

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1313*

Short Title: Stop Unwanted Telephone Solicitations. (Public)

Sponsors: Senators Odom; Allran and Foxx.

Referred to: Commerce.

June 11, 2002

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH AND MAINTAIN A NO-CALL REGISTRY FOR
3 CONSUMERS WHO WISH TO STOP UNWANTED TELEPHONE
4 SOLICITATION CALLS AND TO INCREASE THE PROTECTIONS FOR
5 CONSUMERS IN TRANSACTIONS INITIATED BY TELEMARKETERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The General Assembly of North Carolina makes the following
8 findings:

- 9 (1) The use of the telephone to market goods and services to the home and
10 to other businesses is now pervasive due to the increased use of
11 cost-effective telemarketing technologies and techniques.
- 12 (2) While some consumers enjoy and benefit from unsolicited
13 telemarketing contacts from legitimate telemarketers, many others
14 object to these contacts as an intrusive invasion of an individual's right
15 of privacy in the home.
- 16 (3) In addition, the proliferation of unsolicited telemarketing calls,
17 especially during the evening hours, creates a nuisance and a
18 disturbance upon the home and family life of North Carolina residents
19 during a time of day used by many families for traditional family
20 activities.
- 21 (4) North Carolina residents should have the freedom to choose whether
22 or not to permit telemarketers to contact them.
- 23 (5) Individual privacy rights, public safety interests, and commercial
24 freedom of speech and trade must be balanced in a way that protects
25 the privacy of individuals and permits legitimate telemarketing
26 practices.
- 27 (6) Even legitimate telemarketers have no interest in continuing to invade
28 the privacy of those consumers who affirmatively express their
29 objections to such contact and, in fact, legitimate telemarketers can

1 make their telemarketing efforts more cost effective by avoiding calls
2 to those consumers who have affirmatively expressed an objection to
3 any such contact.

4 (7) Many North Carolina consumers who have transacted business with
5 firms that employ telemarketing have experienced problems with their
6 checking and credit card accounts being debited before they can
7 evaluate the terms and conditions of the transaction, before they can
8 evaluate the merchandise or service to be delivered, or without their
9 agreement to enter into the transaction or authorize such transactions
10 in the first place.

11 (8) New technologies that make telemarketing more cost effective also
12 allow for the creation of a State No-Call Registry through which North
13 Carolina consumers can easily register their desires not to receive
14 further telemarketing calls and telemarketers can easily access and
15 employ lists of consumers who have registered those desires.

16 (9) The public interest requires an efficient mechanism for North Carolina
17 residents to notify telemarketers that their telephone numbers cannot
18 be called and additional protections for North Carolina residents who
19 enter into consumer transactions initiated through telemarketing calls.

20 **SECTION 2.** G.S. 75-30.1 reads as rewritten:

21 **"§ 75-30.1. Restrictions on telephone solicitations.**

22 (a) For purposes of this section:

23 (1) 'Residential telephone subscriber' means a person who subscribes to
24 residential telephone service from a local exchange company and uses
25 that service primarily for residential purposes, or the persons living or
26 residing with that person.

27 (2) 'Telephone solicitation' means a voice ~~communication~~ communication,
28 whether prerecorded or live, or a facsimile over a telephone line to a
29 residential telephone subscriber for the purpose of soliciting or
30 encouraging the purchase or rental of, or investment in, property,
31 goods, or ~~services, or services;~~ for the purpose of obtaining
32 information that will or may be used for that ~~purpose, purpose; for the~~
33 purpose of soliciting or encouraging a telephone subscriber's
34 participation in any contest, sweepstakes, raffle, or lottery, whether
35 legal or illegal; or for the purpose of obtaining a donation. Telephone
36 solicitation also means any such voice communication that is initiated
37 by a residential telephone subscriber responding to any unsolicited
38 letter, telegram, e-mail message, or other notice that states any one or
39 more of the following:

40 a. That the residential telephone subscriber has won, may have
41 won, or may win any contest, sweepstakes, raffle, or lottery.

42 b. That the residential telephone subscriber may obtain or qualify
43 for credit by contacting the solicitor.

- 1 c. That the solicitor has buyers interested in purchasing the
2 recipient's property.
- 3 (2a) 'Telephone solicitation' but does not include any of the following
4 telephonic communications:
- 5 a. To any person with that person's prior express invitation or
6 permission; permission, including telephonic communications
7 initiated by that person unless that person is responding to any
8 unsolicited letter, telegram, e-mail message, or other notice that
9 states one or more of the following:
- 10 1. That the residential telephone subscriber has won, may
11 have won, or may win any contest, sweepstakes, raffle,
12 or lottery.
- 13 2. That the residential telephone subscriber may obtain or
14 qualify for credit by contacting the solicitor.
- 15 3. That the solicitor has buyers interested in purchasing the
16 recipient's property.
- 17 b. To any person with whom the telephone solicitor has an
18 established business relationship; or in connection with an
19 existing debt or contract for which payment or performance has
20 not been completed at the time of the call.
- 21 c. By or on behalf of a tax-exempt nonprofit organization;
22 organization when calls are being placed by direct employees of
23 the organization, or volunteers without remuneration for the
24 organization, and the caller immediately discloses the following
25 information upon making contact with the residential telephone
26 subscriber:
- 27 (1.) The caller's true first and last name; and
28 (2.) The name, address, and telephone number of the
29 organization.
- 30 (3) 'Telephone solicitor' means any business or other legal entity doing
31 business in this State that that, directly or through salespersons or
32 agents, makes or attempts to make telephone solicitations or causes
33 telephone solicitations to be made.
- 34 (4) 'Doing business in this State' means to make or cause to be made any
35 telephone solicitation to North Carolina residential telephone
36 subscribers, whether the telephone solicitations are made from a
37 location inside North Carolina or outside North Carolina.
- 38 (b) No telephone solicitor shall place any calls to a North Carolina residential
39 telephone subscriber's number if that telephone subscriber's telephone number, facsimile
40 machine number, pager number, or other telephonic device number appears on the latest
41 edition of the No-Call Registry under G.S. 75-30.2 or if the telephone subscriber
42 previously has communicated to that telephone solicitor a desire to receive no further
43 telephone solicitations from that solicitor. Any telephone solicitor who makes a
44 telephone solicitation to a residential telephone subscriber whose telephonic device

