

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1612*

Short Title: Stop Unwanted Telephone Solicitations. (Public)

Sponsors: Representatives Baddour, Redwine (Primary Sponsors); Smith, Adams, Alexander, Barefoot, Boyd-McIntyre, Coates, Cox, Dedmon, Easterling, Goodwin, Hackney, Hensley, Insko, Jarrell, Jeffus, Lucas, McLawhorn, Rogers, Tolson, Tucker, Underhill, Warren, Warwick, Willingham, and Womble.

Referred to: Judiciary II, if favorable, Appropriation.

June 11, 2002

A BILL TO BE ENTITLED

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

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

1 the privacy of individuals and permits legitimate telemarketing
2 practices.

3 (6) Even legitimate telemarketers have no interest in continuing to invade
4 the privacy of those consumers who affirmatively express their
5 objections to such contact and, in fact, legitimate telemarketers can
6 make their telemarketing efforts more cost effective by avoiding calls
7 to those consumers who have affirmatively expressed an objection to
8 any such contact.

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

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

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

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

26 **"§ 75-30.1. Restrictions on telephone solicitations.**

27 (a) For purposes of this section:

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

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

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

1 edition of the No-Call Registry under G.S. 75-30.2 or if the telephone subscriber
2 previously has communicated to that telephone solicitor a desire to receive no further
3 telephone solicitations from that solicitor. Any telephone solicitor who makes a
4 telephone solicitation to a residential telephone subscriber whose telephonic device
5 number is not listed in the latest edition of the No-Call Registry or who previously has
6 not communicated to the telephone solicitor a desire to receive no further telephone
7 solicitations from that solicitor shall:

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

19 (c) Every telephone solicitor who makes telephone solicitations in this State shall
20 implement in-house systems and procedures designed to prevent further calls to ~~persons~~
21 any person who have has asked not to be called again. ~~Compliance with 47 C.F.R. §~~
22 ~~64.1200(e) of the Federal Communications Commission's Restrictions on Telephone~~
23 ~~Solicitation constitutes compliance with this subsection:~~ again or who has placed a
24 telephonic device number in the No-Call Registry.

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

28 (e) No telephone solicitor shall initiate a call to a residential telephone subscriber
29 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.

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

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

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

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

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

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

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

35 (i) A person residential telephone subscriber who has received more than one a
36 telephone solicitation within any 12 month period by from or on behalf of the same a
37 telephone solicitor in violation of subsections (b) through (g) of this section or G.S. 75-
38 30.2 may bring any of the following actions in the General Court of Justice:

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

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

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

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

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

13 **"§ 75-30.2. No-Call Registry.**

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

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

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

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

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

43 a. The agent has demonstrated the capacity to maintain and
44 operate such a registry.

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

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

38 **"§ 62-54. Notification of opportunity to object to telephone solicitation.**

39 The Commission shall require each local exchange company to notify all persons
40 who subscribe to residential service from that company of the provisions of ~~G.S.~~
41 ~~75-30.1~~, G.S. 75-30.1 and G.S. 75-30.2, of the federal laws and regulations allowing
42 consumers to object to receiving telephone solicitations, and of programs made
43 available by private industry that allow consumers to have their names removed from
44 telemarketing lists, by enclosing that information, at least ~~annually~~, every six months, in

1 every telephone bill mailed to residential customers. This information shall be in the
2 form of a bill insert, pamphlet, or other document drafted by the Attorney General and
3 reprinted at the local exchange company's expense, and shall reflect any changes in
4 North Carolina, federal, or private industry procedures and requirements for registering
5 objections to telephone solicitations. The Commission shall also ensure that this
6 information is printed in a clear, conspicuous manner in the consumer information
7 pages of each telephone directory distributed to residential customers."

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

9 **"§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

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

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

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

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

22 c. For the purpose of obtaining a donation.

