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party by contacting the consumer reporting agency and providing all of the following:

- (1) Your personal identification number or password,
- (2) Proper identification to verify your identity, and

- (3) Proper information regarding the period of time you want your report available to users of the credit report, or the third party with respect to which you want to lift the freeze.

A consumer reporting agency that receives a request from you to temporarily lift a freeze or to lift a freeze with respect to a particular third party on a credit report shall comply with the request no later than three business days after receiving the request by mail and no later than 15 minutes after receiving a request by telephone or electronically. A consumer reporting agency may charge you up to three dollars (\$3.00) to institute a freeze if your request is made by telephone or by mail. A consumer reporting agency may not charge you any amount to freeze, remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party, if any of the following are true:

- (1) Your request is made electronically.
- (2) You are over the age of 62.
- (3) You are the victim of identity theft and have submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or you are the spouse of such a person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1; 2006-158, s. 1; 2009-355, s. 1; 2009-550, s. 5; 2015-193, s. 2.)

### **§ 75-63.1. Security freeze for protected consumers.**

(a) **Obligation to Place Security Freeze.** – A consumer reporting agency shall place a protected consumer security freeze on the protected consumer's credit report or on the protected consumer's file in accordance with subsection (b) of this section within 30 days of all of the following conditions being satisfied:

- (1) The consumer reporting agency receives a request under this section from the protected consumer's representative for the placement of the protected consumer security freeze by any of the following methods:
  - a. First-class mail.
  - b. Telephone call.
  - c. Secure Web site or secure electronic mail connection.
- (2) The protected consumer's representative does all of the following:
  - a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.
  - b. Provides to the consumer reporting agency sufficient proof of identification for both the protected consumer and the representative.
  - c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer.

- d. Pays to the consumer reporting agency a fee as provided in subsection (d) of this section.
- (b) Action Required. – If the placement of a protected consumer security freeze is required under subsection (a) of this section, a consumer reporting agency shall do one of the following, as applicable:
- (1) If no consumer report exists. – If the consumer reporting agency does not have a consumer report pertaining to the protected consumer, the consumer reporting agency shall create a protected consumer's file and place a restriction in the protected consumer's file that prohibits the release of the protected consumer's file, any consumer report subsequently created for the consumer, and any information contained in either document except as provided in this section.
  - (2) If a consumer report exists. – If the consumer reporting agency has a consumer report pertaining to the protected consumer, the consumer reporting agency shall place a restriction on the report that prohibits the release of the consumer report and any information contained in the report except as provided in this section.
- (c) Duration of Freeze. – A protected consumer security freeze shall remain in effect until one of the following occurs, in which case the protected consumer security freeze shall be removed within 30 days:
- (1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze by doing all of the following:
    - a. Submitting a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency.
    - b. If the request is being made by the protected consumer, providing to the consumer reporting agency (i) proof that the sufficient proof of authority for the protected consumer's representative is no longer valid and (ii) sufficient proof of identification for the protected consumer.
    - c. If the request is being made by the representative of a protected consumer, providing to the consumer reporting agency (i) sufficient proof of identification of the protected consumer and the representative and (ii) sufficient proof of authority to act on behalf of the protected consumer.
    - d. Providing to the consumer reporting agency a fee as provided in subsection (d) of this section.
  - (2) The consumer reporting agency determines that the protected consumer security freeze was placed based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(d) Fees. – A consumer reporting agency may charge a reasonable fee for each placement or removal of a protected consumer security freeze in accordance with the following:

- (1) Fee allowed in certain cases. – Except as provided in subdivision (2) of this subsection, a consumer reporting agency may charge a fee to a consumer not to exceed five dollars (\$5.00) for placement or removal of a protected consumer security freeze.
- (2) No fee allowed in certain cases. – A fee may not be charged for the placement or removal of a protected consumer security freeze under this section if any of the following conditions are satisfied:
  - a. The protected consumer's representative has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person.
  - b. A request for placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.
  - c. The protected consumer is over the age of 62.
- (3) No other fees allowed. – No fee other than those authorized under this subsection may be charged for placement or removal of a protected consumer security freeze.

(e) Exceptions. – This section does not apply to the use of a consumer credit report by any of the following:

- (1) A person or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.
- (2) Any person acting pursuant to a court order, warrant, or subpoena.
- (3) A State or local agency, or its agents or assigns, that administers a program for establishing and enforcing child support obligations.
- (4) A State or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.
- (5) A federal, State, or local governmental entity, including a law enforcement agency, court, or its agent or assigns.
- (6) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.
- (7) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the protected consumer has subscribed or



the representative of the protected consumer has subscribed on behalf of the protected consumer.

- (8) A consumer reporting agency for the purpose of providing a protected consumer or representative of a protected consumer with a copy of the protected consumer's credit report upon the request of the protected consumer or the protected consumer's representative.
- (9) Any depository financial institution for checking, savings, and investment accounts.
- (10) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.
- (11) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).
- (12) A person for the purpose of criminal background record information.

(f) The following persons are not required to place a security freeze on a credit report pursuant to this section; provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

- (1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.
- (2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
- (3) A consumer reporting agency that does all of the following:
  - a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.
  - b. Does not maintain a permanent database of credit information from which new credit reports are produced.
- (4) A consumer reporting agency that maintains a database or file that consists of information used for any of the following purposes but that is not used for credit granting purposes:
  - a. Reporting of criminal record information.
  - b. Fraud prevention or detection.
  - c. Reporting personal loss history information.
  - d. Employment, tenant, or other individual background screening.

(g) Violation. – A violation of this section is a violation of G.S. 75-1.1. (2015-193, s. 3.)

**§ 75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

- (1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed.
- (2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.
- (3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

- (1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.
- (2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.
- (3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

- (1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm Leach Bliley Act, 15 U.S.C. § 6801, et seq., as amended.
- (2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable

health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its nonmanagerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation. (2005-414, s. 1.)

### **§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include all of the following:

(1) A description of the incident in general terms.

(2) A description of the type of personal information that was subject to the unauthorized access and acquisition.