1 number is not listed in the latest edition of the No-Call Registry or who previously has
2 not communicated to the telephone solicitor a desire to receive no further telephone
3 solicitations from that solicitor shall:

- 4 (1) At the beginning of the call, state clearly the identity of the business,
5 individual, or other legal entity initiating the call, and identify the
6 person making the call by that person's name.
7 (2) Upon request, provide the telephone subscriber with the telephone
8 number or address at which the person or entity may be contacted.
9 (3) Terminate the call if the person does not consent to the call.
10 (4) If the person called requests to be taken off the contact list of the
11 telephone solicitor, take all steps necessary to remove within three
12 business days that person's name and telephone number from the
13 contact records of the business, individual or other legal entity
14 initiating the call.

15 (c) Every telephone solicitor who makes telephone solicitations in this State shall
16 implement in-house systems and procedures designed to prevent further calls to ~~persons~~
17 any person who have has asked not to be called again. ~~Compliance with 47 C.F.R. §~~
18 ~~64.1200(e) of the Federal Communications Commission's Restrictions on Telephone~~
19 ~~Solicitation constitutes compliance with this subsection: again or who has placed a~~
20 telephonic device number in the No-Call Registry.

21 ~~(d) No telephone solicitor shall initiate a call to a residential telephone subscriber~~
22 ~~who has communicated to that telephone solicitor a desire to be taken off the contact list~~
23 ~~of that solicitor.~~

24 (e) No telephone solicitor shall initiate a call to a residential telephone subscriber
25 after ~~9:00 P.M. 8:00 P.M.~~ or before ~~8:00 A.M. 10:00 A.M.~~ at the called party's location.

26 (f) No telephone solicitor who makes a telephone solicitation to the telephone
27 line of a residential telephone subscriber in this State shall knowingly use any method to
28 block or otherwise circumvent that subscriber's use of a caller identification service. ~~A~~
29 ~~telephone solicitor who makes a telephone solicitation to the telephone line of a~~
30 ~~residential subscriber through the use of a private branch exchange (PBX) or other call-~~
31 ~~generating system that is not capable of transmitting caller identification information~~
32 ~~shall not be in violation of this subsection.~~ No provider of telephone caller identification
33 services shall be held liable for violations of this subsection committed by other persons
34 or entities.

35 (g) Every telephone solicitor who makes telephone solicitations in this State shall
36 keep a record for a period of 24 months from the date a call is placed of the legal name
37 and any fictitious name used, resident address, telephone number, and job title of each
38 person who places a telephone solicitation for that telephone solicitor. If callers for a
39 telephone solicitor use fictitious names, each fictitious name shall be traceable to only
40 one specific caller.

41 (g1) In all transactions involving residential telephone subscribers in North
42 Carolina, no contract or purchase agreement secured during a telephone solicitation is
43 valid, and no money from the residential telephone subscriber is due thereunder, unless
44 all of the following conditions are satisfied:

- 1 (1) The contract is reduced to writing and signed by the consumer.
- 2 (2) The contract complies with all other applicable laws.
- 3 (3) The contract contains the name, address, and business telephone
4 number of the seller, the total price of the contract, and a detailed
5 description of the goods or services being sold.
- 6 (4) The goods or services subject to the contract comply with the
7 description principally used in the telephone solicitation.
- 8 (5) The contract contains, in bold, conspicuous type, immediately
9 preceding the signature, the words: 'You are not obligated to pay any
10 money unless you sign this contract and return it to the seller.'
- 11 (6) The contract does not exclude from its terms any oral or written
12 representations made by the telephone solicitor to the consumer in
13 connection with the transaction.

14 (g2) A telephone solicitor or a merchant who engages a telephone solicitor to
15 make or cause to be made a telephone solicitation to a North Carolina residential
16 telephone subscriber shall not do any of the following until the merchant receives from
17 the residential telephone subscriber a copy of the written contract, signed by the
18 consumer, that complies with this section:

- 19 (1) Make or submit a charge to a consumer's credit card account, debit
20 card account, checking account, savings account, or other account.
- 21 (2) Make or cause to be made any electronic transfer of funds.

