

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 872
Commerce Committee Substitute Adopted 4/29/03

Short Title: Unwanted Telephone Solicitations.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO
3 WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR
4 CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 75-30 is repealed.

7 SECTION 2. G.S. 75-30.1 is repealed.

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

10 "Article 4.

11 "Telephone Solicitations.

12 "§ 75-100. Findings.

13 The General Assembly finds all of the following:

14 (1) The use of the telephone to market goods and services to the home is
15 now pervasive due to the increased use of cost-effective telephone
16 solicitation technologies and techniques.

17 (2) While some consumers enjoy and benefit from telephone solicitations
18 from legitimate telephone solicitors, many others object to these
19 telephone solicitations as an intrusive invasion of their privacy in the
20 home.

21 (3) In addition, the proliferation of telephone solicitations, especially
22 during the evening hours, creates a nuisance and a disturbance upon
23 the home and family life of telephone subscribers during a time of day
24 used by many families for traditional family activities.

25 (4) North Carolina residents should have the freedom to choose whether
26 or not to permit telephone solicitors to contact them.

27 (5) Individual privacy rights, personal safety, prevention of fraud, and
28 commercial freedom of speech and trade must be balanced in a way

1 that protects the privacy of individuals and permits legitimate
2 telephone solicitation practices.

3 (6) Legitimate telephone solicitors have no interest in continuing to invade
4 the privacy of those telephone subscribers who affirmatively express
5 their desires to receive no further telephone solicitations.

6 (7) Many telephone subscribers who have transacted business with firms
7 that employ telephone solicitations have experienced problems with
8 their checking and credit card accounts being debited before they can
9 evaluate the terms and conditions of the transaction, before they can
10 evaluate the merchandise or service to be delivered, or without their
11 agreement to enter into the transaction or authorize such transactions
12 in the first place. Other telephone subscribers have had unauthorized
13 charges placed on their telephone bill and have had their long distance
14 carrier switched without their authorization as a result of telephone
15 solicitations.

16 (8) New technologies that make telephone solicitations more
17 cost-effective also allow for the creation of a 'Do Not Call' Registry
18 through which North Carolina consumers can easily register their
19 desires not to receive further telephone solicitations and telephone
20 solicitors can easily access and employ lists of consumers who have
21 registered those desires.

22 (9) The public interest requires an efficient mechanism for telephone
23 subscribers to notify telephone solicitors that their telephone numbers
24 cannot be called and additional protections for North Carolina
25 residents who enter into consumer transactions initiated through
26 telephone solicitations.

27 **§ 75-101. Definitions.**

28 The following definitions apply in this Article:

29 (1) Affiliate. – A business establishment, business, or other legal entity
30 that wholly or substantially owns, is wholly or substantially owned by,
31 or is under common ownership with a telephone solicitor.

32 (2) Automatic dialing and recorded message player. – Any automatic
33 equipment that incorporates a storage capability of telephone numbers
34 to be called or a random or a sequential number generator capable of
35 producing numbers to be called that, working alone or in conjunction
36 with other equipment, disseminates a prerecorded message to the
37 telephone number called.

38 (3) 'Do Not Call' Registry. – The registry created and maintained by the
39 Federal Trade Commission pursuant to the Telemarketing Sales Rule.
40 It also means any other telemarketing registry created by the federal
41 government, including the Federal Communications Commission. It
42 also means any registry created by the Attorney General pursuant to
43 G.S. 75-102(o).