(3) A description of the general acts of the business to protect the personal information from further unauthorized access.

- (4) A telephone number for the business that the person may call for further information and assistance, if one exists.
  - (5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.
  - (6) The toll-free numbers and addresses for the major consumer reporting agencies.
  - (7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.
- (e) For purposes of this section, notice to affected persons may be provided by one of the following methods:
- (1) Written notice.
  - (2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.
  - (3) Telephonic notice provided that contact is made directly with the affected persons.
  - (4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:
    - a. E-mail notice when the business has an electronic mail address for the subject persons.
    - b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.
    - c. Notification to major statewide media.
- (e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.
- (f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision; or a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration; and any revisions, additions, or substitutions relating to any of the said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned. (2005-414, s. 1; 2009-355, s. 2; 2009-573, s. 10.)

#### **§ 75-66. Publication of personal information.**

(a) It shall be a violation of this section for any person to knowingly broadcast or publish to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any such disclosure.

(b) As used in this section, "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity, but does not include any:

- (1) Government, government subdivision or agency.
- (2) Entity subject to federal requirements pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

(c) As used in this section, the phrase "personal information" includes a person's first name or first initial and last name in combination with any of the following information:

- (1) Social security or employer taxpayer identification numbers.
- (2) Drivers license, State identification card, or passport numbers.
- (3) Checking account numbers.
- (4) Savings account numbers.
- (5) Credit card numbers.
- (6) Debit card numbers.
- (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
- (8) Digital signatures.
- (9) Any other numbers or information that can be used to access a person's financial resources.
- (10) Biometric data.
- (11) Fingerprints.
- (12) Passwords.

(d) Nothing in this section shall:

- (1) Limit the requirements or obligations under any other section of this Article, including, but not limited to, G.S. 75-62 and G.S. 75-65.
- (2) Apply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, State, or local law, regulation, or ordinance.
- (3) Apply to data integration efforts to implement the State's business intelligence strategy as provided by law or under contract.

(e) Any person whose property or person is injured by reason of a violation of this section may sue for civil damages pursuant to the provisions of G.S. 1-539.2C. (2007-534, s. 2; 2012-142, s. 6A.7A(h).)

§ 75-67. Reserved for future codification purposes.

§ 75-68. Reserved for future codification purposes.

§ 75-69. Reserved for future codification purposes.

§ 75-70. Reserved for future codification purposes.

§ 75-71. Reserved for future codification purposes.

§ 75-72. Reserved for future codification purposes.

§ 75-73. Reserved for future codification purposes.

§ 75-74. Reserved for future codification purposes.

§ 75-75. Reserved for future codification purposes.

§ 75-76. Reserved for future codification purposes.

§ 75-77. Reserved for future codification purposes.

§ 75-78. Reserved for future codification purposes.

§ 75-79. Reserved for future codification purposes.

### Article 3.

#### Motor Fuel Marketing Act.

#### § 75-80. Title.

This Article shall be known and may be cited as the "Motor Fuel Marketing Act". (1985 (Reg. Sess., 1986), c. 972, s. 1.)

## § 75-81. Definitions.

The following terms shall have the meanings ascribed to them in this section unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

- (1) "Person" shall mean any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or legal entity.
- (2) "Sale" shall mean selling, offering for sale or advertising for sale.
- (3) "Motor Fuel" means motor fuel, as defined in G.S. 105-449.60, and alternative fuel, as defined in G.S. 105-449.130.
- (4) "Cost" or "Costs" shall mean as follows:
  - a. For a refiner or terminal supplier, costs shall be presumed to be the refiner's or terminal supplier's prevailing price to the wholesale class of trade at the terminal used by the refiner or terminal supplier to obtain the motor fuel in question or the lowest prevailing price within 10 days prior to a sale alleged to be in violation of G.S. 75-82 hereof plus all transportation expenses including freight expenses (incurred and not otherwise included in the cost of the motor fuel), and motor fuel taxes. If a refiner or terminal supplier does not regularly sell to the wholesale class of trade at the terminal in question, then such refiner or terminal supplier shall use as the prevailing price either (i) the lowest price to the wholesale class of trade of those other refiners or terminal suppliers at the same terminal who regularly sell to the wholesaler class or (ii) a price determined by using standard functional accounting procedures.
  - b. For all other sellers, cost includes the invoice or replacement cost, whichever is less, of the grade, brand or blend, of motor fuel within 10 days prior to the date of sale, in the quantity or quantities last purchased, less all rebates and discounts received including prompt payment discounts and plus all applicable State, federal and local taxes, and transportation expenses including freight expenses, incurred and not otherwise included in the cost of the motor fuel.
- (5) "Prompt Payment Discounts" shall mean any allowance for payment within a specified time, but shall not include discounts for cash made to the motoring public at motor fuel outlets.
- (6) "Affiliate" shall mean any person who (other than by means of a franchise) controls, is controlled by or is under common control with, any other person.
- (7) "Motor Fuel Merchant" is any person selling motor fuel to the public.
- (8) "Motor Fuel Outlet" is any retail facility selling motor fuel to the motoring public.
- (9) "New Retail Outlet" shall mean a new retail facility constructed from the ground or an existing retail facility that is offering motor fuel to the motoring public for the first time.
- (10) "Refiner" shall mean any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this State or elsewhere, and includes any affiliate of such person or firm.
- (11) "Terminal Supplier" shall mean any person engaged in selling or brokering motor fuel to wholesalers or retailers from a storage facility of more than

2,000,000 gallons capacity and such person has an ownership interest in or control of the storage facility. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 36; 1995, c. 390, s. 12; 1997-456, s. 27.)

**§ 75-82. Unlawful below-cost selling; exceptions.**

(a) It shall be unlawful where the intent is to injure competition for any motor fuel merchant or the affiliate of any motor fuel merchant to sell with such frequency as to indicate a general business practice of selling at a motor fuel outlet any grade, brand or blend of motor fuel for less than the cost of that grade, brand or blend of motor fuel except where (i) the price is established in good faith to meet or compete with the lower price of a competitor in the same market area on the same level of distribution selling the same or comparable product of like quality, (ii) the price remains in effect for no more than 10 days after the first sale of that grade, brand or blend by the merchant at a new retail outlet, (iii) the sale is made in good faith to dispose of a grade, brand or blend of motor fuel for the purpose of discontinuing sales of that product, or (iv) the sale is made pursuant to the order or authority of any court or governmental agency.

