

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1313\***

Short Title: Stop Unwanted Telephone Solicitations. (Public)

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Sponsors: Senators Odom; Allran and Foxx.

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Referred to: Commerce.

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June 11, 2002

A BILL TO BE ENTITLED

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

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  
25 the privacy of individuals and permits legitimate telemarketing  
26 practices.
- 27 (6) Even legitimate telemarketers have no interest in continuing to invade  
28 the privacy of those consumers who affirmatively express their  
29 objections to such contact and, in fact, legitimate telemarketers can

1 make their telemarketing efforts more cost effective by avoiding calls  
2 to those consumers who have affirmatively expressed an objection to  
3 any such contact.

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

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

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

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

21 **"§ 75-30.1. Restrictions on telephone solicitations.**

22 (a) For purposes of this section:

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

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

40 a. That the residential telephone subscriber has won, may have  
41 won, or may win any contest, sweepstakes, raffle, or lottery.

42 b. That the residential telephone subscriber may obtain or qualify  
43 for credit by contacting the solicitor.

- 1           c.     That the solicitor has buyers interested in purchasing the  
2                 recipient's property.
- 3     (2a) 'Telephone solicitation' but does not include any of the following  
4           telephonic communications:
- 5           a.     To any person with that person's prior express invitation or  
6                 ~~permission;~~ permission, including telephonic communications  
7                 initiated by that person unless that person is responding to any  
8                 unsolicited letter, telegram, e-mail message, or other notice that  
9                 states one or more of the following:
- 10                 1.     That the residential telephone subscriber has won, may  
11                         have won, or may win any contest, sweepstakes, raffle,  
12                         or lottery.
- 13                 2.     That the residential telephone subscriber may obtain or  
14                         qualify for credit by contacting the solicitor.
- 15                 3.     That the solicitor has buyers interested in purchasing the  
16                         recipient's property.
- 17           b.     To any person ~~with whom the telephone solicitor has an~~  
18                 ~~established business relationship;~~ or in connection with an  
19                 existing debt or contract for which payment or performance has  
20                 not been completed at the time of the call.
- 21           c.     By or on behalf of a tax-exempt nonprofit ~~organization.~~  
22                 organization when calls are being placed by direct employees of  
23                 the organization, or volunteers without remuneration for the  
24                 organization, and the caller immediately discloses the following  
25                 information upon making contact with the residential telephone  
26                 subscriber:
- 27                         (1.) The caller's true first and last name; and  
28                         (2.) The name, address, and telephone number of the  
29                                 organization.
- 30     (3) 'Telephone solicitor' means any business or other legal entity doing  
31           business in this State ~~that~~ that, directly or through salespersons or  
32           agents, makes or attempts to make telephone solicitations or causes  
33           telephone solicitations to be made.
- 34     (4) 'Doing business in this State' means to make or cause to be made any  
35           telephone solicitation to North Carolina residential telephone  
36           subscribers, whether the telephone solicitations are made from a  
37           location inside North Carolina or outside North Carolina.
- 38     (b) No telephone solicitor shall place any calls to a North Carolina residential  
39           telephone subscriber's number if that telephone subscriber's telephone number, facsimile  
40           machine number, pager number, or other telephonic device number appears on the latest  
41           edition of the No-Call Registry under G.S. 75-30.2 or if the telephone subscriber  
42           previously has communicated to that telephone solicitor a desire to receive no further  
43           telephone solicitations from that solicitor. Any telephone solicitor who makes a  
44           telephone solicitation to a residential telephone subscriber whose telephonic device

1 number is not listed in the latest edition of the No-Call Registry or who previously has  
2 not communicated to the telephone solicitor a desire to receive no further telephone  
3 solicitations from that solicitor shall:

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

15 (c) Every telephone solicitor who makes telephone solicitations in this State shall  
16 implement in-house systems and procedures designed to prevent further calls to ~~persons~~  
17 any person who have has asked not to be called again. ~~Compliance with 47 C.F.R. §~~  
18 ~~64.1200(e) of the Federal Communications Commission's Restrictions on Telephone~~  
19 ~~Solicitation constitutes compliance with this subsection: again or who has placed a~~  
20 telephonic device number in the No-Call Registry.

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

24 (e) No telephone solicitor shall initiate a call to a residential telephone subscriber  
25 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.

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

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

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

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

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

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

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

31           (i)    A ~~person~~residential telephone subscriber who has received ~~more than one~~a  
32 telephone solicitation within any 12 month period by ~~from~~ or on behalf of the ~~same~~a  
33 telephone solicitor in violation of subsections (b) through (g) of this section or G.S. 75-  
34 30.2 may bring any of the following actions in the General Court of Justice:

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

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

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

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

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

9 **"§ 75-30.2. No-Call Registry.**

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

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

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

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

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

39 a. The agent has demonstrated the capacity to maintain and  
40 operate such a registry.

41 b. The Attorney General, upon entering into a contract under this  
42 section, has ultimate authority over the agent for the approval of  
43 procedures for the establishment, maintenance, and  
44 dissemination of the listings in the No-Call Registry.