22 (h) The Attorney General may investigate any complaints received alleging
23 violations of ~~subsections (b) through (g) of this section,~~section or G.S. 75-30.2. If, after
24 investigating a complaint, the Attorney General finds that there has been a violation of
25 ~~subsections (b) through (g) of this section,~~section or G.S. 75-30.2, the Attorney General
26 may bring an action to impose a ~~civil penalty~~civil penalties and to seek any other
27 appropriate ~~relief,~~ relief pursuant to this Chapter, including equitable relief to restrain
28 the violation pursuant to G.S. 75-14. ~~Actions for civil penalties under this section shall~~
29 ~~be consistent with the provisions of G.S. 75-15.2 except that the penalty imposed for a~~
30 ~~violation of this section shall not exceed five hundred dollars (\$500.00) per violation.~~

31 (i) A ~~person~~residential telephone subscriber who has received ~~more than one~~a
32 telephone solicitation within any 12 month period by ~~from~~ or on behalf of the ~~same~~a
33 telephone solicitor in violation of subsections (b) through (g) of this section or G.S. 75-
34 30.2 may bring any of the following actions in the General Court of Justice:

- 35 (1) An action to enjoin further ~~violations,~~violations by the telephone
36 solicitor.
- 37 (2) An action to recover ~~five hundred dollars (\$500.00)~~five thousand
38 dollars (\$5,000) in statutory damages for each ~~violation;~~violation.
- 39 (3) An action to declare void any contract resulting from telephonic
40 solicitations in violation of this section or G.S. 75-30.2.

41 In an action brought pursuant to this ~~section,~~section or G.S. 75-30.2, a prevailing
42 plaintiff shall be entitled to recover reasonable attorneys' fees and the court may award
43 reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff
44 knew, or should have known, that the action was frivolous and malicious.

1 (j) A citizen of this State is also entitled to bring an action in the General Court
2 of Justice to enforce the private rights of action established by federal law under 47
3 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

4 (k) Actions brought by residential telephone subscribers pursuant to subsections
5 (i) and (j) of this section or G.S. 75-30.2 shall be tried in the county where the plaintiff
6 resides at the time of the commencement of the action."

7 **SECTION 3.** Article 1 of Chapter 75 of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 75-30.2. No-Call Registry.**

10 The Attorney General shall establish and maintain a No-Call Registry containing the
11 telephone numbers of North Carolina residential telephone subscribers who do not wish
12 to receive telephone solicitations at those numbers. The No-Call Registry shall be
13 operated as follows:

14 (1) The telephone number of a residential telephone subscriber shall be
15 placed in the No-Call Registry immediately upon receipt of a request
16 submitted by the subscriber pursuant to registration procedures
17 established by the Attorney General. The telephone subscriber's
18 number shall remain in the No-Call Registry until the telephone
19 subscriber notifies the Attorney General, in accordance with these
20 registration procedures, that it should be removed, or until the number
21 is assigned to a new telephone subscriber.

22 (2) Not less than 10 days before commencing telephone solicitations in
23 this State, a telephone solicitor shall register pursuant to G.S. 66-261
24 and obtain from the Attorney General a copy of the most up-to-date
25 quarterly edition of the No-Call Registry. On the first business day
26 following each January 1, April 1, July 1, and October 1 of each year,
27 the Attorney General shall produce and make available to registered
28 telephone solicitors a revised, quarterly edition of the No-Call
29 Registry. A telephone solicitor that relies upon any version of the
30 Registry beyond the quarter for which it was produced and issued is in
31 violation of this section.

32 (3) The Attorney General shall make the latest edition of the No-Call
33 Registry available to the registered telephone solicitor in written form
34 upon request, or in whatever electronic form that the Attorney General
35 deems appropriate and cost effective.

36 (4) The Attorney General may contract with an agent to establish and
37 operate the No-Call Registry under this section so long as all of the
38 following are satisfied:

39 a. The agent has demonstrated the capacity to maintain and
40 operate such a registry.

41 b. The Attorney General, upon entering into a contract under this
42 section, has ultimate authority over the agent for the approval of
43 procedures for the establishment, maintenance, and
44 dissemination of the listings in the No-Call Registry.

- 1 (5) The Attorney General shall arrange, if the Attorney General
2 determines it is technically feasible and economically practicable, to
3 transfer into the No-Call Registry the numbers of all North Carolina
4 residential telephone subscribers who have enrolled in any national do-
5 not-call registries that may be established and operated by agencies of
6 the United States government. The Attorney General may also arrange
7 to transfer information from the No-Call Registry under this section to
8 such federal agencies so that the wishes of the North Carolina
9 telephone subscribers are recorded in those national do-not-call
10 registries.
- 11 (6) No telephone solicitor shall sell, assign, transfer, or convey any copy
12 of the No-Call Registry to parties other than its employees or its
13 wholly owned subsidiaries. If a telephone solicitor utilizes other
14 telephone solicitors to make telephone solicitations for it in North
15 Carolina on a subcontract, commission, partnership, or similar basis,
16 that other telephone solicitor shall register under G.S. 66-261 and shall
17 procure and utilize its own copy of the current No-Call Registry from
18 the Attorney General in accordance with the provisions of this section.
19 No telephone solicitor may use the information on the Registry for any
20 purpose other than to remove residential telephone subscribers from
21 telephone call lists and to prevent calls from being placed to telephone
22 numbers listed in the Registry.
- 23 (7) No information compiled and maintained in the No-Call Registry is a
24 public record under Chapter 132 of the General Statutes. Information
25 contained in the No-Call Registry shall be used only for complying
26 with or enforcing the requirements of this section.
- 27 (8) The Attorney General shall produce a bill insert, pamphlet, or other
28 document that notifies consumers of the existence of the No-Call
29 Registry and provides information to consumers on how to use it to
30 object to receiving telephone solicitations. Local exchange companies
31 shall distribute the insert, pamphlet, or other document pursuant to
32 G.S. 62-54."