(b) For purposes of this Article, motor fuel cost shall be computed separately for each grade, brand or blend of each motor fuel at each location where said motor fuel is offered for sale; however, nothing in this subsection shall prevent a motor fuel merchant from using a weighted average motor fuel cost for comparable grade, brand or blend when such motor fuel merchant is supplied by more than one refiner or terminal supplier at one or more terminals.

(c) This Article shall apply only to retail sales of motor fuel at motor fuel outlets. (1985 (Reg. Sess., 1986), c. 972, s. 1.)

**§ 75-83. Unlawful inducement; civil penalty.**

It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of this Article, whether by otherwise lawful or unlawful means. In any action initiated by the Attorney General, anyone found to have violated this provision shall be subject to the civil penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a civil penalty of one thousand dollars (\$1,000). The clear proceeds of any civil penalties imposed in any actions initiated by the Attorney General under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1998-215, s. 102.)

**§ 75-84. Separate offenses; injunctions.**

Each act of establishing a price in violation of this Article shall constitute a separate offense by the seller and the civil penalty for each offense shall be not more than one thousand dollars (\$1,000). Upon a proper showing by the Attorney General or his delegate, further violations may be temporarily or permanently enjoined.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1998-215, s. 103.)

**§ 75-85. Investigations by Attorney General.**

The Attorney General is authorized to investigate any allegation of a violation of this Article made by a motor fuel merchant or by an association or group of motor fuel merchants. If an investigation discloses a violation, the Attorney General may exercise the authority under this



Article to seek an injunction and he may also seek civil penalties. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1998-215, s. 104.)

**§ 75-86. Private actions.**

Any person, corporation, or other business entity which is engaged in the sale of motor fuel for resale or consumption and which is directly or indirectly injured by a violation of this Article may bring an action in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the violation is alleged to have occurred to recover actual damages, exemplary damages, costs and reasonable attorneys' fees. The court shall also grant such equitable relief as is proper, including a declaratory judgment and injunctive relief. Any action under this Article must be brought within one year of the alleged violation. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 97.)

**§ 75-87. Private action presumptions.**

(a) In any private action brought under this Article, a violation shall be presumed to have occurred if: (i) the prevailing price under G.S. 75-81(4)(a) for any grade, brand or blend of a motor fuel sold by a refiner or terminal supplier to a wholesaler or retailer is greater than the price of the same grade, brand or blend of motor fuel sold by such refiner or terminal supplier directly through its own motor fuel outlet or through the outlet of an affiliate of said refiner or terminal supplier; or (ii) if the product price of any grade, brand or blend of a motor fuel sold by a wholesaler to a retailer is greater than the retail price of the same grade, brand or blend of motor fuel sold by such wholesaler through its own motor fuel outlet or the outlet of an affiliate of said wholesaler, provided the method of delivery and quantities of each delivery of motor fuel to the retailer and to the wholesaler's outlet or affiliate's outlet are the same or comparable.

(b) A party may rebut the presumption created by this section by presenting evidence to establish his cost of the grade, brand or blend of motor fuel in question, or by qualifying for an exception under G.S. 75-82. (1985 (Reg. Sess., 1986), c. 972, s. 1.)

**§ 75-88. Public disclosure.**

Any refiner or terminal supplier computing prevailing price under the provisions of G.S. 75-81(4)(a)(i) or (ii) shall be required to publicly disclose said price. (1985 (Reg. Sess., 1986), c. 972, s. 1.)

**§ 75-89. Powers and remedies supplementary.**

The powers and remedies provided by this Article shall be cumulative and supplementary to all powers and remedies otherwise provided by law. (1985 (Reg. Sess., 1986), c. 972, s. 1.)

**§ 75-90. Availability of gasoline suitable for blending with fuel alcohol; blender of record.**

- (a) The following definitions apply in this section:
- (1) Blender. – Defined in G.S. 105-449.60.
  - (2) Distributor. – Defined in G.S. 105-449.60.
  - (3) Fuel Alcohol. – Defined in G.S. 105-449.60.
  - (4) Gasoline. – Defined in G.S. 105-449.60(22)a.
  - (5) Retailer. – Defined in G.S. 105-449.60.
  - (6) Supplier. – Defined in G.S. 105-449.60.

(b) A supplier that imports gasoline into the State shall offer gasoline for sale to a distributor or retailer that is not preblended with fuel alcohol and that is suitable for subsequent blending with fuel alcohol.

(c) The General Assembly finds that use of blended fuels reduces dependence on imported oil and is therefore in the public interest. The General Assembly further finds that gasoline may be blended with fuel alcohol below the terminal rack by distributors and retailers as well as above the terminal rack by suppliers and that there is no reason to restrict or prevent blending by suppliers, distributors, or retailers. Therefore, any provision of any contract that would restrict or prevent a distributor or retailer from blending gasoline with fuel alcohol or from qualifying for any federal or State tax credit due to blenders is contrary to public policy and is void. This subsection does not impair the obligation of existing contracts, but does apply if such contract is modified, amended, or renewed. (2008-198, s. 11.7; 2008-222, s. 1.)

§ 75-91: Reserved for future codification purposes.

§ 75-92: Reserved for future codification purposes.

§ 75-93: Reserved for future codification purposes.

§ 75-94: Reserved for future codification purposes.

§ 75-95: Reserved for future codification purposes.

§ 75-96: Reserved for future codification purposes.

§ 75-97: Reserved for future codification purposes.

§ 75-98: Reserved for future codification purposes.

§ 75-99: Reserved for future codification purposes.