- 1 (4) Doing business in this State. – To make or cause to be made any
2 telephone solicitation to North Carolina telephone subscribers, whether
3 the telephone solicitations are made from a location inside North
4 Carolina or outside North Carolina.
- 5 (5) Established business relationship. – A relationship between a seller
6 and a consumer based on:
- 7 a. The consumer's purchase, rental, or lease of the seller's goods or
8 services or a financial transaction between the consumer and the
9 seller or one or more of its affiliates, within the 18 months
10 immediately preceding the date of a telephone solicitation; or
- 11 b. The consumer's inquiry or application regarding a product or
12 service offered by the seller within the three months
13 immediately preceding the date of a telephone solicitation.
- 14 (6) Express invitation or permission. – Any invitation or permission that is
15 registered by the telephone subscriber on an independent form and that
16 contains the telephone number to which calls can be placed and the
17 signature of the telephone subscriber. The form may be completed and
18 signed electronically.
- 19 (7) Person. – Any individual, business establishment, business, or other
20 legal entity.
- 21 (8) Telemarketing Sales Rule. – The federal regulation promulgated by the
22 Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003
23 Edition), as amended, to implement the Telemarketing and Consumer
24 Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as
25 amended.
- 26 (9) Telephone subscriber. – An individual who subscribes to a residential
27 telephone service from a local exchange company, a competing local
28 provider certified to do business in North Carolina, or a wireless
29 telephone company; or the persons living or residing with that person.
- 30 (10) Telephone solicitation. – A voice communication, whether
31 prerecorded, live, or a facsimile, over a telephone line or wireless
32 telephone network or via a commercial mobile radio service that is
33 made by a telephone solicitor to a telephone subscriber for the purpose
34 of soliciting or encouraging the purchase or rental of, or investment in,
35 property, goods, or services; obtaining or providing information that
36 will or may be used for that purpose; soliciting or encouraging a
37 telephone subscriber's participation in any contest, sweepstakes, raffle,
38 or lottery, whether legal or illegal; or obtaining a charitable donation.
39 'Telephone solicitation' also includes those transactions that are
40 defined as 'telemarketing' under the Telemarketing Sales Rule.
- 41 (11) Telephone solicitor. – Any individual, business establishment,
42 business, or other legal entity doing business in this State that, directly
43 or through salespersons or agents, makes or attempts to make
44 telephone solicitations or causes telephone solicitations to be made.

1 'Telephone solicitor' also includes any party defined as a 'telemarketer'
2 under the Telemarketing Sales Rule.

3 (12) Unsolicited telephone call. – A voice communication, whether
4 prerecorded, live, or a facsimile, over a telephone line or wireless
5 telephone network or via a commercial mobile radio service that is
6 made by a person to a telephone subscriber without prior express
7 invitation or permission.

8 **"§ 75-102. Restrictions on telephone solicitations.**

9 (a) Except as provided in subsection (c) of this section, no telephone solicitor
10 shall make a telephone solicitation to a telephone subscriber's telephone number if the
11 telephone subscriber's telephone number appears in the latest edition of the 'Do Not
12 Call' Registry.

13 (b) No telephone solicitor shall make a telephone solicitation to a telephone
14 subscriber's telephone number if the telephone subscriber previously has communicated
15 to the telephone solicitor a desire to receive no further telephone solicitations from the
16 telephone solicitor to that number.

17 (c) Subsection (a) of this section does not apply to any of the following telephone
18 solicitations:

19 (1) To any telephone subscriber with the telephone subscriber's prior
20 express invitation or permission.

21 (2) To any telephone subscriber with whom the telephone solicitor has an
22 established business relationship.

23 (3) By or on behalf of a tax-exempt nonprofit organization.

24 (4) By or on behalf of a telephone solicitor that employs fewer than 10 full
25 or part-time direct employees, the telephone solicitations are made by
26 the direct employees, and the direct employees collectively make or
27 attempt to make no more than an average of 10 telephone solicitations
28 to telephone subscribers per week during a calendar year.

29 (5) To any telephone subscriber for the sole purpose of arranging a
30 subsequent face-to-face meeting between the telephone solicitor and
31 the telephone subscriber and the telephone solicitor does none of the
32 following during the telephone solicitation:

33 a. Seek payment from the telephone subscriber in connection with
34 the sale or rental of, or investment in, property, goods, or
35 services.

36 b. Complete the sale or rental of, or investment in, property,
37 goods, or services.

38 c. Obtain provisional acceptance of a sale, rental, or investment.

39 d. Obtain the agreement of the telephone subscriber to participate
40 in any contest, sweepstakes, raffle, or lottery.

41 e. Directly following the telephone solicitation, go or cause an
42 individual to go to the telephone subscriber to collect a payment
43 or deliver any item purchased.

