Article 33.

Telephonic Seller Registration and Bond Requirement.

§ 66-260. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

terms "telephonic seller" and "seller" only with respect to activities regulated by Chapters 78A and 78C.

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

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

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

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

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

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

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

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

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

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

l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.

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

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

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

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

q. A person soliciting:

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

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

s. A book, video, recording, or multimedia club or contractual plan or arrangement:

1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.
2. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce".
3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

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

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

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

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

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

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