33 **SECTION 4.** G.S. 62-54 reads as rewritten:

34 **"§ 62-54. Notification of opportunity to object to telephone solicitation.**

35 The Commission shall require each local exchange company to notify all persons
36 who subscribe to residential service from that company of the provisions of ~~G.S.~~
37 ~~75-30.1~~, G.S. 75-30.1 and G.S. 75-30.2, of the federal laws and regulations allowing
38 consumers to object to receiving telephone solicitations, and of programs made
39 available by private industry that allow consumers to have their names removed from
40 telemarketing lists, by enclosing that information, at least ~~annually~~, every six months, in
41 every telephone bill mailed to residential customers. This information shall be in the
42 form of a bill insert, pamphlet, or other document drafted by the Attorney General and
43 reprinted at the local exchange company's expense, and shall reflect any changes in
44 North Carolina, federal, or private industry procedures and requirements for registering

1 objections to telephone solicitations. The Commission shall also ensure that this
2 information is printed in a clear, conspicuous manner in the consumer information
3 pages of each telephone directory distributed to residential customers."

4 **SECTION 5.** G.S. 75-30 reads as rewritten:

5 "**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

6 (a) No person may make an unsolicited telephone call by the use of an automatic
7 dialing and recorded message player ~~unless:~~unless all of the following conditions are
8 satisfied:

9 (1) Such calling person is a ~~charitable, civic, political or tax-exempt~~
10 charitable or civic organization, a political party or political candidate,
11 a governmental official, an opinion polling organization or organization,
12 or a radio station, television station or station, or broadcast rating service
13 conducting a public opinion poll required by law; and poll when no
14 part of the call is used for any one or more of the following:

15 a. To solicit or encourage the purchase or rental of, or investment
16 in, property, goods, or services.

17 b. To obtain information that will or may be used for that purpose.

18 c. For the purpose of obtaining a donation.

19 (2) Such calling person clearly identifies the nature of the call and the
20 name and address of the calling organization.

21 (b) As an exception to subsection ~~(a)-(a)~~ of this section, an unsolicited telephone
22 call may be made by the use of an automatic dialing and recorded message player if the
23 recorded message is preceded by an announcement made by a ~~human~~ live operator
24 ~~who:~~ who does all of the following:

25 (1) States the nature and length in minutes of the recorded ~~message;~~
26 ~~and~~ message.

27 (2) Identifies the individual, business, group, or organization ~~calling;~~
28 ~~and~~ calling.

29 (3) Asks ~~the called party whether he is willing to listen to the recorded~~
30 ~~message; and~~ for and receives the called party's prior approval to play
31 the recorded message.

32 (4) ~~Disconnects~~ Promptly disconnects from the called party's line ~~if once~~
33 ~~the called party is unwilling to listen to the recorded message.~~ hangs up
34 or otherwise attempts to terminate the call.

35 (c) For the purpose of this ~~section~~ section, an automatic dialing and recorded
36 message player shall be defined as any automatic equipment which incorporates a
37 storage capability of telephone numbers to be called or a random or sequential number
38 generator capable of producing numbers to be called and the capability, working alone
39 or in conjunction with other equipment, of disseminating a ~~prerecorded~~ message to the
40 telephone number called.

41 (d) For the purpose of this section, a telephone call shall be deemed to be
42 unsolicited unless pursuant to a prior agreement between the parties the person called
43 has agreed to accept such calls from the person ~~calling.~~ calling, and the person called

1 has not subsequently expressed to the caller a desire not to receive further telephone
2 solicitations in accordance with provisions of G.S. 75-30.1.

3 (e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a
4 fine of one hundred dollars (\$100.00), for each occurrence is an unfair and deceptive act
5 or practice in or affecting commerce under G.S. 75-1.1.

6 (f) The Attorney General may investigate any complaints received alleging
7 violations of this section. If, after investigating a complaint, the Attorney General finds
8 that there has been a violation of this section, the Attorney General may bring an action
9 to impose civil penalties and to seek any other appropriate relief pursuant to this
10 Chapter, including equitable relief to restrain the violation.

11 (g) A residential telephone subscriber who has received a telephone
12 communication in violation of this section may bring a civil action seeking any one or
13 more of the following:

14 (1) An action to enjoin further violations by the telephone solicitor.

15 (2) An action to recover five thousand dollars (\$5,000) in statutory
16 damages for each violation.

17 (3) An action to declare void any contract resulting from telephone
18 solicitations in violation of this section.

19 (4) An action to enforce private rights of action established by federal law
20 under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

21 (h) Actions brought by residential telephone subscribers under this section shall
22 be tried in the county where the plaintiff resides at the time of the commencement of the
23 action."

24 **SECTION 6.** Article 33 of Chapter 66 of the General Statutes reads as
25 rewritten:

26 "Article 33.

