

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 723

Short Title: Telephone Consumer Protection 2/AB.

(Public)

Sponsors: Senators Winner, Lucas, Cochrane, Gulley, Rand, and Perdue.

Referred to: Commerce

April 13, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
NORTH CAROLINA AND TO MAKE THE OFFERING OF TELEPHONE SALES
RECOVERY SERVICES A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

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

"ARTICLE 32.

"TELEPHONIC SELLER REGISTRATION AND BOND REQUIREMENT.

"§ 66-251. 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.

- 1 (4) 'Person' includes any individual, firm, association, corporation,
2 partnership, joint venture, or any other business entity.
- 3 (5) 'Principal' means an owner, an executive officer of a corporation, a
4 general partner of a partnership, a sole proprietor of a sole
5 proprietorship, a trustee of a trust, or any other individual with similar
6 supervisory functions with respect to any person.
- 7 (6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to
8 become obligated to a telephonic seller or to make any donation or gift
9 to any person represented by the telephonic seller.
- 10 (7) 'Room operator' means any principal, employee, or agent responsible for
11 the operational management and supervision of facilities from which
12 telephonic sales calls are made or received.
- 13 (8) 'Salesperson' means any individual employed, appointed, or authorized
14 by a telephonic seller, whether referred to by the telephonic seller as an
15 agency, representative, or independent contractor, who attempts to
16 solicit or solicits a sale on behalf of the telephonic seller.
- 17 (9) 'Secretary' means the Office of the Secretary of State.
- 18 (10) 'Telephone solicitation' or 'attempted telephone solicitation' means any
19 communication designed to persuade any person to purchase goods or
20 services, to enter a contest, or to contribute to a charity, regardless of
21 whether the telephone call initiating the solicitation is placed by the
22 telephonic seller or a person responding to notices sent or provided by
23 or on behalf of the seller.
- 24 (11) 'Telephonic seller' or 'seller' means a person who, directly or through
25 salespersons, causes a telephone solicitation or attempted telephone
26 solicitation to occur. 'Telephonic seller' and 'seller' does not mean:
- 27 a. A person who is offering or selling a registered security and is
28 licensed to sell such security in North Carolina;
- 29 b. Any person conducting sales or solicitations on behalf of a
30 licensed utility regulated by the North Carolina Utilities
31 Commission;
- 32 c. Any insurance agent or broker who is properly licensed by the
33 Department of Insurance and who is soliciting within the scope
34 of the agent's or broker's license;
- 35 d. Any federally chartered bank or savings institution or any bank
36 or savings institution properly licensed by the State or subject to
37 federal regulating authorities;
- 38 e. Any organization already accorded section 501(c)(3) nonprofit
39 status under the Internal Revenue Code or any 'charitable
40 solicitor' properly licensed under Article 2 of Chapter 131F of the
41 General Statutes;

- 1 f. Any person soliciting business solely from purchasers who have
2 previously initiated purchases from the entity for which the
3 person is soliciting;
- 4 g. Any person taking callers' orders for the purchase of an item that
5 has been offered for sale through an advertisement or a catalog,
6 provided that the person taking the order makes no effort to
7 solicit the purchase of additional items;
- 8 h. A person engaging in a commercial telephone solicitation where
9 the solicitation is an isolated transaction and not done in the
10 course of a pattern of repeated transactions of the same nature;
- 11 i. A person primarily soliciting the sale of a newspaper of general
12 circulation;
- 13 j. A person soliciting the sale of services provided by a cable
14 television system operating under the authority of a local
15 franchise;
- 16 k. Any passenger airline licensed by the Federal Aviation
17 Administration;
- 18 l. Any person holding a real estate broker's or sales agent's license
19 under Chapter 93A of the General Statutes;
- 20 m. Any person soliciting a transaction regulated by the Commodities
21 Futures Trading Commission, provided the person is registered
22 or temporarily licensed by the Commodities Futures Trading
23 Commission under the Commodity Exchange Act, 7 U.S.C. § 1
24 et seq.; and
- 25 n. Any person soliciting a purchase from a business, provided the
26 person soliciting makes reasonable efforts to ensure that the
27 person solicited has actual authority to bind the business to a
28 purchase agreement.

29 **§ 66-252. Registration of telephonic sellers.**

30 (a) Not less than 10 days before commencing telephone solicitations in this State,
31 a telephonic seller shall register with the Secretary by filing the information required in
32 G.S. 66-253 and paying a filing fee of one hundred dollars (\$100.00). A telephonic seller
33 is doing business in this State if it solicits or attempts to solicit prospective purchasers
34 from locations in this State or solicits or attempts to solicit prospective purchasers who
35 are located in this State.

36 (b) The information required in G.S. 66-253 shall be submitted on a form provided
37 by the Secretary and shall contain the notarized signatures of each principal of the
38 telephonic seller.

