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SENATE BILL 723
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Short Title: Telephone Consumer Protection 2/AB.

(Public)

Sponsors:

Referred to: Finance

April 13, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
3 NORTH CAROLINA AND TO MAKE THE OFFERING OF TELEPHONE SALES
4 RECOVERY SERVICES A CRIMINAL OFFENSE.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 32.**

9 **"TELEPHONIC SELLER REGISTRATION AND BOND REQUIREMENT.**

10 **"§ 66-251. Definitions.**

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

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

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

- 1 (3) 'Owner' means a person who owns or controls ten percent (10%) or
2 more of the equity of, or otherwise has a claim to ten percent (10%) or
3 more of the net income of, a telephonic seller.
- 4 (4) 'Person' includes any individual, firm, association, corporation,
5 partnership, joint venture, or any other business entity.
- 6 (5) 'Principal' means an owner, an executive officer of a corporation, a
7 general partner of a partnership, a sole proprietor of a sole
8 proprietorship, a trustee of a trust, or any other individual with similar
9 supervisory functions with respect to any person.
- 10 (6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to
11 become obligated to a telephonic seller or to make any donation or gift
12 to any person represented by the telephonic seller.
- 13 (7) 'Room operator' means any principal, employee, or agent responsible for
14 the operational management and supervision of facilities from which
15 telephonic sales calls are made or received.
- 16 (8) 'Salesperson' means any individual employed, appointed, or authorized
17 by a telephonic seller, whether referred to by the telephonic seller as an
18 agency, representative, or independent contractor, who attempts to
19 solicit or solicits a sale on behalf of the telephonic seller.
- 20 (9) 'Secretary' means the Office of the Secretary of State.
- 21 (10) 'Telephone solicitation' or 'attempted telephone solicitation' means any
22 telephonic communication designed to persuade any person to purchase
23 goods or services, to enter a contest, or to contribute to a charity,
24 regardless of whether the telephone call initiating the solicitation is
25 placed by the (i) telephonic seller or (ii) a person responding to any
26 unsolicited notice or notices sent or provided by or on behalf of the
27 seller, which notice or notices represents to the recipient that he or she
28 has won a gift or prize, that the recipient may obtain or qualify for credit
29 by contacting the seller, or that the seller has buyers interested in
30 purchasing the recipient's property.
- 31 (11) 'Telephonic seller' or 'seller' means a person who, directly or through
32 salespersons, causes a telephone solicitation or attempted telephone
33 solicitation to occur. 'Telephonic seller' and 'seller' does not include any
34 of the following:
- 35 a. A person who is offering or selling a registered security and is
36 licensed to sell such security in North Carolina.
- 37 b. Any person conducting sales or solicitations on behalf of a
38 licensee of the North Carolina Utilities Commission or the
39 Federal Communications Commission.
- 40 c. Any insurance agent or broker who is properly licensed by the
41 Department of Insurance and who is soliciting within the scope
42 of the agent's or broker's license or any employee or independent
43 contractor of an insurance company licensed by the Department