27 "~~Telephonic Seller~~ Telephone Solicitor Registration and Bond Requirement.

28 "**§ 66-260. Definitions.**

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

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

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

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

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

40 (5) 'Principal' means an owner, a part-owner holding or controlling ten
41 percent (10%) or more of the equity of, or otherwise having a claim to
42 ten percent (10%) or more of the net income of, a telephone solicitor,
43 an executive officer of a corporation, a general partner of a
44 partnership, a sole proprietor of a sole proprietorship, a trustee of a

1 trust, or any other individual with similar supervisory functions with
2 respect to any person.

3 (6) ~~'Purchaser' or 'prospective purchaser' means a person who is solicited~~
4 ~~to become obligated to a telephonic seller or to make any donation or~~
5 ~~gift to any person represented by the telephonic seller. the residential~~
6 ~~telephone subscriber whose telephone number is called or used in a~~
7 ~~telephone solicitation, and includes any member of the residential~~
8 ~~telephone subscriber's household who is a party to any telephone~~
9 ~~solicitation transaction.~~

10 (7) ~~'Room operator' means any principal, employee, or agent responsible~~
11 ~~for the operational management and supervision of facilities from~~
12 ~~which 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 ~~telephonic communication designed to persuade any person to~~
20 ~~purchase goods or services, to enter a contest, or to contribute to a~~
21 ~~charity or a person represented to be a charity, regardless of whether~~
22 ~~the telephone call initiating the solicitation is placed by the (i)~~
23 ~~telephonic seller or (ii) a person responding to any unsolicited notice~~
24 ~~or notices sent or provided by or on behalf of the seller, which notice~~
25 ~~or notices represent to the recipient that he or she has won a gift or~~
26 ~~prize, that the recipient may obtain or qualify for credit by contacting~~
27 ~~the seller, or that the seller has buyers interested in purchasing the~~
28 ~~recipient's property. has the same meaning as telephone solicitation in~~
29 ~~G.S. 75-30.1.~~

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

34 a. ~~A securities 'dealer' within the meaning of G.S. 78A-2(2) or a~~
35 ~~person excluded from the definition of 'dealer' by that~~
36 ~~provision; a 'salesman' within the meaning of G.S. 78A-2(9); an~~
37 ~~'investment adviser' within the meaning of G.S. 78C-2(1) or a~~
38 ~~person excluded from the definition of 'investment adviser' by~~
39 ~~that provision; or an 'investment adviser representative' within~~
40 ~~the meaning of G.S. 78C-2(3); provided that such persons shall~~
41 ~~be excluded from the terms 'telephonic seller' and 'seller' only~~
42 ~~with respect to activities regulated by Chapters 78A and 78C.~~

43 b. ~~Any person conducting sales or solicitations on behalf of a~~
44 ~~licensee of the Federal Communications Commission or holder~~

- 1 of a franchise or certificate of public convenience and necessity
2 from the North Carolina Utilities Commission.
- 3 e. Any insurance agent or broker who is properly licensed by the
4 Department of Insurance and who is soliciting within the scope
5 of the agent's or broker's license or any employee or
6 independent contractor of an insurance company licensed by the
7 Department of Insurance conducting sales or solicitations on
8 behalf of that company.
- 9 d. Any federally chartered bank, savings institution, or credit
10 union or any bank, savings institution, or credit union properly
11 licensed by the State or subject to federal regulating authorities.
- 12 e. Any organization that is exempt under section 501(c)(3) of the
13 Internal Revenue Code of 1986 or any successor section, or that
14 is organized exclusively for one or more of the purposes
15 specified in section 501(c)(3) of the Internal Revenue Code of
16 1986 or any successor section and that upon dissolution shall
17 distribute its assets to an entity that is exempt under section
18 501(c)(3) of the Internal Revenue Code of 1986 or any
19 successor section, the United States, or a state; any "charitable
20 solicitor" properly licensed under Article 2 of Chapter 131F of
21 the General Statutes, or any person exempt from Chapter 131F
22 of the General Statutes under G.S. 131F 3.
- 23 f. A person who periodically issues and delivers catalogs to
24 potential purchasers and the catalog:
- 25 1. Includes a written description or illustration and the sales
26 price of each item offered for sale;
 - 27 2. Includes at least 24 full pages of written material or
28 illustrations;
 - 29 3. Is distributed in more than one state; and
 - 30 4. Has an annual circulation of not less than 250,000
31 customers.
- 32 g. A person engaging in a commercial telephone solicitation
33 where the solicitation is an isolated transaction and not done in
34 the course of a pattern of repeated transactions of a like nature.
- 35 h. A person primarily soliciting the sale of a newspaper of general
36 circulation, a publisher of a magazine or other periodical of
37 general circulation, or an agent of such a publisher acting
38 pursuant to a written agency agreement.
- 39 i. A person soliciting the sale of services provided by a cable
40 television system operating under the authority of a local
41 franchise.
- 42 j. Any passenger airline licensed by the Federal Aviation
43 Administration.