#### Article 4.

#### Telephone Solicitations.

#### § 75-100. Findings.

The General Assembly finds all of the following:

- (1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telephone solicitation technologies and techniques.
- (2) While some consumers enjoy and benefit from telephone solicitations from legitimate telephone solicitors, many others object to these telephone solicitations as an intrusive invasion of their privacy in the home.
- (3) In addition, the proliferation of telephone solicitations, especially during the evening hours, creates a nuisance and a disturbance upon the home and family

life of telephone subscribers during a time of day used by many families for traditional family activities.

- (4) North Carolina residents should have the freedom to choose whether or not to permit telephone solicitors to contact them.
- (5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telephone solicitation practices.
- (6) Legitimate telephone solicitors have no interest in continuing to invade the privacy of those telephone subscribers who affirmatively express their desires to receive no further telephone solicitations.
- (7) Many telephone subscribers who have transacted business with firms that employ telephone solicitations have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place. Other telephone subscribers have had unauthorized charges placed on their telephone bill and have had their long-distance carrier switched without their authorization as a result of telephone solicitations.
- (8) New technologies that make telephone solicitations more cost-effective also allow for the creation of a "Do Not Call" Registry through which North Carolina consumers can easily register their desires not to receive further telephone solicitations and telephone solicitors can easily access and employ lists of consumers who have registered those desires.
- (9) The public interest requires an efficient mechanism for telephone subscribers to notify telephone solicitors that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telephone solicitations. (2003-411, s. 3.)

#### **§ 75-101. Definitions.**

The following definitions apply in this Article:

- (1) Affiliate. – A business establishment, business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.
- (2) Automatic dialing and recorded message player. – Any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or a sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.
- (3) "Do Not Call" Registry. – The registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to G.S. 75-102(n).
- (4) Doing business in this State. – To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone

- solicitations are made from a location inside North Carolina or outside North Carolina.
- (5) Established business relationship. – A relationship between a seller and a consumer based on:
    - a. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of a telephone solicitation; or
    - b. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telephone solicitation.
  - (6) Express invitation or permission. – Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.
  - (7) Person. – Any individual, business establishment, business, or other legal entity.
  - (8) Telemarketing Sales Rule. – The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.
  - (9) Telephone solicitation. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. "Telephone solicitation" also includes those transactions that are defined as "telemarketing" under the Telemarketing Sales Rule.
  - (10) Telephone solicitor. – Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made. "Telephone solicitor" also includes any party defined as a "telemarketer" under the Telemarketing Sales Rule.
  - (11) Telephone subscriber. – An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the individuals living or residing with that individual.
  - (12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission. (2003-411, s. 3.)

**§ 75-102. Restrictions on telephone solicitations.**

(a) Except as provided in G.S. 75-103, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the "Do Not Call" Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Any telephone solicitor who makes a telephone solicitation shall do all of the following:

- (1) At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.
- (2) Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.
- (3) If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber's name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.
- (4) If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.
- (5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor relies on the established business relationship of an affiliate to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the "Do Not Call" Registry and the person called communicates a desire to receive no further telephone solicitations from the telephone solicitor, the telephone solicitor shall take all steps necessary to remove that telephone subscriber's telephone number from the contact lists of the telephone solicitor and that affiliate, unless the telephone subscriber indicates otherwise, and the telephone solicitor and that affiliate shall stop calling the telephone subscriber at that number within 60 business days.

(d) Every telephone solicitor shall implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the "Do Not Call" Registry. Every telephone solicitor shall train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures. Every telephone solicitor shall ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded. Compliance with the time requirements within the Telemarketing Sales Rule for incorporating and complying with updated versions of the "Do Not Call" Registry shall constitute compliance with North Carolina law.

(e) Except as provided in G.S. 75-103, no telephone solicitor shall violate any requirement of section 310.3 of the Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

(f) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or after 9:00 P.M.

(g) A telephone solicitor shall inquire as to whether the telephone subscriber is under the age of 18. If the telephone subscriber purports to be less than 18 years of age, the telephone solicitor shall discontinue the call immediately. No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts who are less than 18 years of age from its list of subscribers being contacted or can demonstrate that it does not target subscribers who are less than 18 years of age.

(h) No telephone solicitor shall engage in threats, intimidation, or the use of profane or obscene language.

(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities.

(j) A telephone solicitor or its agent that makes telephone solicitations on its behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep a record for a period of 24 months from the date a telephone solicitation is made of the legal name, any fictitious name used, the resident address, the telephone number, and the job title of each individual who makes a telephone solicitation for that telephone solicitor. If an individual who makes telephone solicitations for a telephone solicitor uses a fictitious name, the fictitious name shall be traceable only to the specific individual.

(k) Nothing in this section prohibits a telephone solicitor from contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to obtain the telephone subscriber's express invitation or permission allowing the telephone solicitor to make telephone solicitations to the telephone subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(l) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to encourage the telephone subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill insert or bill message, a direct mailing, and an e-mail that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the notification pursuant to G.S. 62-54.

(n) In the event that the federal "Do Not Call" Registry is not operational by January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney General may develop, operate, and maintain such a registry for the benefit of North Carolina telephone subscribers.

(o) In telephone solicitation transactions involving telephone subscribers, no contract or purchase agreement entered into during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all the following conditions are satisfied:

- (1) The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in sections 310.3 and 310.4 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.

- (2) The telephone solicitor has complied with the record keeping requirements of section 310.5 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.
- (3) The contract and the sales representations that precede it comply with all other applicable federal and State laws, including Article 1 of this Chapter. (2003-411, ss. 3, 4; 2009-122, s. 1.)

**§ 75-103. Limited exceptions.**

(a) G.S. 75-102(a) does not apply to any of the following telephone solicitations that are made:

- (1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.
- (2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.
- (3) By or on behalf of a tax-exempt nonprofit organization.
- (4) By or on behalf of a telephone solicitor that employs fewer than 10 full-time or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.
- (5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:
  - a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.
  - b. Complete the sale or rental of, or investment in, property, goods, or services.
  - c. Obtain provisional acceptance of a sale, rental, or investment.
  - d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.
  - e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.
- (6) By a person primarily soliciting the sale of a subscription for a newspaper of general circulation.