- 1 of Insurance conducting sales or solicitations on behalf of that
2 company.
- 3 d. Any federally chartered bank or savings institution or any bank
4 or savings institution properly licensed by the State or subject to
5 federal regulating authorities.
- 6 e. Any organization already accorded section 501(c)(3) nonprofit
7 status under the Internal Revenue Code, any 'charitable solicitor'
8 properly licensed under Article 2 of Chapter 131F of the General
9 Statutes, or any person exempt under G.S. 131F-3 from Chapter
10 131F of the General Statutes.
- 11 f. A person who periodically issues and delivers catalogs to
12 potential purchasers and the catalog:
- 13 1. Includes a written description or illustration and the sales
14 price of each item offered for sale;
- 15 2. Includes at least 24 full pages of written material or
16 illustrations;
- 17 3. Is distributed in more than one state; and
- 18 4. Has an annual circulation of not less than 250,000
19 customers.
- 20 g. A person engaging in a commercial telephone solicitation where
21 the solicitation is an isolated transaction and not done in the
22 course of a pattern of repeated transactions of a like nature.
- 23 h. A person primarily soliciting the sale of a newspaper of general
24 circulation, a publisher of a magazine or other periodical of
25 general circulation, or an agent of such a publisher acting
26 pursuant to a written agency agreement.
- 27 i. A person soliciting the sale of services provided by a cable
28 television system operating under the authority of a local
29 franchise.
- 30 j. Any passenger airline licensed by the Federal Aviation
31 Administration.
- 32 k. Any person holding a real estate broker's or sales agent's license
33 under Chapter 93A of the General Statutes.
- 34 l. Any person soliciting a transaction regulated by the Commodities
35 Futures Trading Commission, provided the person is registered
36 or temporarily licensed by the Commodities Futures Trading
37 Commission under the Commodity Exchange Act, 7 U.S.C. § 1
38 et seq.
- 39 m. Any person soliciting a purchase from a business, provided the
40 person soliciting makes reasonable efforts to ensure that the
41 person solicited has actual authority to bind the business to a
42 purchase agreement.

- 1 n. A foreign corporation which has for the preceding 12 months
2 held and maintained a certificate of authority to do business in
3 this State pursuant to Article 15 of Chapter 55 of the General
4 Statutes and which only does business in this State using the
5 name set forth in the certificate of authority.
- 6 o. An issuer or a subsidiary of an issuer that has a class of securities
7 which is subject to section 12 of the Securities Exchange Act of
8 1934 (15 U.S.C. section 781) and which is either registered or
9 exempt from registration under paragraph (A), paragraph (B),
10 paragraph (C), paragraph (E), paragraph (F), paragraph (G), or
11 paragraph (H) of subsection (g)(2) of that section.
- 12 p. A person soliciting the sale of food, seeds, or plants when a sale
13 does not involve an amount in excess of one hundred dollars
14 (\$100.00) directed to a single address.
- 15 q. A person soliciting:
- 16 1. Without intent to complete or obtain provisional
17 acceptance of a sale during the telephone solicitation;
- 18 2. Who does not make the major sales presentation during
19 the telephone solicitation but arranges for the major sales
20 presentation to be made at a later face-to-face meeting
21 between the salesperson and the purchaser; and
- 22 3. Who does not cause an individual to go to the prospective
23 purchaser to collect payment for the purchase or to deliver
24 any item purchased directly following the telephone
25 solicitation; or
- 26 4. Who offers to send the purchaser descriptive literature and
27 does not require payment prior to the purchaser's review
28 of the descriptive literature.
- 29 r. A person soliciting the purchase of contracts for the maintenance
30 or repair of items previously purchased from the person making
31 the solicitation or on whose behalf the solicitation is made.
- 32 s. A book, video, or record club or contractual plan or arrangement:
- 33 1. Under which the seller provides the consumer with a form
34 with which the consumer can instruct the seller not to ship
35 the offered merchandise.
- 36 2. Which is regulated by the Federal Trade Commission
37 trade regulation concerning 'use of negative option plans
38 by sellers in commerce'.
- 39 3. Which provides for the sale of books, records, or videos
40 which are not covered under paragraphs 1. or 2. of this
41 sub-subdivision, including continuity plans, subscription
42 arrangements, standing order arrangements, supplements,
43 and series arrangements under which the seller

1 periodically ships merchandise to a consumer who has
2 consented in advance to receive such merchandise on a
3 periodic basis.

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

11 u. A person:

12 1. Who provides telephone solicitation services under
13 contract to sellers;

14 2. Who has been operating continuously for at least three
15 years under the same business name; and

16 3. For whom at least seventy-five percent (75%) of the
17 person's contracts are performed on behalf of other
18 persons exempt under this section.

19 v. A person soliciting political contributions in accordance with
20 Article 22A of Chapter 163.