- 1 k. ~~Any person holding a real estate broker's or sales agent's license~~
2 under Chapter 93A of the General Statutes and who is soliciting
3 within the scope of the broker's or agent's license.
- 4 l. ~~Any person soliciting a transaction regulated by the~~
5 ~~Commodities Futures Trading Commission, provided the~~
6 ~~person is registered or temporarily licensed by the Commodities~~
7 ~~Futures Trading Commission under the Commodity Exchange~~
8 ~~Act, 7 U.S.C. § 1, et seq.~~
- 9 m. ~~Any person soliciting a purchase from a business, provided the~~
10 ~~person soliciting makes reasonable efforts to ensure that the~~
11 ~~person solicited has actual authority to bind the business to a~~
12 ~~purchase agreement.~~
- 13 n. ~~A foreign corporation, limited liability company, or limited~~
14 ~~partnership that has obtained and maintained a certificate of~~
15 ~~authority to transact business or conduct affairs in this State~~
16 ~~pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59~~
17 ~~of the General Statutes and that only transacts business or~~
18 ~~conducts affairs in this State using the name set forth in the~~
19 ~~certificate of authority.~~
- 20 o. ~~An issuer or a subsidiary of an issuer that has a class of~~
21 ~~securities which is subject to section 12 of the Securities~~
22 ~~Exchange Act of 1934 (15 U.S.C. § 781) and which is either~~
23 ~~registered or exempt from registration under paragraph (A),~~
24 ~~paragraph (B), paragraph (C), paragraph (E), paragraph (F),~~
25 ~~paragraph (G), or paragraph (H) of subsection (g)(2) of that~~
26 ~~section.~~
- 27 p. ~~A person soliciting the sale of food, seeds, or plants when a sale~~
28 ~~does not involve an amount in excess of one hundred dollars~~
29 ~~(\$100.00) directed to a single address.~~
- 30 q. ~~A person soliciting:~~
- 31 1. ~~Without intent to complete or obtain provisional~~
32 ~~acceptance of a sale during the telephone solicitation;~~
- 33 2. ~~Who does not make the major sales presentation during~~
34 ~~the telephone solicitation but arranges for the major sales~~
35 ~~presentation to be made at a later face to face meeting~~
36 ~~between the salesperson and the purchaser;~~
- 37 3. ~~Who does not cause an individual to go to the~~
38 ~~prospective purchaser to collect payment for the~~
39 ~~purchase or to deliver any item purchased directly~~
40 ~~following the telephone solicitation; or~~
- 41 4. ~~Who offers to send the purchaser descriptive literature~~
42 ~~and does not require payment prior to the purchaser's~~
43 ~~review of the descriptive literature.~~

- 1 r. ~~A person soliciting the purchase of contracts for the~~
2 ~~maintenance or repair of items previously purchased from the~~
3 ~~person making the solicitation or on whose behalf the~~
4 ~~solicitation is made.~~
- 5 s. ~~A book, video, recording, or multimedia club or contractual~~
6 ~~plan or arrangement:~~
- 7 1. ~~Under which the seller provides the consumer with a~~
8 ~~form with which the consumer can instruct the seller not~~
9 ~~to ship the offered merchandise.~~
- 10 2. ~~Which is regulated by the Federal Trade Commission~~
11 ~~trade regulation concerning "use of negative option plans~~
12 ~~by sellers in commerce".~~
- 13 3. ~~Which provides for the sale of books, recordings,~~
14 ~~multimedia products or goods, or videos which are not~~
15 ~~covered under paragraphs 1. or 2. of this sub-~~
16 ~~subdivision, including continuity plans, subscription~~
17 ~~arrangements, standing order arrangements,~~
18 ~~supplements, and series arrangements under which the~~
19 ~~seller periodically ships merchandise to a consumer who~~
20 ~~has consented in advance to receive such merchandise on~~
21 ~~a periodic basis.~~
- 22 t. ~~A person who for at least two years has been operating under~~
23 ~~the same name as that used in connection with its telemarketing~~
24 ~~operations and retail establishment in North Carolina where~~
25 ~~consumer goods are displayed and offered for sale on a~~
26 ~~continuing basis if a majority of the person's business involves~~
27 ~~the buyers obtaining services or products at the person's retail~~
28 ~~establishment.~~
- 29 u. ~~A person:~~
- 30 1. ~~Who provides telephone solicitation services under~~
31 ~~contract to sellers;~~
- 32 2. ~~Who has been operating continuously for at least three~~
33 ~~years under the same business name; and~~
- 34 3. ~~For whom at least seventy five percent (75%) of the~~
35 ~~person's contracts are performed on behalf of other~~
36 ~~persons exempt under this section.~~
- 37 v. ~~A person soliciting political contributions in accordance with~~
38 ~~Article 22A of Chapter 163 of the General Statutes.~~
- 39 w. ~~The seller of a "business opportunity" as defined in G.S. 66-94,~~
40 ~~while engaged in activities subject to regulation under Article~~
41 ~~19 of Chapter 66 of the General Statutes, provided that such~~
42 ~~seller has complied with the provisions of G.S. 66-97.~~
- 43 x. ~~A "loan broker" as defined in G.S. 66-106, while engaged in~~
44 ~~activities subject to regulation under Article 20 of Chapter 66 of~~

1 the General Statutes, provided that such loan broker has
2 complied with the provisions of G.S. 66-109.

3 y. A "membership camping operator" as defined in G.S. 66-
4 232(10) or a "salesperson" as defined in G.S. 66-232(16), while
5 engaged in activities subject to regulation under Article 31 of
6 Chapter 66 of the General Statutes, provided that such persons
7 have complied with the provisions of G.S. 66-234 and 66-237,
8 as applicable.