(b) G.S. 75-102(c)(3), 75-102(d), 75-102(g), and 75-102(j) do not apply to any telephone solicitations described in G.S. 75-103(a)(1), (2), (3), (4), and (5).

(c) G.S. 75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(4) and (a)(5) of this section.

(d) G.S. 75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(1), (a)(2), and (a)(3) of this section, except that these types of telephone solicitations shall comply with sections 310.3(a)(2), (a)(3), and (a)(4), 310.3(c), 310.3(d), 310.4(a), 310.4(b)(1)(i) and (iv), (b)(2), (b)(3), and (b)(4), and 310.4(e) of the Telemarketing Sales Rule.

(e) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subsection (a) of this section, the telephone solicitor has the burden

of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under G.S. 75-102(b). (2003-411, s. 3.)

**§ 75-104. Restrictions on use of automatic dialing and recorded message players.**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

- (1) All of the following are satisfied:
  - a. The person making the call is any of the following:
    1. A tax-exempt charitable or civic organization.
    2. A political party or political candidate.
    3. A governmental official.
    4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.
  - b. No part of the call is used to make a telephone solicitation.
  - c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.
- (3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call, and both of the following are satisfied:
  - a. No part of the call is used to make a telephone solicitation.
  - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service, and both of the following are satisfied:



- a. No part of the call is used to make a telephone solicitation.
  - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.
- (6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits, and both of the following are satisfied:
- a. No part of the call is used to make a telephone solicitation.
  - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:
- a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.
  - b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by

the government agency or product manufacturer, distributor, or retailer instituting the recall.

c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy.

(8) The call is generated from a court proceeding notification system established by the Administrative Office of the Courts. (2003-411, s. 3; 2008-124, s. 10.3; 2009-364, s. 1; 2018-40, s. 13.2.)

### **§ 75-105. Enforcement.**

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

- (1) Five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.
- (2) One hundred dollars (\$100.00) for each violation within two years of the first violation, if the solicitor can show that the violations are the result of a mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone solicitor complied with G.S. 75-102(d).

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

- (1) An action to enjoin further violations of this Article by the telephone solicitor.
- (2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought under subsection (b) of this section if the violations are a result of mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone solicitor complied with G.S. 75-102(d).

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action. (2003-411, s. 3.)

**§§ 75-106 through 75-114. Reserved for future codification purposes.**

## Article 5A.

### Home Foreclosure Rescue Scams.

#### **§ 75-120. Definitions.**

The following definitions shall apply in this Article:

- (1) Repealed by Session Laws 2015-178, s. 5(a), effective October 1, 2015, and applicable to transactions entered into on or after that date.
- (2) Exempt transaction. – A foreclosure rescue transaction in which the transferee is any of the following:
  - a. A member of the transferor's immediate family as defined in G.S. 53-244-030(13).
  - b. A state, federal, or local government agency or organization.
  - c. A bank, savings institution, or credit union, including operating subsidiaries and affiliates, organized under the laws of the United States or any state.
  - d. A mortgage lender or mortgage servicer licensed by the Commissioner of Banks under Article 19B of Chapter 53 of the General Statutes.
- (3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:
  - a. The real property is the principal residence of the transferor.
  - b. Repealed by Session Laws 2015-178, s. 5(a), effective October 1, 2015, and applicable to transactions entered into on or after that date.
  - c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.

- d. The transferor retains a tenancy interest, an interest under a lease with option to purchase agreement, or an option to reacquire the property.
- (4) Property. – Real property upon which there is located one or more single-family dwellings, including an individual condominium unit, cooperative unit, manufactured home, or mobile home. (2010-164, s. 2; 2015-178, s. 5(a).)

**§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a certified appraiser. An appraisal to determine the fair market value of the property must be performed no more than 120 days prior to the transfer. The appraisal shall be delivered to the transferor no less than seven days prior to the time the transferor becomes obligated to perform the agreement. This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

- (1) The names and addresses of all parties to the contract.
- (2) The legal description of the property being transferred.
- (3) Any financial obligation of the transferor that will be assumed by the transferee.
- (4) The total amount to be paid by the transferee in connection with the transaction.
- (5) The fair market value of the property as determined by a certified appraiser.
- (6) A description of the interest in the property retained by the transferor as provided in G.S. 75-120(3)d.
- (7) The terms of the transferor's right to any future possessory or ownership interest in the property. (2010-164, s. 2; 2015-178, s. 5(b).)

**§ 75-122. Remedies.**

A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction, as well as for declaratory or equitable relief for a violation of this Article. The provisions of this section shall not be enforceable against a bona fide purchaser for value. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be

construed to subject an individual homeowner selling his or her primary residence to liability under G.S. 75-1.1. (2010-164, s. 2; 2010-97, s. 15(a).)

§ 75-123: Reserved for future codification purposes.

§ 75-124: Reserved for future codification purposes.

## Article 5.

### Unsolicited Facsimiles.

#### § 75-115. Definitions.

The following definitions apply in this Article:

- (1) Established business relationship. –
  - a. A relationship between a seller and a consumer based on:
    1. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of an unsolicited advertisement;  
or
    2. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of an unsolicited advertisement.
  - b. A relationship between a tax-exempt nonprofit organization and a person based on:
    1. The person's association with the tax-exempt nonprofit organization as a member, contributor, or volunteer of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement;
    2. The person's subscription to or use of the services of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement;  
or
    3. The person's inquiry regarding the tax-exempt nonprofit organization within the three months immediately preceding the date of an unsolicited advertisement.
- (2) Telephone facsimile machine. – Equipment that has the capacity to do either or both of the following:
  - a. Transcribe text or images or both from paper into an electronic signal and to transmit that signal over a regular telephone line.
  - b. Transcribe text or images or both from an electronic signal received over a regular telephone line onto paper.
- (3) Unsolicited advertisement. – Any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a

specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time. (2006-207, s. 1.)

**§ 75-116. Prohibition of unsolicited facsimiles; exception.**

(a) No person or entity, if either the person or entity or the recipient is located within the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other device to send or (ii) cause another person or entity to use a telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine.

