

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1080*

Short Title: Telephone Solicitation.

(Public)

Sponsors: Representatives Allen; Alexander, Baddour, Cansler, Crawford, Dedmon, Fox, Gardner, Hackney, Hill, Hurley, Kinney, Thompson, Tolson, and Warner.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

**AN ACT TO ALLOW CONSUMERS TO BE PLACED ON A LIST OF
RESIDENTIAL TELEPHONE SUBSCRIBERS WHO OBJECT TO TELEPHONE
SOLICITATIONS AND PROHIBITING TELEPHONE SOLICITORS FROM
MAKING CALLS TO PERSONS ON THAT LIST.**

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) The use of the telephone to market goods and services to consumers is increasingly pervasive now due to the availability of cost-effective telemarketing techniques;
- (2) Thousands of businesses actively telemarket goods and services to business and residential customers;
- (3) Some citizens of this State are concerned at the proliferation of calls to their homes from telemarketers;
- (4) The rights to privacy and commercial speech can be balanced in a way that accomodates both the privacy of individuals and legitimate telemarketing practices; and

- 1 (5) The public interest requires the establishment of a mechanism under
2 which the citizens of this State can decide whether or not they wish to
3 receive telemarketing calls in their homes.

4 Section 2. Chapter 75 of the General Statutes is amended by adding a new
5 section to read:

6 **"§ 75-30.1. Restrictions on telephone solicitations.**

7 (a) For purposes of this section:

- 8 (1) "Residential telephone subscriber" means a person who subscribes to
9 residential telephone service from a local exchange company and uses
10 that service primarily for residential purposes, or the persons living or
11 residing with that person.

- 12 (2) "Telephone solicitation" means a voice communication over a telephone
13 line for the purpose of soliciting or encouraging the purchase or rental
14 of, or investment in, property, goods, or services, or for the purpose of
15 obtaining information that will or may be used for that purpose, but
16 does not include such communications:

17 a. In response to an express request of the person called;

18 b. Primarily in connection with an existing debt or contract, the
19 payment or performance of which has not been completed at the
20 time of the call;

21 c. To any person with whom the telephone solicitor, or an affiliate
22 or related entity of the telephone solicitor, has a prior or existing
23 business relationship; or

24 d. Made directly by organizations described in section 501(c)(3) of
25 the Internal Revenue Code.

- 26 (3) "Telephone solicitor" means any legal entity doing business in this State
27 that makes or causes to be made telephone solicitations.

28 (b) The Secretary of State shall establish a list of residential telephone subscribers
29 who object to receiving telephone solicitations. Any residential telephone subscriber
30 who desires to be placed on this list may notify the Secretary of State, in writing, and be
31 placed on the list upon receipt by the Secretary of State of a fee of ten dollars (\$10.00) for
32 the initial listing charge. The list shall be renewed annually by the Secretary of State for
33 each subscriber upon receipt of a renewal notice and a renewal fee of five dollars (\$5.00).
34 The Secretary of State shall issue this list of subscribers upon receipt of initial
35 subscriptions and shall update the list at least quarterly. The Secretary of State shall
36 provide the list to telephone solicitors upon request for a fee of ten dollars (\$10.00), in
37 either printed or electronic format as requested by the telephone solicitor. The Secretary
38 of State shall provide consumers who request that their names be placed on the list with
39 information about the Telephone Preference Service offered by the Direct Marketing
40 Association, including the way to participate in the program, and the benefits to be
41 derived from participating.

42 In the event that the Federal Communications Commission establishes a single
43 national database of the telephone numbers of subscribers who object to receiving

1 telephone solicitations pursuant to the provisions of 47 U.S.C. § 227(c)(3), the Secretary
2 of State shall include the portion of that national database covering subscribers in North
3 Carolina within the list established under this section.

4 (c) No telephone solicitor shall make or cause to be made any telephone
5 solicitation to any telephone number on the list published by the Secretary of State
6 pursuant to subsection (b) of this section after the expiration of 90 days from the date that
7 the number is initially included in the list. Any person who offers for sale any consumer
8 information that includes telephone numbers, other than persons providing directory
9 assistance and telephone directories or lists made available through tariffs approved by
10 the North Carolina Utilities Commission, shall screen and exclude the numbers appearing
11 on the current listing published by the Secretary of State pursuant to subsection (b) of this
12 section within 90 days of each publication and shall certify compliance to purchasers of
13 the information.

14 (d) Any telephone solicitor who makes a telephone solicitation to the telephone
15 line of any residential telephone subscriber in this State shall, at the beginning of the call,
16 state clearly the identity of the person or entity initiating the call.

17 (e) No telephone solicitor who makes a telephone solicitation to the telephone line
18 of a residential telephone subscriber in this State shall knowingly use any method to
19 block or otherwise circumvent that subscriber's use of a caller identification service. A
20 telephone solicitor who makes a telephone solicitation to the telephone line of a
21 residential subscriber through the use of a private branch exchange (PBX) that does not
22 transmit caller identification information shall not be in violation of this subsection. No
23 provider of telephone caller identification services shall be held liable for violations of
24 this subsection committed by other persons or entities.

25 (f) The Attorney General shall investigate any complaints received alleging
26 violations of subsections (c) through (e) of this section. If, after investigating a
27 complaint, the Attorney General finds that there has been a violation of subsections (c)
28 through (e) of this section, the Attorney General may bring an action to impose a civil
29 penalty and to seek any other appropriate relief, including equitable relief to restrain the
30 violation. The civil penalty imposed shall not exceed five hundred dollars (\$500.00) per
31 violation. In determining the amount of the civil penalty, or whether it is appropriate to
32 waive the civil penalty for a first violation, the court shall consider all relevant
33 circumstances, including the extent of harm caused by the conduct constituting a
34 violation, whether the defendant can demonstrate that the defendant has established and
35 implemented reasonable practices and procedures and exercised due care to prevent
36 telephone solicitations constituting violations, and whether the defendant has taken any
37 other corrective action.

38 (g) A telephone solicitor complies with this section by participating in the Telephone
39 Preference Service of the Direct Marketing Association and making written certification
40 to the Secretary of State of its participation in that service. However, a telephone
41 solicitor who elects the alternative method of compliance set forth in this subsection shall
42 be deemed to have violated subsections (c) through (e) of this section by taking any of the
43 actions prohibited by those subsections with respect to a residential telephone subscriber

1 whose name has been placed on the list maintained under the Telephone Preference
2 Service of the Direct Marketing Association.

3 (h) It shall be a defense in any action or proceeding brought under subsection (f) of
4 this section that the defendant has established and implemented, with due care,
5 reasonable practices and procedures to effectively prevent telephone solicitations in
6 violation of this section."

7 Section 3. Chapter 62 of the General Statutes is amended by adding a new
8 section to read:

9 "**§ 62-53. Notification of opportunity to object to telephone solicitation.**

10 The Commission shall require each local exchange company to notify all persons who
11 subscribe to residential service from that company of the opportunity to be placed on the
12 list of persons who object to receiving telephone solicitations established in G.S. 75-30.1.
13 The notification shall be made by the later of March 1, 2000, or the time the person
14 initially subscribes to residential service from the local exchange company."

15 Section 4. This act becomes effective October 1, 1999.