1 (d) Any telephone solicitor who makes a telephone solicitation shall do all of the
2 following:

- 3 (1) At the beginning of the telephone solicitation, state clearly the identity
4 of the telephone solicitor and identify the individual making the
5 telephone solicitation.
- 6 (2) Upon request, provide the telephone subscriber with the telephone
7 number or address at which the telephone solicitor may be contacted.
- 8 (3) If the telephone subscriber requests to be taken off the contact list of
9 the telephone solicitor, the telephone solicitor shall take all steps
10 necessary to remove the telephone subscriber's name and telephone
11 number from the contact list of the telephone solicitor and stop calling
12 the telephone subscriber within 30 business days.
- 13 (4) If the telephone subscriber objects to the telephone solicitation,
14 terminate the telephone solicitation and promptly disconnect from the
15 telephone line of the person receiving the call.
- 16 (5) Notwithstanding subdivision (3) of this subsection, if a telephone
17 solicitor relies on the established business relationship of an affiliate to
18 solicit a residential telephone subscriber whose telephone number is
19 listed in the latest edition of the 'Do Not Call' Registry and the person
20 called communicates a desire to receive no further telephone
21 solicitations from the telephone solicitor, the telephone solicitor shall
22 take all steps necessary to remove that telephone subscriber's
23 telephone number from the contact list of the telephone solicitor and
24 all of its affiliates, unless the telephone subscriber indicates otherwise,
25 and the telephone solicitor and its affiliates shall stop calling the
26 telephone subscriber at that number within 30 business days.

27 (e) Every telephone solicitor shall implement systems and written procedures to
28 prevent further telephone solicitations to any telephone subscriber who has asked not to
29 be called again at a specific number or numbers or whose telephone number appears in
30 the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce
31 compliance by its employees and shall monitor and enforce compliance by its
32 independent contractors in those systems and procedures. Every telephone solicitor shall
33 ensure that lists of telephone numbers that may not be contacted by the telephone
34 solicitor are maintained and recorded. Compliance with the time requirements within
35 the Telemarketing Sales Rule for incorporating and complying with updated versions of
36 the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

37 (f) No telephone solicitor shall violate any requirement of section 310.3 of the
38 Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of
39 the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section
40 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

41 (g) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or
42 after 9:00 P.M.

43 (h) A telephone solicitor shall inquire as to whether the telephone subscriber is
44 under the age of 18. If the telephone subscriber purports to be less than 18 years of age,

1 the telephone solicitor shall discontinue the call immediately. No inquiry is required
2 where the solicitor has taken reasonable steps to remove all telephone contacts less than
3 18 years of age from its list of subscribers being contacted.

4 (i) No telephone solicitor shall knowingly use any method to block or otherwise
5 circumvent a telephone subscriber's use of a caller identification service. A telephone
6 solicitor who makes a telephone solicitation through the use of a private branch
7 exchange (PBX) or other call-generating system that is not capable of transmitting caller
8 identification information shall not be in violation of this subsection. No provider of
9 telephone caller identification services shall be held liable for violations of this
10 subsection committed by other individuals or entities.

11 (j) A telephone solicitor or its agent that makes telephone solicitations on its
12 behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep
13 a record for a period of 24 months from the date a telephone solicitation is made of the
14 legal name, any fictitious name used, resident address, telephone number, and job title
15 of each individual who makes a telephone solicitation for that telephone solicitor. If an
16 individual who makes telephone solicitations for a telephone solicitor uses a fictitious
17 name, the fictitious name shall be traceable only to the specific individual.

18 (k) Nothing in this section prohibits a telephone solicitor from contacting by
19 nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do
20 Not Call' Registry to obtain the telephone subscriber's express invitation or permission
21 allowing the telephone solicitor to make telephone solicitations to the telephone
22 subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to
23 obtain this express invitation or permission.

24 (l) Nothing in this section prohibits a telephone solicitor from advertising in a
25 general medium or contacting by nontelephonic notice a telephone subscriber whose
26 telephone number appears in the 'Do Not Call' Registry to encourage the telephone
27 subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor
28 shall not contact a telephone subscriber by telephone to obtain this express invitation or
29 permission.

30 (m) In any dispute regarding whether a telephone subscriber has provided an
31 express invitation or permission under subdivision (1) of subsection (c) of this section,
32 the telephone solicitor has the burden of proving that the telephone subscriber has
33 provided this permission by producing the original document, a facsimile document, or
34 an electronic form, signed by the telephone subscriber, or other authentication that
35 evidences permission. A telephone subscriber may subsequently retract express
36 invitation or permission by indicating a desire not to receive further telephone
37 solicitations under subsection (b) of this section.