(b) This section shall not apply to a person or entity that has an established business relationship with the recipient of the facsimile. However, the person or entity who sends an unsolicited advertisement under this subsection shall provide a notice in the unsolicited advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited advertisement; (ii) states that the recipient may make a request to the sender to "do not send" any future unsolicited advertisements to a telephone facsimile machine and that the sender's failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone number or facsimile machine number that the recipient may call at any time on any day of the week to transmit a request to "do not send" future facsimiles. (2006-207, s. 1.)

**§ 75-117. Facsimiles to contain identifying material.**

(a) It shall be a violation of this Article for any person or entity, if either the person or entity or the recipient is located in the State of North Carolina, to do either of the following:

- (1) Initiate any communication using a telephone facsimile machine that does not clearly mark in a margin at the top or bottom of each transmitted page or on the first page of each transmission the date and time sent; an identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.
- (2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission the date and time it is sent, the identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.

(b) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association if all of the following conditions are met:

- (1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.
- (2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.
- (3) The member who is sent the facsimile has not requested that the association stop sending facsimiles. (2006-207, s. 1.)

**§ 75-118. Enforcement.**

(a) A person or entity who receives an unsolicited advertisement in violation of this Article may bring any of the following actions in civil court:

- (1) An action to enjoin further violations of this Article by the person or entity who sent the unsolicited advertisement.
- (2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(b) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(c) Actions brought by a person or entity pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action.

(d) This section shall not be construed to alter or restrict any remedy a person may have under federal law, including the Junk Fax Prevention Act of 2005, against a person or entity who sends an unsolicited advertisement.

(e) A violation of G.S. 75-116 is a violation of G.S. 75-1.1. (2006-207, s. 1.)

**§ 75-119:** Reserved for future codification purposes.

## Article 6.

### Truth in Music Advertising Act.

#### **§ 75-125. Short title and definitions.**

(a) Short Title. – This Article may be cited as the Truth in Music Advertising Act.

(b) Definitions. – The following definitions apply in this Article:

- (1) Performing group. – A vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.
- (2) Recording group. – A vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.
- (3) Sound recording. – A work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied. (2009-284, s. 1.)

#### **§ 75-126. Production.**

No person shall advertise or conduct a live musical performance or production in this State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if any of the following apply:

- (1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

- (2) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.
- (3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, or the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.
- (4) The advertising does not relate to a live musical performance or production taking place in this State.
- (5) The performance or production is expressly authorized by the recording group. (2009-284, s. 1.)

**§ 75-127. Penalty.**

A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) per violation, which civil penalty shall be in addition to any other relief which may be granted under other applicable laws. Each performance or production in violation of G.S. 75-126 shall constitute a separate violation. (2009-284, s. 1.)

**§ 75-128. Unfair and deceptive trade practice.**

A violation of this Article shall be an unfair and deceptive trade practice under G.S. 75-1.1. (2009-284, s. 1.)

**§ 75-129:** Reserved for future codification purposes.

**§ 75-130:** Reserved for future codification purposes.

**§ 75-131:** Reserved for future codification purposes.

**§ 75-132:** Reserved for future codification purposes.

Article 7.

Credit Monitoring Services Act.

**§ 75-133. Title.**

This Article shall be known and may be cited as the "Credit Monitoring Services Act." (2009-355, s. 7.)

**§ 75-134. Definitions.**

The following definitions apply in this Article:

- (1) Consumer. – An individual.
- (2) Consumer report. – As defined in G.S. 75-61(3).
- (3) Credit monitoring service. – Any person who offers, for a fee or compensation, to obtain, provide, or monitor a credit report on behalf of a consumer, or to assist a consumer in obtaining or monitoring the consumer's credit report, and



provides or purports to provide the foregoing services. The term also includes any person who offers, for a fee or compensation, to obtain or provide a fraud alert on behalf of a consumer or to assist a consumer in obtaining such fraud alert. The term does not include the following activities of a consumer reporting agency, as defined in section 603(f) [15 U.S.C. § 1681a(f)] of the federal Fair Credit Reporting Act, provided that, while the excluded activities themselves do not fall within the definition of the term "credit monitoring service" none of these excluded activities exempts a consumer reporting agency from the duty to provide the notice required under G.S. 75-135 where the sale of a credit monitoring service occurs as a result of an offer for the credit monitoring service made at a time during communications involving such activities:

- a. Providing a credit report to another party that monitors a credit report on behalf of a consumer;
  - b. Providing a disclosure to a consumer of the information in the consumer's file pursuant to section 609(a) [15 U.S.C. § 1681g(a)] of the federal Fair Credit Reporting Act and also imposing a charge permitted under section 612(f) [15 U.S.C. § 1681j(f)] of the federal Fair Credit Reporting Act;
  - c. Providing the disclosure of a score pursuant to section 609(f) [15 U.S.C. § 1681g(f)] of the federal Fair Credit Reporting Act and also imposing a charge permitted under section 609(f)(8) [15 U.S.C. § 1681g(f)(8)] of the federal Fair Credit Reporting Act;
  - d. Providing a notice required by G.S. 75-63(m); or
  - e. Providing a monitoring service to individuals who receive a notice provided by a person who experienced a security breach and where the monitoring service was paid for by the person who experienced the security breach.
- (4) Fraud alert. – As defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c-1.
- (5) Person. – Any individual, partnership, corporation, association, business establishment, or any other legal or commercial entity. (2009-355, s. 7.)

**§ 75-135. Required disclosure.**

(a) Prior to charging or collecting any fee or compensation from a consumer for obtaining, providing, or monitoring the consumer's credit report on behalf of the consumer, a credit monitoring service shall provide a clear and conspicuous written description of a consumer's right to one free credit report per year pursuant to section 612(a) [15 U.S.C. § 1681j(a)] of the federal Fair Credit Reporting Act, and how to obtain those credit reports from each of the nationwide consumer reporting agencies, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(b) If the credit monitoring service is offered and fees are collected during a telephone call, the notice required by subsection (a) of this section will be offered in the same manner.