9 'Telephone solicitor' or 'solicitor' has the same meaning as telephone
10 solicitor in G.S. 75-30.1.

11 **"§ 66-261. Registration of telephonic sellers.telephone solicitors.**

12 (a) Not less than 10 days before commencing telephone solicitations in this State,
13 a ~~telephonic seller~~ telephone solicitor shall register with the ~~Secretary~~ Attorney General
14 by filing the information required in G.S. 66-262 and paying a filing fee of ~~one hundred~~
15 ~~dollars (\$100.00).~~ one thousand dollars (\$1,000). A ~~telephonic seller~~ telephone solicitor
16 is doing business in this State if it solicits or attempts to solicit prospective purchasers
17 from locations in this State or solicits or attempts to solicit prospective purchasers who
18 are located in this State.

19 (b) The information required in G.S. 66-262 shall be submitted on a form
20 provided by the ~~Secretary~~ Attorney General and shall contain the notarized signatures of
21 each principal of the ~~telephonic seller~~ telephone solicitor.

22 (c) Registration of a ~~telephonic seller~~ telephone solicitor shall be valid for one
23 year from the effective date thereof and may be annually renewed by making the filing
24 required in G.S. 66-262 and paying the filing fee of ~~one hundred dollars (\$100.00).~~ one
25 thousand dollars (\$1,000). Registration shall not be deemed effective unless all required
26 information is provided and any deficiencies or errors noted by the ~~Secretary~~ Attorney
27 General have been corrected to the satisfaction of the ~~Secretary~~ Attorney General.

28 (d) Whenever, prior to expiration of a ~~seller's solicitor's~~ annual registration, there
29 is a change in the information required by G.S. 66-262, the ~~seller~~ solicitor shall, within
30 10 days after the change, file an addendum with the ~~Secretary~~ Attorney General
31 updating the information.

32 **"§ 66-262. Filing information.**

33 (a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of
34 the following information:

- 35 (1) The name or names, including any assumed names, under which the
36 ~~telephonic seller~~ telephone solicitor is doing or intends to do business
37 in this State.
- 38 (2) The ~~telephonic seller's~~ telephone solicitor's business form and place of
39 ~~organization and, if the seller is a corporation, copies of its articles of~~
40 ~~incorporation and bylaws and amendments thereto, or if a partnership,~~
41 ~~a copy of the partnership agreement.~~ organization.
- 42 (3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's
43 principal place of business.

- 1 (4) ~~The complete street address of each location from which telephone~~
2 ~~solicitations are placed by the telephonic seller.~~
- 3 (5) ~~A listing of all telephone numbers to be used by the telephonic seller,~~
4 ~~including area codes, and the complete street address of the business~~
5 ~~premises served by each number.~~
- 6 (6) ~~The name and title of each principal.~~
- 7 (7) ~~The complete street address of the residence, the date of birth, and the~~
8 ~~social security number of each principal.~~
- 9 (8) ~~The true name, street address, date of birth, and the social security~~
10 ~~number of each room operator, together with the room operator's full~~
11 ~~employment history during the preceding two years.~~
- 12 (9) ~~The name and address of all banks or savings institutions where the~~
13 ~~telephonic seller maintains deposit accounts.~~
- 14 (10) ~~The name and address of each long distance telephone carrier used by~~
15 ~~the telephonic seller.~~
- 16 (10a) The name, title, telephone number, fax number (if any), electronic mail
17 address (if any), and mailing address of the party to whom all notices,
18 information regarding changes in North Carolina telemarketing
19 regulations, and current copies of the No-Call Registry established
20 under G.S. 75-30.2 shall be delivered.
- 21 (11) ~~A summary of each civil or criminal proceeding civil, criminal, or~~
22 ~~administrative proceeding, including a consent judgment or consent~~
23 ~~decree without litigation and including an assurance of discontinuance~~
24 ~~or an assurance of voluntary compliance in order to resolve any~~
25 ~~allegation that has been brought by any federal, state, or local~~
26 ~~government agency or local official within the United States or any~~
27 ~~federal, provincial, or local government agency or official in Canada,~~
28 ~~brought against the telephonic seller, in which the telephone solicitor,~~
29 ~~any of its principals, or any of its room operators subsidiaries, or~~
30 ~~corporate predecessors has been a party during the preceding five~~
31 ~~yearsten-year period preceding registration or renewal of registration,~~
32 ~~by federal, State, or local officials relating to telephonic sales practices~~
33 ~~of each, and which proceeding involves allegations that regulations,~~
34 ~~agency rules, ordinances, or statutes pertaining to telephone~~
35 ~~solicitations have been violated by the telephone solicitor or that the~~
36 ~~telephone solicitor or any of its principals, subsidiaries, or corporate~~
37 ~~predecessors have violated any criminal statute prohibiting mail fraud,~~
38 ~~wire fraud, money laundering, obtaining property by false pretenses, or~~
39 ~~other forms of fraud.~~ The summary shall include the date each ~~action~~
40 ~~proceeding~~ was commenced, the ~~criminal or civil charges~~~~criminal,~~
41 ~~civil, or administrative violations~~ alleged, the case caption, the court ~~or~~
42 ~~agency proceeding~~ file number, the ~~court venue,~~ ~~venue~~ of the
43 ~~proceeding,~~ and the disposition ~~or current status~~ of the ~~action~~
44 ~~proceeding.~~ For purposes of this section, a 'civil proceeding includes'

1 means ~~assurances of voluntary compliance, assurances of~~
2 ~~discontinuance, consent judgments, and similar agreements executed~~
3 ~~with federal, State, or local officials.~~ The summary of settlement
4 agreements, assurances of discontinuance, and assurances of voluntary
5 compliance shall include the date each was executed, the violations
6 alleged or resolved, and the name and address of the agency or official
7 that executed the document with the telephone solicitor.

