

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

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**SENATE BILL 221**

Short Title: No Telephone Solicitation.

(Public)

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Sponsors: Senator Robinson.

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Referred to: Information Technology.

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March 4, 1999

**A BILL TO BE ENTITLED**

**AN ACT TO ALLOW RESIDENTIAL TELEPHONE SUBSCRIBERS TO BE  
PLACED ON A LIST OF PERSONS WHO OBJECT TO TELEPHONE  
SOLICITATIONS AND TO PROHIBIT 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 residential customers.
- (3) Telemarketing can be an intrusive and relentless invasion of the privacy and peacefulness of the home.
- (4) Many citizens of this State are upset at the proliferation of calls to their homes from telemarketers.
- (5) The rights to privacy and commercial speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices.

- 1 (6) 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 or the  
10 persons living or residing with that person.

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

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

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

20 c. To any person with whom the telephone solicitor has a prior or  
21 existing business relationship.

22 d. By or on behalf of organizations described in section 501(c)(3) of  
23 the Internal Revenue Code.

24 (3) 'Telephone solicitor' means any legal entity doing business in this State  
25 that makes or causes to be made telephone solicitations.

26 (b) The Attorney General shall establish and maintain a list of telephone numbers  
27 of residential, mobile, or telephonic paging device telephone subscribers who object to  
28 receiving telephone solicitations. Any residential telephone subscriber who desires to be  
29 placed on this list may notify the Attorney General and be placed on the list upon receipt  
30 by the Attorney General of a fee of ten dollars (\$10.00) for the initial listing charge. The  
31 subscriber may renew the subscriber's listing for a year upon receipt of a renewal notice  
32 and a renewal fee of five dollars (\$5.00) for each year. The Attorney General shall  
33 update the list at least quarterly. The Attorney General shall provide paper or electronic  
34 copies of the list to telephone solicitors upon request for a fee of ten dollars (\$10.00) per  
35 year. The fees collected under this section shall be credited to the General Fund and  
36 appropriated to the Attorney General to support the cost of implementing this section.

37 (c) In the event that the Federal Communications Commission establishes a single  
38 national database of the telephone numbers of subscribers who object to receiving  
39 telephone solicitations pursuant to the provisions of 47 U.S.C. § 227(c)(3), the Attorney  
40 General shall include the portion of that national database covering subscribers in North  
41 Carolina within the list established under this section.

42 (d) No telephone solicitor shall make or cause to be made any telephone  
43 solicitation to any telephone number that, at the time of the solicitation, appears on the

1 listing published by the Attorney General pursuant to subsection (b) of this section. Any  
2 person who offers for sale any consumer information that includes telephone numbers,  
3 other than persons providing directory assistance and telephone directories and  
4 organizations described in section 501(c)(3) of the Internal Revenue Code, shall screen  
5 and exclude the numbers appearing on the current listing published by the Attorney  
6 General pursuant to subsection (b) of this section.

7 (e) Any telephone solicitor who makes a telephone solicitation to the telephone  
8 line of any residential telephone subscriber in this State shall, at the beginning of the call,  
9 state clearly the identity of the person or entity initiating the call. Any telephone solicitor  
10 who makes a telephone solicitation to the telephone line of any residential telephone  
11 subscriber in this State shall, within 30 seconds after beginning the conversation, inquire  
12 whether the person being solicited is interested in listening to a sales presentation and  
13 immediately discontinue the solicitation if the person being solicited gives a negative  
14 response.

15 (f) No telephone solicitor who makes a telephone solicitation to the telephone line  
16 of a residential telephone subscriber in this State shall knowingly use any method to  
17 block or otherwise circumvent that subscriber's use of a caller identification service.

18 (g) Information contained in the list published under subsection (b) of this section  
19 shall be used only for the purpose of complying with this section or in a proceeding or  
20 action under subsection (h) or (i) of this section. The information contained in the list  
21 published under subsection (b) of this section is not a public record under Chapter 132 of  
22 the General Statutes and shall not be subject to public inspection or disclosure.

23 (h) The Attorney General shall investigate any complaints received alleging  
24 violations of any of subsections (c) through (e) of this section. If, after investigating a  
25 complaint, the Attorney General finds that there has been a violation of subsections (c)  
26 through (e) of this section, the Attorney General may bring an action to impose a civil  
27 penalty and to seek any other appropriate relief, including equitable relief to restrain the  
28 violation. The civil penalty imposed shall not exceed five thousand dollars (\$5,000) per  
29 violation. In determining the amount of the civil penalty, the court shall consider all  
30 relevant circumstances, including the extent of harm caused by the conduct constituting a  
31 violation, whether the defendant can demonstrate that the defendant has established and  
32 implemented reasonable practices and procedures and exercised due care to prevent  
33 telephone solicitations constituting violations, and whether the defendant has taken any  
34 other corrective action.

35 (i) Any person who has received more than one telephone solicitation within any  
36 12-month period by or on behalf of the same person or entity in violation of subsection  
37 (d) of this section may either bring an action to enjoin such violation; bring an action to  
38 recover for actual monetary loss from such knowing violation or to receive up to two  
39 thousand dollars (\$2,000) in damages for each such knowing violation, whichever is  
40 greater; or bring both of these actions.

41 (j) It shall be a defense in any action or proceeding brought under subsection (h)  
42 or (i) of this section that the defendant has established and implemented, with due care,

1 reasonable practices and procedures to effectively prevent telephone solicitations in  
2 violation of this section.

3 (k) The remedies available under this section are not exclusive and are in addition  
4 to all other remedies provided by law.

5 (l) The Department of Justice shall adopt rules that:

6 (1) Require each local exchange company to inform its residential  
7 telephone subscribers of the opportunity to provide notification to the  
8 Attorney General that the subscriber objects to receiving telephone  
9 solicitations.

10 (2) Specify the methods by which each residential telephone subscriber may  
11 give notice to the Attorney General of the subscriber's objection to  
12 receiving telephone solicitations or revocation of that notice.

13 (3) Specify the length of time for which a notice of objection shall be  
14 effective and the effect of a change of telephone number on that notice.

15 (4) Specify the methods by which such objections and revocations shall be  
16 collected and added to the list under subsection (b) of this section.

17 (5) Specify the methods by which any person or entity desiring to make  
18 telephone solicitations will obtain access to the list under subsection (b)  
19 of this section as required to avoid calling the telephone numbers of  
20 residential telephone subscribers included in the list under subsection  
21 (b) of this section.

22 (6) Are necessary or desirable to implement this section."

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

25 **"§ 62-53. Notification of opportunity to object to telephone solicitation.**

26 The Commission shall by rule require each local exchange company to periodically  
27 notify all persons who subscribe to residential service from that company of the  
28 opportunity to be placed on the list of persons who object to receiving telephone  
29 solicitations established in G.S. 75-30.1. This notification shall include at a minimum  
30 annual inserts in the billing statements mailed to customers."

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