(c) A violation of this section is a violation of G.S. 75-1.1, except that compliance with the requirement that the notice required by this section be clear and conspicuous shall be enforced exclusively by the Attorney General under G.S. 75-15. (2009-355, s. 7.)

§ 75-136: Reserved for future codification purposes.

§ 75-137: Reserved for future codification purposes.

§ 75-138: Reserved for future codification purposes.

§ 75-139: Reserved for future codification purposes.

## Article 8.

### Abusive Patent Assertions.

#### § 75-140. Title.

This Article shall be known and may be cited as the "Abusive Patent Assertions Act." (2014-110, s. 2.1.)

#### § 75-141. Purpose.

- (a) The General Assembly finds the following:
- (1) North Carolina is home to a growing high-technology, knowledge-based economy. With its top-tier research universities and active technology sector, North Carolina is poised to continue its growth. To continue growing, North Carolina must attract new, small, and mid-sized technology companies. Doing so will help provide jobs for North Carolina's residents and boost North Carolina's economy. North Carolina also is home to companies in retail, manufacturing, and other industries, many of whom are customers of technology companies. Those other businesses are more likely to succeed if not inhibited by abusive and bad-faith demands and litigation.
  - (2) Patents encourage research, development, and innovation. Patent holders have legitimate rights to enforce their patents.
  - (3) The General Assembly does not wish to interfere with good-faith patent litigation or the good-faith enforcement of patents. The General Assembly also recognizes that North Carolina is preempted from passing any law that conflicts with federal patent law.
  - (4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies. North Carolina wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.
  - (5) In order for North Carolina companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving

- this information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on North Carolina companies.
- (6) Abusive patent litigation, and especially the assertion of bad-faith infringement claims, can harm North Carolina companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee even if the claim is meritless. This is especially so for small- and medium-sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.
  - (7) Not only do bad-faith patent infringement claims impose a significant burden on individual North Carolina businesses, they also undermine North Carolina's efforts to attract and nurture technology and other companies. Funds used to avoid the threat of bad-faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming North Carolina's economy.
  - (8) North Carolina has a strong interest in patent matters involving its citizens and its businesses, including protecting its citizens and businesses against abusive patent assertions and ensuring North Carolina companies are not subjected to abusive patent assertion by entities acting in bad faith.
  - (9) In lawsuits involving abusive patent assertions, an accused infringer prevailing on the merits may be awarded costs and, less frequently, fees. These awards do not serve as a deterrent to abusive patent assertion entities who have limited liability, as these companies may hold no cash or other assets. North Carolina has a strong interest in making sure that prevailing North Carolina companies sued by abusive patent assertions entities can recover what is awarded to them.

(b) The General Assembly seeks, by this narrowly tailored act, to strike a balance between (i) the interests of efficient and prompt resolution of patent infringement claims, protection of North Carolina businesses from abusive and bad-faith assertions of patent infringement, and building of North Carolina's economy and (ii) the intentions to respect federal law and be careful to not interfere with legitimate patent enforcement actions. Except as specifically set forth in this act regarding bad-faith patent assertions, nothing in this act is intended to alter current law concerning piercing the corporate veil or otherwise concerning personal liability of principals in business entities. (2014-110, s. 2.1.)

#### **§ 75-142. Definitions.**

The following definitions apply in this Article:

- (1) **Affiliate.** – A business establishment, business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with another entity.

- (2) Demand. – A letter, e-mail, or other communication asserting or claiming that a target has engaged in patent infringement or should obtain a license to a patent.
- (3) Institution of higher education. – Defined in 20 U.S.C. § 1001(a).
- (4) Interested party. – A person, other than the party alleging infringement, that (i) is an assignee of the patent or patents at issue; (ii) has a right, including a contingent right, to enforce or sublicense the patent or patents at issue; or (iii) has a direct financial interest in the patent or patents at issue, including the right to any part of an award of damages or any part of licensing revenue. A "direct financial interest" does not include either of the following:
  - a. An attorney or law firm providing legal representation in the civil action alleging patent infringement if the sole basis for the financial interest of the attorney or law firm in the patent or patents at issue arises from the attorney or law firm's receipt of compensation reasonably related to the provision of the legal representation.
  - b. A person whose sole financial interest in the patent or patents at issue is ownership of an equity interest in the party alleging infringement, unless such person also has the right or ability to influence, direct, or control the party alleging infringement.
- (5) Operating entity. – A person primarily engaged in, when evaluated with its affiliates over the preceding 24-month period and when disregarding the selling and licensing of patents, one or more of the following activities:
  - a. Research and technical or experimental work to create, test, qualify, modify, or validate technologies or processes for commercialization of goods or services;
  - b. Manufacturing; or
  - c. The provision of goods or commercial services.
- (6) Target. – A North Carolina person that meets one or more of the following:
  - a. The person has received a demand or is the subject of an assertion or allegation of patent infringement.
  - b. The person has been threatened with litigation or is the defendant of a filed lawsuit alleging patent infringement.
  - c. The person has customers who have received a demand asserting that the person's product, service, or technology has infringed a patent. (2014-110, s. 2.1.)

**§ 75-143. Abusive patent assertions.**

(a) It is unlawful for a person to make a bad-faith assertion of patent infringement. A court may consider the following factors as evidence that a person has made a bad-faith assertion of patent infringement:

- (1) The demand does not contain all of the following information:
  - a. The patent application number or patent number.
  - b. The name and address of the patent owner or owners and assignee or assignees, if any.
  - c. Factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by specific, identified claims in the patent.
  - d. An explanation of why the person making the assertion has standing, if the United States Patent and Trademark Office's assignment system does not identify the person asserting the patent as the owner.
- (2) Prior to sending the demand, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or the analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.
- (3) The demand lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.
- (4) The person demands payment of a license fee or response within an unreasonably short period of time.
- (5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license, or the person offers to license the patent for an amount that is based on the cost of defending a potential or actual lawsuit.
- (6) The claim or assertion of patent infringement is meritless, and the person knew or should have known that the claim or assertion is meritless; or the claim or assertion relies on an interpretation of the patent that was disclaimed during prosecution, and the person making the claim or assertion knows or should have known about the disclaimer, or would have known about the disclaimer if the person reviewed the patent's prosecution history.
- (7) The claim or assertion of patent infringement is deceptive.
- (8) The person or its subsidiaries or affiliates have previously or concurrently filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and (i) those threats or lawsuits lacked the information described in subdivision (1) of this subsection or (ii) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