8 (b) For purposes of this section, 'street address' does not include a private mail
9 service ~~address~~. address, 'Commercial Mail Receiving Agency' ('CMRA') or 'private
10 mailbox' ('PMB'), as those terms are defined by the United States Postal Service.

11 **"§ 66-263. Bond requirement; prizes and gifts.**

12 (a) At least 10 days before the commencement of any promotion offering any gift
13 or prize with an actual or represented market value of five hundred dollars (\$500.00) or
14 more, the ~~telephonic seller~~ telephone solicitor shall notify the ~~Secretary~~ Attorney
15 General in writing of the details of the promotion, fully describing the nature and
16 number of all gifts or prizes and their current market value, the ~~seller's~~ solicitor's rules
17 and regulations governing the promotion, and the date the gifts or prizes are to be
18 awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the
19 ~~Secretary~~ Attorney General under this subsection, the ~~telephonic seller~~ telephone
20 solicitor shall post a bond with the ~~Secretary~~ Attorney General for the market value or
21 the represented value, whichever is greater, of all gifts or prizes represented as available
22 under the promotion. The bond must be issued by a surety company authorized to do
23 business in this State. The bond shall be in favor of the State of North Carolina for the
24 benefit of any person entitled to receive a gift or prize under the promotion who did not
25 receive it within 30 days of the specified date of award. The amount recoverable by any
26 person under the bond shall not exceed the market value, the represented value of the
27 gift or prize, or the amount of any consideration or contribution paid by that person in
28 response to the telephone solicitation, whichever is greatest.

29 (b) Within 45 days after the specified date of the award of the gift or prize, the
30 ~~seller~~ solicitor shall provide, in writing, to the ~~Secretary~~ Attorney General, proof that the
31 gifts or prizes were awarded. The writing shall include the name, address, and telephone
32 number of all persons receiving awards or prizes. The bond shall be maintained until the
33 ~~Secretary~~ Attorney General receives reliable proof that the gifts or prizes have been
34 delivered to the intended recipients.

35 (c) The Attorney General, on behalf of any injured purchaser, or any purchaser
36 who is injured by the bankruptcy of the ~~telephonic seller~~ telephone solicitor or its breach
37 of any agreement entered into in its capacity as a ~~telephonic seller~~ telephone solicitor,
38 may initiate a civil action to recover against the bond.

39 **"§ 66-264. Calls made to minors.**

40 A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective
41 purchaser it is contacting is under 18 years of age. If the prospective purchaser purports
42 to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue
43 the call immediately.

44 **"§ 66-265. Offers of gifts or prizes.**

1 (a) It shall be unlawful for any ~~telephonic seller~~ telephone solicitor to make a
2 telephone solicitation or attempted telephone solicitation involving any gift or prize
3 when the solicitation or attempted solicitation:

4 (1) Requests or directs the consumer to further the transaction by calling a
5 900 number or a pay-per-call number.

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

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

9 (b) Notwithstanding subsection (a) of this section, a ~~telephonic seller~~ telephone
10 solicitor may offer a gift or prize in connection with the bona fide sale of a product or
11 service.

12 "**§ 66-266. Penalties.**

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

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

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

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

25 (e) In any civil proceeding alleging a violation of this Article, the burden of
26 proving an exemption or an exception from a definition is upon the person claiming it,
27 and in any criminal proceeding alleging a violation of this Article, the burden of
28 producing evidence to support a defense based upon an exemption or an exception from
29 a definition is upon the person claiming it."

30 **SECTION 7.** Should one or more of the terms or provisions of this act or any
31 application thereof be held or declared unenforceable or invalid to any extent, the
32 remainder of this act, and the applications thereof that have not been held or declared
33 unenforceable or invalid, shall remain in effect.

34 **SECTION 8.** Consistent with protected speech rights of businesses that
35 engage in telephone solicitations, the provisions of this act shall be given broad
36 construction so as to protect North Carolina residential telephone subscribers from
37 unwanted telephone solicitations and from problematic sales techniques and payment
38 procedures often associated with these solicitations.

39 **SECTION 9.** There is appropriated from the General Fund to the
40 Department of Justice the sum of nine hundred thousand dollars (\$900,000) for the
41 2002-2003 fiscal year to establish and maintain the No-Call Registry established by
42 G.S. 75-30.2, as enacted in Section 3 of this act.

43 **SECTION 10.** This act is effective when it becomes law and applies to
44 telephone solicitations made on or after that date. G.S. 75-30.2, as enacted in Section 3

1 of this act, becomes effective 90 days after the current operations appropriations act for
2 the 2002-2003 fiscal year is enacted. G.S. 66-54, as amended in Section 4 of this act,
3 applies to all telephone directories printed on or after that date.