38 (n) The Attorney General, in consultation with the Public Staff of the Public
39 Utilities Commission, shall draft the contents of a bill insert that notifies consumers of
40 the existence of the 'Do Not Call' Registry and provides information to consumers on
41 how to use it and the other provisions of this Article to object to receiving telephone
42 solicitations. Local exchange companies shall distribute the insert pursuant to G.S.
43 62-54.

1 (o) In the event that the federal 'Do Not Call' Registry is not operational by
2 January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney
3 General may develop, operate, and maintain such a registry for the benefit of North
4 Carolina telephone subscribers.

5 (p) In telephone solicitation transactions involving telephone subscribers, no
6 contract or purchase agreement entered into during a telephone solicitation is valid, and
7 no money from the prospective purchaser is due thereunder, unless all the following
8 conditions are satisfied:

9 (1) The contract and the sales representations that precede it are not
10 deceptive or abusive telemarketing acts or practices as elaborated in
11 section 310.3 of the Telemarketing Sales Rule and section 310.4 of the
12 Telemarketing Sales Rule.

13 (2) The telephone solicitor has complied with the record keeping
14 requirements of section 310.5 of the Telemarketing Sales Rule.

15 (3) The contract and the sales representations that precede it comply with
16 all other applicable federal and State laws, including Article 1 of this
17 Chapter.

18 **"§ 75-103. Restrictions on use of automatic dialing and recorded message players.**

19 (a) Except as provided in this section, no person may use an automatic dialing
20 and recorded message player to make an unsolicited telephone call.

21 (b) Notwithstanding subsection (a) of this section, a person may use an automatic
22 dialing and recorded message player to make an unsolicited telephone call under any
23 one or more of the following circumstances only:

24 (1) All of the following are satisfied:

25 a. The person making the call is any of the following:

26 1. A tax-exempt charitable or civic organization.

27 2. A political party or political candidate.

28 3. A governmental official.

29 4. An opinion polling organization, radio station, television
30 station, cable television company, or broadcast rating
31 service conducting a public opinion poll.

32 b. No part of the call is used to solicit or encourage the purchase
33 or rental of, or investment in, property, goods, or services; to
34 obtain or provide information that will or may be used to solicit
35 or encourage the purchase or rental of, or investment in,
36 property, goods, or services; or to solicit or encourage the
37 making of a charitable donation.

38 c. The person making the call clearly identifies the person's name
39 and contact information and the nature of the unsolicited
40 telephone call.

41 (2) Prior to the playing of the recorded message, a live operator complies
42 with G.S. 75-102(d), states the nature and length in minutes of the
43 recorded message, and asks for and receives prior approval to play the
44 recorded message from the person receiving the call.

1 (3) The unsolicited telephone call is in connection with an existing debt or
2 contract for which payment or performance has not been completed at
3 the time of the unsolicited telephone call.

4 (4) The call is placed by a person with whom the telephone subscriber has
5 made an appointment, provided that the call is conveying information
6 only about the appointment, or by a utility, telephone company, cable
7 television company, satellite television company, or similar entity for
8 the sole purpose of conveying information or news about network
9 outages, repairs or service interruptions, and confirmation calls related
10 to restoration of service.

11 (5) The person plays the recorded message in order to comply with the
12 Telemarketing Sales Rule, 16 C.F.R. Part 310.4(b)(4).

13 **"§ 75-104. Enforcement.**

14 (a) The Attorney General may investigate any complaints received alleging
15 violation of this Article. If the Attorney General finds that there has been a violation of
16 this Article, the Attorney General may bring an action to impose civil penalties and to
17 seek any other appropriate relief pursuant to this Chapter, including equitable relief to
18 restrain the violation. If the Attorney General brings an action on behalf of telephone
19 subscribers pursuant to subsection (b) of this section, the Attorney General may not seek
20 treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for
21 civil penalties under this section shall be consistent with the provisions of this Chapter
22 except that the penalty imposed for a violation of this Article shall be either of the
23 following:

24 (1) Five hundred dollars (\$500.00) for the first violation, one thousand
25 dollars (\$1,000) for the second violation, and five thousand dollars
26 (\$5,000) for the third and any other violation that occurs within two
27 years of the first violation.