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

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

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

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

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

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

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

1 (d) For the purpose of this section, a telephone call shall be deemed to be
2 unsolicited unless pursuant to a prior agreement between the parties the person called
3 has agreed to accept such calls from the person ~~ealling~~-calling, and the person called
4 has not subsequently expressed to the caller a desire not to receive further telephone
5 solicitations in accordance with provisions of G.S. 75-30.1.

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

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

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

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

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

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

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

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

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

29 "Article 33.

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

31 "**§ 66-260. Definitions.**

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

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

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

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

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

43 (5) 'Principal' means an owner, a part-owner holding or controlling ten
44 percent (10%) or more of the equity of, or otherwise having a claim to

1 ten percent (10%) or more of the net income of, a telephone solicitor,
2 an executive officer of a corporation, a general partner of a
3 partnership, a sole proprietor of a sole proprietorship, a trustee of a
4 trust, or any other individual with similar supervisory functions with
5 respect to any person.

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

13 (7) ~~'Room operator' means any principal, employee, or agent responsible~~
14 ~~for the operational management and supervision of facilities from~~
15 ~~which telephonic sales calls are made or received.~~

16 (8) ~~'Salesperson' means any individual employed, appointed, or authorized~~
17 ~~by a telephonic seller, whether referred to by the telephonic seller as an~~
18 ~~agency, representative, or independent contractor, who attempts to~~
19 ~~solicit or solicits a sale on behalf of the telephonic seller.~~

20 (9) ~~'Secretary' means the Office of the Secretary of State.~~

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

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

37 a. ~~A securities 'dealer' within the meaning of G.S. 78A-2(2) or a~~
38 ~~person excluded from the definition of 'dealer' by that~~
39 ~~provision; a 'salesman' within the meaning of G.S. 78A-2(9); an~~
40 ~~'investment adviser' within the meaning of G.S. 78C-2(1) or a~~
41 ~~person excluded from the definition of 'investment adviser' by~~
42 ~~that provision; or an 'investment adviser representative' within~~
43 ~~the meaning of G.S. 78C-2(3); provided that such persons shall~~

- 1 be excluded from the terms 'telephonic seller' and 'seller' only
2 with respect to activities regulated by Chapters 78A and 78C.
- 3 b. Any person conducting sales or solicitations on behalf of a
4 licensee of the Federal Communications Commission or holder
5 of a franchise or certificate of public convenience and necessity
6 from the North Carolina Utilities Commission.
- 7 e. Any insurance agent or broker who is properly licensed by the
8 Department of Insurance and who is soliciting within the scope
9 of the agent's or broker's license or any employee or
10 independent contractor of an insurance company licensed by the
11 Department of Insurance conducting sales or solicitations on
12 behalf of that company.
- 13 d. Any federally chartered bank, savings institution, or credit
14 union or any bank, savings institution, or credit union properly
15 licensed by the State or subject to federal regulating authorities.
- 16 e. Any organization that is exempt under section 501(c)(3) of the
17 Internal Revenue Code of 1986 or any successor section, or that
18 is organized exclusively for one or more of the purposes
19 specified in section 501(c)(3) of the Internal Revenue Code of
20 1986 or any successor section and that upon dissolution shall
21 distribute its assets to an entity that is exempt under section
22 501(c)(3) of the Internal Revenue Code of 1986 or any
23 successor section, the United States, or a state; any "charitable
24 solicitor" properly licensed under Article 2 of Chapter 131F of
25 the General Statutes, or any person exempt from Chapter 131F
26 of the General Statutes under G.S. 131F 3.
- 27 f. A person who periodically issues and delivers catalogs to
28 potential purchasers and the catalog:
- 29 1. Includes a written description or illustration and the sales
30 price of each item offered for sale;
- 31 2. Includes at least 24 full pages of written material or
32 illustrations;
- 33 3. Is distributed in more than one state; and
- 34 4. Has an annual circulation of not less than 250,000
35 customers.
- 36 g. A person engaging in a commercial telephone solicitation
37 where the solicitation is an isolated transaction and not done in
38 the course of a pattern of repeated transactions of a like nature.
- 39 h. A person primarily soliciting the sale of a newspaper of general
40 circulation, a publisher of a magazine or other periodical of
41 general circulation, or an agent of such a publisher acting
42 pursuant to a written agency agreement.