39 (c) Registration of a telephonic seller shall be valid for one year from the effective
40 date thereof and may be annually renewed by making the filing required in G.S. 66-253
41 and paying the filing fee of one hundred dollars (\$100.00).

42 (d) Whenever, prior to expiration of a seller's annual registration, there is a
43 material change in the information required by G.S. 66-253, the seller shall, within 10

1 days after the material change, file an addendum with the Secretary updating the
2 information.

3 **"§ 66-253. Filing information.**

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

- 6 (1) The name or names, including any assumed names, under which the
7 telephonic seller is doing or intends to do business in this State.
- 8 (2) The telephonic seller's business form and place of organization and, if
9 the seller is a corporation, copies of its articles of incorporation and
10 bylaws and amendments thereto, or if a partnership, a copy of the
11 partnership agreement.
- 12 (3) Complete street address of the telephonic seller's principal place of
13 business.
- 14 (4) The complete street address of each location from which telephone
15 solicitations are placed by the telephonic seller.
- 16 (5) A listing of all telephone numbers to be used by the telephonic seller,
17 including area codes, and the complete street address of the business
18 premises served by each number.
- 19 (6) The name and title of each principal.
- 20 (7) The complete street address of the residence, the date of birth, and the
21 social security number of each principal.
- 22 (8) The true name, street address, date of birth, and the social security
23 number of each room operator, together with the room operator's full
24 employment history during the preceding two years.
- 25 (9) The name and address of all banks or savings institutions where the
26 telephonic seller maintains deposit accounts.
- 27 (10) The name and address of each long-distance telephone carrier used by
28 the telephonic seller.
- 29 (11) A summary of each civil or criminal proceeding brought against the
30 telephonic seller, any of its principals, or any of its room operators
31 during the preceding five years by federal, State, or local officials
32 relating to telephonic sales practices of each. The summary shall
33 include the date each action was commenced, the criminal or civil
34 charges alleged, the case caption, the court file number, the court venue,
35 and the disposition of the action. For purposes of this section, a 'civil
36 action' means assurances of voluntary compliance, assurances of
37 discontinuance, consent judgments, and similar agreements executed
38 with federal, State, or local officials.

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

41 **"§ 66-254. Bond requirement: prizes and gifts.**

42 (a) At least 10 days before the commencement of any promotion offering any gift
43 or prize with an actual or represented market value of five hundred dollars (\$500.00) or

1 more, the telephonic seller shall notify the Secretary in writing of the details of the
2 promotion, fully describing the nature and number of all gifts or prizes and their current
3 market value, the seller's rules and regulations governing the promotion, and the date the
4 gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent
5 with notifying the Secretary under this subsection, the telephonic seller shall post a bond
6 with the Secretary for the market value or the represented value, whichever is greater, of
7 all gifts or prizes represented as available under the promotion. The bond must be issued
8 by a surety company authorized to do business in this State. The bond shall be in favor
9 of the State of North Carolina for the benefit of any person entitled to receive a gift or
10 prize under the promotion who did not receive it within 30 days of the specified date of
11 award. The amount recoverable by any person under the bond shall not exceed the
12 market value, the represented value of the gift or prize, or the amount of any
13 consideration or contribution paid by that person in response to the telephone solicitation,
14 whichever is greatest.

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

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

24 **"§ 66-255. Calls made to minors.**

25 A telephonic seller must inquire as to the age of the prospective purchaser it is
26 contacting. If the prospective purchaser is under 18 years of age, the telephonic seller
27 must discontinue the call immediately.

28 **"§ 66-256. Offers of gifts or prizes.**

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

- 32 (1) Requests or directs the consumer to further the transaction by calling a
33 900 number or a pay per call number.
- 34 (2) Requests or directs the consumer to send any payment or make a
35 donation in order to collect the gift or prize.
- 36 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

37 **"§ 66-257. Penalties.**

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

40 (b) In an action by the Attorney General against a telephonic seller for violation of
41 this Article, or for any other act or practice constituting a violation of G.S. 75-1.1, the
42 court may impose civil penalties of up to twenty-five thousand dollars (\$25,000) for each

1 violation involving North Carolina purchasers or prospective purchasers who are 65 years
2 of age or older.

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

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

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

9 **"§ 14-401.15. Telephone sales recovery services.**

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

13 (1) Money or other valuable consideration previously tendered to a
14 telephonic seller, as defined in G.S. 66-251; or

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

17 (b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any
18 violation involving actual collection of money or other consideration from a customer
19 shall be punishable as a Class H felony. Any violation involving collection of money or
20 other consideration from a customer 65 years of age or older shall be punishable as a
21 Class G felony.

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

26 Sec. 3. Section 2 of this act becomes effective January 1, 1996. The
27 remaining sections of this act become effective October 1, 1995.