21 **"§ 66-252. Registration of telephonic sellers.**

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

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

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

34 (d) Whenever, prior to expiration of a seller's annual registration, there is a
35 material change in the information required by G.S. 66-253, the seller shall, within 10
36 days after the material change, file an addendum with the Secretary updating the
37 information.

38 **"§ 66-253. Filing information.**

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

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

- 1 (2) The telephonic seller's business form and place of organization and, if
2 the seller is a corporation, copies of its articles of incorporation and
3 bylaws and amendments thereto, or if a partnership, a copy of the
4 partnership agreement.
- 5 (3) Complete street address of the telephonic seller's principal place of
6 business.
- 7 (4) The complete street address of each location from which telephone
8 solicitations are placed by the telephonic seller.
- 9 (5) A listing of all telephone numbers to be used by the telephonic seller,
10 including area codes, and the complete street address of the business
11 premises served by each number.
- 12 (6) The name and title of each principal.
- 13 (7) The complete street address of the residence, the date of birth, and the
14 social security number of each principal.
- 15 (8) The true name, street address, date of birth, and the social security
16 number of each room operator, together with the room operator's full
17 employment history during the preceding two years.
- 18 (9) The name and address of all banks or savings institutions where the
19 telephonic seller maintains deposit accounts.
- 20 (10) The name and address of each long-distance telephone carrier used by
21 the telephonic seller.
- 22 (11) A summary of each civil or criminal proceeding brought against the
23 telephonic seller, any of its principals, or any of its room operators
24 during the preceding five years by federal, State, or local officials
25 relating to telephonic sales practices of each. The summary shall
26 include the date each action was commenced, the criminal or civil
27 charges alleged, the case caption, the court file number, the court venue,
28 and the disposition of the action. For purposes of this section, a 'civil
29 proceeding includes' means assurances of voluntary compliance,
30 assurances of discontinuance, consent judgments, and similar
31 agreements executed with federal, State, or local officials.
- 32 (b) For purposes of this section, 'street address' does not include a private mail
33 service address.

34 **"§ 66-254. Bond requirement; prizes and gifts.**

- 35 (a) At least 10 days before the commencement of any promotion offering any gift
36 or prize with an actual or represented market value of five hundred dollars (\$500.00) or
37 more, the telephonic seller shall notify the Secretary in writing of the details of the
38 promotion, fully describing the nature and number of all gifts or prizes and their current
39 market value, the seller's rules and regulations governing the promotion, and the date the
40 gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent
41 with notifying the Secretary under this subsection, the telephonic seller shall post a bond
42 with the Secretary for the market value or the represented value, whichever is greater, of
43 all gifts or prizes represented as available under the promotion. The bond must be issued

1 by a surety company authorized to do business in this State. The bond shall be in favor
2 of the State of North Carolina for the benefit of any person entitled to receive a gift or
3 prize under the promotion who did not receive it within 30 days of the specified date of
4 award. The amount recoverable by any person under the bond shall not exceed the
5 market value, the represented value of the gift or prize, or the amount of any
6 consideration or contribution paid by that person in response to the telephone solicitation,
7 whichever is greatest.

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

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

17 **"§ 66-255. Calls made to minors.**

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

21 **"§ 66-256. Offers of gifts or prizes.**

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

25 (1) Requests or directs the consumer to further the transaction by calling a
26 900 number or a pay per call number.

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

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

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

32 **"§ 66-257. Penalties.**

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

35 (b) In an action by the Attorney General against a telephonic seller for violation of
36 this Article, or for any other act or practice by a telephonic seller constituting a violation
37 of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars
38 (\$25,000) for each violation involving North Carolina purchasers or prospective
39 purchasers who are 65 years of age or older.

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

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

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

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

8 **"§ 14-401.15. Telephone sales recovery services.**

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

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

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

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

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

23 Sec. 3. Section 2 of this act becomes effective January 1, 1996, and applies to
24 offenses committed on or after that date. The remaining sections of this act become
25 effective October 1, 1995, and apply to violations occurring on or after that date.