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

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

- 1 w. ~~The seller of a "business opportunity" as defined in G.S. 66-94,~~
2 ~~while engaged in activities subject to regulation under Article~~
3 ~~19 of Chapter 66 of the General Statutes, provided that such~~
4 ~~seller has complied with the provisions of G.S. 66-97.~~
- 5 x. ~~A "loan broker" as defined in G.S. 66-106, while engaged in~~
6 ~~activities subject to regulation under Article 20 of Chapter 66 of~~
7 ~~the General Statutes, provided that such loan broker has~~
8 ~~complied with the provisions of G.S. 66-109.~~
- 9 y. ~~A "membership camping operator" as defined in G.S. 66-~~
10 ~~232(10) or a "salesperson" as defined in G.S. 66-232(16), while~~
11 ~~engaged in activities subject to regulation under Article 31 of~~
12 ~~Chapter 66 of the General Statutes, provided that such persons~~
13 ~~have complied with the provisions of G.S. 66-234 and 66-237,~~
14 ~~as applicable.~~

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

17 **"§ 66-261. Registration of telephonic sellers, telephone solicitors.**

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

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

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

34 (d) Whenever, prior to expiration of a ~~seller's solicitor's~~ annual registration, there
35 is a change in the information required by G.S. 66-262, the ~~seller-solicitor~~ shall, within
36 10 days after the change, file an addendum with the ~~Secretary-Attorney General~~
37 updating the information.

38 **"§ 66-262. Filing information.**

39 (a) Each filing submitted to the ~~Secretary-Attorney General~~ shall contain all of
40 the following information:

- 41 (1) The name or names, including any assumed names, under which the
42 ~~telephonic seller~~ telephone solicitor is doing or intends to do business
43 in this State.

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

1 other forms of fraud. The summary shall include the date each ~~action~~
2 proceeding was commenced, the ~~eriminal or civil charges~~criminal,
3 civil, or administrative violations alleged, the case caption, the court or
4 agency proceeding file number, the ~~court venue,~~ venue of the
5 proceeding, and the disposition or current status of the ~~action-~~
6 proceeding. For purposes of this section, a 'civil proceeding includes'
7 ~~means~~ assurances of voluntary compliance, assurances of
8 discontinuance, consent judgments, and similar agreements executed
9 with federal, State, or local officials. The summary of settlement
10 agreements, assurances of discontinuance, and assurances of voluntary
11 compliance shall include the date each was executed, the violations
12 alleged or resolved, and the name and address of the agency or official
13 that executed the document with the telephone solicitor.

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

17 **"§ 66-263. Bond requirement; prizes and gifts.**

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

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

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

1 **"§ 66-264. Calls made to minors.**

2 A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective
3 purchaser it is contacting is under 18 years of age. If the prospective purchaser purports
4 to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue
5 the call immediately.

6 **"§ 66-265. Offers of gifts or prizes.**

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

- 10 (1) Requests or directs the consumer to further the transaction by calling a
11 900 number or a pay-per-call number.
12 (2) Requests or directs the consumer to send any payment or make a
13 donation in order to collect the gift or prize.
14 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

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

18 **"§ 66-266. Penalties.**

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

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

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

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

31 (e) In any civil proceeding alleging a violation of this Article, the burden of
32 proving an exemption or an exception from a definition is upon the person claiming it,
33 and in any criminal proceeding alleging a violation of this Article, the burden of
34 producing evidence to support a defense based upon an exemption or an exception from
35 a definition is upon the person claiming it."

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

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

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

5 **SECTION 10.** This act is effective when it becomes law and applies to
6 telephone solicitations made on or after that date. G.S. 75-30.2, as enacted in Section 3
7 of this act, becomes effective 90 days after the current operations appropriations act for
8 the 2002-2003 fiscal year is enacted. G.S. 66-54, as amended in Section 4 of this act,
9 applies to all telephone directories printed on or after that date.