

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1191\*

Short Title: Controlling Telephone Solicitations.

(Public)

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Sponsors: Senators Weinstein; Allran, Carpenter, Dalton, Garrou, Lucas, Martin of Pitt, Reeves, Robinson, and Warren.

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Referred to: Information Technology.

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May 10, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE CONSUMERS WITH CONTROL OVER TELEPHONE  
3 SOLICITATION CALLS TO THEIR HOMES.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Assembly finds that:

- 6 (1) The use of the telephone to market goods and services to consumers is  
7 increasing;
- 8 (2) Some citizens of this State wish to have a means of controlling these  
9 calls to their residences;
- 10 (3) The rights to privacy and commercial speech can be balanced in a way  
11 that accommodates both the privacy of individuals and legitimate  
12 telemarketing practices; and
- 13 (4) The public interest requires the establishment of a mechanism under  
14 which the citizens of this State can decide whether or not they wish to  
15 receive telemarketing calls in their homes.

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

18 "**§ 75-30.1. Restrictions on telephone solicitations.**

- 19 (a) For purposes of this section:

- 1           (1) 'Residential telephone subscriber' means a person who subscribes to  
2 residential telephone service from a local exchange company and uses  
3 that service primarily for residential purposes, or the persons living or  
4 residing with that person.
- 5           (2) 'Telephone solicitation' means a voice communication over a telephone  
6 line to a residential telephone subscriber for the purpose of soliciting or  
7 encouraging the purchase or rental of, or investment in, property, goods,  
8 or services, or for the purpose of obtaining information that will or may  
9 be used for that purpose, but does not include such communications:  
10           a. To any person with that person's prior express invitation or  
11 permission;  
12           b. To any person with whom the telephone solicitor has an  
13 established, continuing business relationship; or  
14           c. By or on behalf of a tax-exempt nonprofit organization.
- 15           (3) 'Telephone solicitor' means any business or other legal entity doing  
16 business in this State that makes telephone solicitations or causes  
17 telephone solicitations to be made.
- 18       (b) Any telephone solicitor who makes a telephone solicitation to a residential  
19 telephone subscriber shall:
- 20           (1) At the beginning of the call, state clearly the identity of the business,  
21 individual, or other legal entity initiating the call, and identify the  
22 person making the call by that person's legal name;
- 23           (2) During the call, state clearly the telephone number, other than that of the  
24 automatic dialer or prerecorded message machine player that placed the  
25 call, or the address of the business, individual, or other legal entity  
26 initiating the call;
- 27           (3) Inquire at the beginning of the call whether the person called consents to  
28 the solicitation, and terminate the call if the person does not consent;  
29 and
- 30           (4) If the person called requests to be taken off the contact list of the  
31 telephone solicitor, take all steps necessary to remove that person's  
32 name and telephone number from the contact records of the business,  
33 individual, or other legal entity initiating the call.
- 34       (c) Every telephone solicitor who makes telephone solicitations in this State shall  
35 implement in-house systems and procedures designed to prevent further calls to persons  
36 who have asked not to be called again. Compliance with section 64.1200(e) of the  
37 Federal Communications Commission's Restrictions on Telephone Solicitation  
38 constitutes compliance with this section.
- 39       (d) No telephone solicitor shall initiate a call to a residential telephone subscriber  
40 who has communicated to that telephone solicitor a desire to be taken off the contact list  
41 of that solicitor.
- 42       (e) No telephone solicitor shall initiate a call to a residential telephone subscriber  
43 after 9:00 p.m. or before 8:00 a.m. at the called party's location.

1       (f) No telephone solicitor who makes a telephone solicitation to the telephone line  
2 of a residential telephone subscriber in this State shall knowingly use any method to  
3 block or otherwise circumvent that subscriber's use of a caller identification service. A  
4 telephone solicitor who makes a telephone solicitation to the telephone line of a  
5 residential subscriber through the use of a private branch exchange (PBX) or other call-  
6 generating system that does not transmit caller identification information shall not be in  
7 violation of this subsection. No provider of telephone caller identification services shall  
8 be held liable for violations of this subsection committed by other persons or entities.

9       (g) The Attorney General may investigate any complaints received alleging  
10 violations of subsections (b) through (f) of this section. If, after investigating a  
11 complaint, the Attorney General finds that there has been a violation of subsections (b)  
12 through (f) of this section, the Attorney General may bring an action to impose a civil  
13 penalty and to seek any other appropriate relief, including equitable relief to restrain the  
14 violation pursuant to G.S. 75-14. Actions for civil penalties under this section shall be  
15 consistent with the provisions of G.S. 75-15.2, except that the penalty imposed for a  
16 violation of this section shall not exceed five hundred dollars (\$500.00) per violation.

17       (h) A person who has received more than one telephone solicitation within any 12  
18 month period by or on behalf of the same telephone solicitor in violation of subsections  
19 (b) through (f) of this section may bring either or both of the following actions in the  
20 General Court of Justice:

21           (1) An action to enjoin further violations.

22           (2) An action to recover for actual monetary losses resulting from each  
23 violation or up to five hundred dollars (\$500.00) in damages for each  
24 violation, whichever is greater.

25       In an action brought pursuant to this section, a prevailing plaintiff shall be entitled to  
26 recover reasonable attorneys' fees and the court may award reasonable attorneys' fees to a  
27 prevailing defendant if the court finds that the plaintiff knew, or should have known, that  
28 the action was frivolous and malicious.

29       (i) A citizen of this State is also entitled to bring an action in the General Court of  
30 Justice to enforce the private rights of action established by federal law under 47 U.S.C. §  
31 227(b)(3) and 47 U.S.C. § 227(c)(5).

32       (j) Actions brought pursuant to subsections (h) and (i) of this section shall be tried  
33 in the county where the plaintiff resides at the time of the commencement of the action."

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

36 **"§ 62-53. Notification of opportunity to object to telephone solicitation.**

37       The Commission shall require each local exchange company to notify all persons who  
38 subscribe to residential service from that company of the provisions of G.S. 75-30.1, of  
39 the federal laws allowing consumers to object to receiving telephone solicitations, and of  
40 programs made available by private industry that allow consumers to have their names  
41 removed from telemarketing lists, by enclosing that information, at least annually, in  
42 every telephone bill mailed to residential customers. The Commission shall also ensure

1 that this information is printed in a clear, conspicuous manner in the consumer  
2 information pages of each telephone directory distributed to residential customers."  
3         Section 4. This act becomes effective October 1, 2000, and applies to  
4 telephone calls made on or after that date. Section 3 applies to all telephone directories  
5 printed on or after that date.