- (9) The person making the claim or assertion sent the same demand or substantially the same demand to multiple recipients and made assertions against a wide variety of products and systems without reflecting those differences in a reasonable manner in the demands.
  - (10) The person making the claim or assertion is aware of, but does not disclose, any final, nonfinal, or preliminary postgrant finding of invalidity or unpatentability involving the patent.
  - (11) The person making the claim or assertion seeks an injunction when that is objectively unreasonable under the law.
  - (12) Any other factor the court finds relevant.
- (b) A court may consider the following factors as evidence that a person has not made a bad-faith assertion of patent infringement:
- (1) The demand contains the information described in subdivision (1) of subsection (a) of this section.
  - (2) Where the demand lacks the information described in subdivision (1) of subsection (a) of this section and the target requests the information, the person provides the information within a reasonable period of time.
  - (3) The person engages in a good-faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.
  - (4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item that the person reasonably believes is covered by the patent. "Use of the patent" in the preceding sentence means actual practice of the patent and does not include licensing without actual practice.
  - (5) The person is either (i) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee or (ii) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.
  - (6) The person has demonstrated good-faith business practices in previous efforts to enforce the patent, or a substantially similar patent, or has successfully enforced the patent, or a substantially similar patent, through litigation.
  - (7) Any other factor the court finds relevant.
- (c) This Article does not apply to any of the following:
- (1) A demand letter or assertion of patent infringement arising under any of the following:
    - a. 7 U.S.C. § 136, et seq.
    - b. 7 U.S.C. § 2321, et seq.
    - c. 21 U.S.C. § 301, et seq.
    - d. 35 U.S.C. § 161, et seq.
    - e. 35 U.S.C. § 271(e)(2).
    - f. 42 U.S.C. § 262.

- (2) A demand letter or assertion of patent infringement by or on behalf of (i) an institution of higher education incorporated under the laws of and with its principal offices in North Carolina or (ii) a technology transfer organization owned by or affiliated with the institution of higher education.
- (3) A demand letter or assertion of patent infringement by or on behalf of a nonprofit research organization recognized as exempt from federal income tax under 26 U.S.C. § 501(c)(3) incorporated under the laws of and with its principal offices in North Carolina, or a technology transfer organization owned by or affiliated with the organization.
- (4) A demand letter or assertion of patent infringement made by an operating entity or its affiliate.

(d) Subject to the provisions of subsections (a) and (b) of this section, and provided the activities are not carried out in bad faith, nothing in this section shall be construed to deem it an unlawful practice for any person who owns or has the right to license or enforce a patent to do any of the following:

- (1) Advise others of that ownership or right of license or enforcement.
- (2) Communicate to others that the patent is available for license or sale.
- (3) Notify another of the infringement of the patent.
- (4) Seek compensation on account of past or present infringement or for a license to the patent. (2014-110, s. 2.1.)

**§ 75-144. Bond.**

(a) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad-faith assertion of patent infringement in violation of this Chapter, the court shall require the person to post a bond in an amount equal to a good-faith estimate of the target's fees and costs to litigate the claim and amounts reasonably likely to be recovered under G.S. 75-145, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed five hundred thousand dollars (\$500,000).

(b) The court may waive the bond requirement of subsection (a) of this section if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

(c) If the person asserting patent infringement fails within 30 days to pay any fee or cost ordered by a court in a matter related to the asserted patent infringement, the amount not paid shall be paid out of the bond posted under subsection (a) of this section without affecting the obligation of the person asserting patent infringement to pay any remainder of those fees or costs not paid out of the bond. (2014-110, s. 2.1.)

**§ 75-145. Enforcement; remedies; damages.**

(a) The Attorney General shall have the same authority under this Article to make rules, conduct civil investigations, bring civil actions, and enter into assurances of

discontinuance as provided under this Chapter. In an action brought by the Attorney General pursuant to this section, the court may award or impose any relief available under this Chapter.

(b) A target or a person aggrieved by a violation of this Article or by a violation of rules adopted under this Article may bring an action in superior court against a person who has made a bad-faith assertion of patent infringement. A court may award to a plaintiff who prevails in an action brought pursuant to this subsection one or more of the following remedies:

- (1) Equitable relief.
- (2) Damages.
- (3) Costs and fees, including reasonable attorneys' fees.
- (4) Exemplary damages in an amount equal to fifty thousand dollars (\$50,000) or three times the total of damages, costs, and fees, whichever is greater.

(c) A court may award to a defendant who prevails in an action brought pursuant to this section costs and fees, including reasonable attorneys' fees, if the court finds the action was not well-grounded in fact and warranted by existing law or was interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) Joinder of Interested Parties. – In an action arising under subsection (a) or (b) of this section, the court shall grant a motion by the Attorney General or a target to join an interested party if the moving party shows that the party alleging infringement has no substantial interest in the patent or patents at issue other than making demands or asserting such patent claim in litigation.

(e) In an action arising under subsection (a) or (b) of this section, any person who has delivered or sent, or caused another to deliver or send, a demand to a target in North Carolina has purposefully availed himself or herself of the privileges of conducting business in this State and shall be subject to suit in this State, whether or not the person is transacting or has transacted any other business in this State. This Article shall be construed as a special jurisdiction statute in accordance with G.S. 1-75.4(2).

(f) If a party is unable to pay an amount awarded by the court pursuant to subsection (a) or (b) of this section, the court may find any interested party joined pursuant to subsection (d) of this section jointly and severally liable for the abusive patent assertion and make the award recoverable against any or all of the joined interested parties.

(g) This Article shall not be construed to limit rights and remedies available to the State of North Carolina or to any person under any other law and shall not alter or restrict the Attorney General's authority under this Article with regard to conduct involving assertions of patent infringement. (2014-110, s. 2.1.)