28 (2) One hundred dollars (\$100.00) for each violation within two years of
29 the first violation, if the telephone solicitor can show that the telephone
30 solicitor has complied with G.S. 75-102(e) and the violations are a
31 result of mistake.

32 (b) A telephone subscriber who has received a telephone solicitation from or on
33 behalf of a telephone solicitor in violation of this Article may bring any of the following
34 actions in civil court:

35 (1) An action to enjoin further violations of this Article by the telephone
36 solicitor.

37 (2) An action to recover five hundred dollars (\$500.00) for the first
38 violation, one thousand dollars (\$1,000) for the second violation, and
39 five thousand dollars (\$5,000) for the third and any other violation that
40 occurs within two years of the first violation.

41 (c) No action may be brought pursuant to subsection (b) of this section if the
42 telephone solicitor can show that the telephone solicitor has complied with G.S.
43 75-102(e) and the violations are a result of mistake.

1 (d) In an action brought pursuant to this Article, the court may award a prevailing
2 plaintiff reasonable attorney's fees if the court finds the defendant willfully engaged in
3 the act or practice and the court may award reasonable attorney's fees to a prevailing
4 defendant if the court finds that the plaintiff knew, or should have known, that the
5 action was frivolous and malicious.

6 (e) A citizen of this State may also bring an action in civil court to enforce the
7 private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47
8 U.S.C. § 227(c)(5).

9 (f) Actions brought by telephone subscribers pursuant to this section, shall be
10 tried in the county where the plaintiff resides at the time of the commencement of the
11 action."

12 **SECTION 4.** G.S. 75-102(i), as enacted in Section 3 of this act, reads as
13 rewritten:

14 "(i) No telephone solicitor shall knowingly use any method to block or otherwise
15 circumvent a telephone subscriber's use of a caller identification service. ~~A telephone~~
16 ~~solicitor who makes a telephone solicitation through the use of a private branch~~
17 ~~exchange (PBX) or other call generating system that is not capable of transmitting caller~~
18 ~~identification information shall not be in violation of this subsection.~~ No provider of
19 telephone caller identification services shall be held liable for violations of this
20 subsection committed by other individuals or entities."

21 **SECTION 5.** G.S. 62-54 reads as rewritten:

22 **"§ 62-54. Notification of opportunity to object to telephone solicitation.**

23 The Commission shall require each local exchange company and each competing
24 local provider certified to do business in North Carolina to notify all ~~persons~~ telephone
25 subscribers who subscribe to residential service from that company of the provisions of
26 ~~G.S. 75-30.1, Article 4 of Chapter 75 of the General Statutes and~~ of the federal laws and
27 regulations allowing consumers to object to receiving telephone solicitations, ~~and of~~
28 ~~programs made available by private industry that allow consumers to have their names~~
29 ~~removed from telemarketing lists, by enclosing that information, by enclosing a bill~~
30 insert, drafted pursuant to G.S. 75-102(n), at least annually, in every at least one
31 telephone bill mailed to customers. every residential customer. The Commission shall
32 also ensure that this information is printed in a clear, conspicuous manner in the
33 consumer information pages of each telephone directory distributed to residential
34 customers."

35 **SECTION 6.** Should one or more of the terms or provisions of this act or
36 any application thereof be held or declared unenforceable or invalid to any extent, the
37 remainder of this act, and the applications thereof that have not been held or declared
38 unenforceable or invalid, shall remain in effect. In the specific event that the provisions
39 of G.S. 75-102, as enacted in Section 3 of this act, or G.S. 75-103, as enacted in Section
40 3 of this act, are declared to be preempted or otherwise unenforceable in relation to
41 interstate telephone calls, those provisions shall remain in force and effect with respect
42 to intra-state telephone calls.

43 **SECTION 7.** Consistent with protected speech rights of businesses that
44 engage in telephone solicitations, the provisions of this act shall be given broad

1 construction so as to protect telephone subscribers from unwanted telephone
2 solicitations and from problematic sales techniques and payment procedures often
3 associated with these solicitations.

4 **SECTION 8.** Section 4 of this act becomes effective January 1, 2006. G.S.
5 62-54, as amended by Section 5 of this act, applies to all telephone directories printed
6 on or after January 1, 2004. All other sections of this act become effective October 1,
7 2003, and apply to telephone solicitations made on or after that date.