

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 253 (Senate Commerce Committee Substitute)  
S253-PCS8626

**SHORT TITLE:** Telephone Consumer Protection 2/AB

**SPONSOR(S):** Senators Winner, Gulley, Lee and Odom

**FISCAL IMPACT**

**Yes (X)      No ( )      No Estimate Available ( )**

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
<b>REVENUES</b>	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500
<b>EXPENDITURES</b>		NONE			

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Office of the Secretary of State, Judicial Branch, Department of Justice Office of Consumer Protection

**EFFECTIVE DATE:** Except as noted below, act is effective Oct. 1, 1997, and applies to violations on or after that date.

**BILL SUMMARY: S 253. TELEPHONE CONSUMER PROTECTION. TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN NORTH CAROLINA, TO MAKE THE OFFERING OF TELEPHONE SALES RECOVERY SERVICES A CRIMINAL OFFENSE, AND TO RESTRICT THE TIME PERIOD WITHIN WHICH UNSOLICITED AUTOMATIC DIALING AND RECORDED MESSAGES MAY BE MADE BY PHONE.** Adds new Art. 33 to GS Ch. 66. Requires that telephonic sellers register with, and pay annual \$100 registration fee to, the Secretary of State not less than 10 days before commencing telephone solicitations from within the state or before soliciting purchasers residing in the state. Specifies required filing information, which includes a summary of any civil or criminal proceedings concerning telephonic sales brought against the registrant in the preceding five years. Registration is not effective until all required information is provided. Requires that telephonic sellers who promote or offer prizes with a value of \$500 or more provide information about that prize to the Secretary of State, post a bond for the value of the prize, and provide the Secretary with proof that the prize was awarded within 45 days after the date of award. The bond is maintained until the Secretary is provided with reliable proof that the prize has been delivered. Prohibits telephone solicitation calls to minors.

Makes it unlawful for a telephonic seller to make a telephone solicitation call involving any gift or prize if the solicitation requests that a consumer further the transaction by calling a 900 number or a pay per call number, or requests a consumer to send payment or make a donation in order to collect a gift or

prize, or fails to comply with provisions of GS Ch. 75 regarding automated dialing and recorded messages and representations regarding prizes.

Violation of act is an unfair and deceptive trade practice. Allows court, in civil action brought by Atty. Gen. for violation of act, to impose civil penalty of up to \$25,000 per violation.

Defines "telephone solicitation" as any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity regardless of whether the telephone call is placed by (a) the telephonic seller or (b) a person responding to an unsolicited notice provided by seller representing to the recipient that the recipient has won a gift or prize or may qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing recipient's property. Excludes from the definition of "telephonic seller" the following persons and entities: (1) nonprofit (501(c)(3)) organizations and charitable solicitors licensed under GS Ch. 131F or exempt from licensure under GS Ch. 131F; (2) licensed persons offering or selling registered securities; (3) persons conducting sales or solicitations on behalf of licensee of NC Utilities Comm'n or Federal Communications Comm'n; (4) licensed insurance agent or broker conducting sales or solicitations on behalf of insurance company; (5) banks or savings institutions; (6) persons who deliver sales catalogs with annual circulation of at least 250,000 to potential purchasers in more than one state; (7) persons soliciting sales on behalf of newspaper or cable television company; (8) persons soliciting purchases from a business; (9) book, video, or record clubs that meet certain requirements; (10) persons soliciting political contributions in accordance with Art. 22A of GS Ch. 163; and (11) sellers of business opportunities, loan brokers and membership camping operators and other persons and entities specified in act.

Effective Jan. 1, 1998, makes it a class 1 misdemeanor for a person, other than an attorney licensed in NC, a collection agent holding permit issued by Dep't of Insurance, or a person licensed by NC Protective Services Board, to solicit or require money or other consideration in exchange for recovering or attempting to recover (1) money or valuable consideration previously tendered to telephonic seller, or (2) prizes, awards, or other things of value that telephonic seller has previously represented would be delivered. A violation involving actual collection of money or consideration from a customer is a class H felony.<sup>1</sup>

**ASSUMPTIONS AND METHODOLOGY:** The Sentencing Commission does not expect the bill to have a significant impact on prison populations since only a handful of cases involving the conduct described in the bill were initiated in state court last year.

The Judicial Branch does not anticipate any substantial impact on this bill because only a minimal increase in lawsuits and prosecutions are anticipated by the Department of Justice.

The Department of Justice does not anticipate any fiscal impact of this bill because they anticipate only a handful of cases will be litigated and that answering inquiries about the bill's requirements can be handled within existing resources.

The Office of the Secretary of State would be responsible for receiving registration by telephonic sellers and for collecting the \$100 registration fee. Based on discussions with states that have already enacted similar legislation, the Secretary of State projects an average of 5 registrants per year or \$500 in revenues. This relatively small number of registrants is a function of the extensive exemptions specified in the legislation. The Office of the Secretary of State can perform this function within existing resources. Thus the only fiscal impact of the bill is the projected revenue from registrations.

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<sup>1</sup> *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, 1997

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION**

**733-4910**

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**DATE:** April 14, 1997



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