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

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

34           **"§ 62-54. Notification of opportunity to object to telephone solicitation.**

35           The Commission shall require each local exchange company to notify all persons  
36 who subscribe to residential service from that company of the provisions of ~~G.S.~~  
37 ~~75-30.1~~, G.S. 75-30.1 and G.S. 75-30.2, of the federal laws and regulations allowing  
38 consumers to object to receiving telephone solicitations, and of programs made  
39 available by private industry that allow consumers to have their names removed from  
40 telemarketing lists, by enclosing that information, at least ~~annually~~, every six months, in  
41 every telephone bill mailed to residential customers. This information shall be in the  
42 form of a bill insert, pamphlet, or other document drafted by the Attorney General and  
43 reprinted at the local exchange company's expense, and shall reflect any changes in  
44 North Carolina, federal, or private industry procedures and requirements for registering

1 objections to telephone solicitations. The Commission shall also ensure that this  
2 information is printed in a clear, conspicuous manner in the consumer information  
3 pages of each telephone directory distributed to residential customers."

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

5 "**§ 75-30. Automatic dialing and recorded message players; restriction on use of.**

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

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

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

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

18 c. For the purpose of obtaining a donation.

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

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

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

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

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

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

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

41 (d) For the purpose of this section, a telephone call shall be deemed to be  
42 unsolicited unless pursuant to a prior agreement between the parties the person called  
43 has agreed to accept such calls from the person ~~calling.~~ calling, and the person called



1 has not subsequently expressed to the caller a desire not to receive further telephone  
 2 solicitations in accordance with provisions of G.S. 75-30.1.

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

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

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

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

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

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

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

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

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

26 "Article 33.

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

28 "**§ 66-260. Definitions.**

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

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

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

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

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

40 (5) 'Principal' means an owner, a part-owner holding or controlling ten  
 41 percent (10%) or more of the equity of, or otherwise having a claim to  
 42 ten percent (10%) or more of the net income of, a telephone solicitor,  
 43 an executive officer of a corporation, a general partner of a  
 44 partnership, a sole proprietor of a sole proprietorship, a trustee of a

1 trust, or any other individual with similar supervisory functions with  
2 respect to any person.

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

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

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

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

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

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

34 a. ~~A securities 'dealer' within the meaning of G.S. 78A-2(2) or a~~  
35 ~~person excluded from the definition of 'dealer' by that~~  
36 ~~provision; a 'salesman' within the meaning of G.S. 78A-2(9); an~~  
37 ~~'investment adviser' within the meaning of G.S. 78C-2(1) or a~~  
38 ~~person excluded from the definition of 'investment adviser' by~~  
39 ~~that provision; or an 'investment adviser representative' within~~  
40 ~~the meaning of G.S. 78C-2(3); provided that such persons shall~~  
41 ~~be excluded from the terms 'telephonic seller' and 'seller' only~~  
42 ~~with respect to activities regulated by Chapters 78A and 78C.~~

43 b. ~~Any person conducting sales or solicitations on behalf of a~~  
44 ~~licensee of the Federal Communications Commission or holder~~

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

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

- 1           r.     ~~A person soliciting the purchase of contracts for the~~  
2           ~~maintenance or repair of items previously purchased from the~~  
3           ~~person making the solicitation or on whose behalf the~~  
4           ~~solicitation is made.~~
- 5           s.     ~~A book, video, recording, or multimedia club or contractual~~  
6           ~~plan or arrangement:~~
- 7                 1.     ~~Under which the seller provides the consumer with a~~  
8                 ~~form with which the consumer can instruct the seller not~~  
9                 ~~to ship the offered merchandise.~~
- 10                2.     ~~Which is regulated by the Federal Trade Commission~~  
11                ~~trade regulation concerning "use of negative option plans~~  
12                ~~by sellers in commerce".~~
- 13                3.     ~~Which provides for the sale of books, recordings,~~  
14                ~~multimedia products or goods, or videos which are not~~  
15                ~~covered under paragraphs 1. or 2. of this sub-~~  
16                ~~subdivision, including continuity plans, subscription~~  
17                ~~arrangements, standing order arrangements,~~  
18                ~~supplements, and series arrangements under which the~~  
19                ~~seller periodically ships merchandise to a consumer who~~  
20                ~~has consented in advance to receive such merchandise on~~  
21                ~~a periodic basis.~~
- 22           t.     ~~A person who for at least two years has been operating under~~  
23           ~~the same name as that used in connection with its telemarketing~~  
24           ~~operations and retail establishment in North Carolina where~~  
25           ~~consumer goods are displayed and offered for sale on a~~  
26           ~~continuing basis if a majority of the person's business involves~~  
27           ~~the buyers obtaining services or products at the person's retail~~  
28           ~~establishment.~~
- 29           u.     ~~A person:~~
- 30                 1.     ~~Who provides telephone solicitation services under~~  
31                 ~~contract to sellers;~~
- 32                 2.     ~~Who has been operating continuously for at least three~~  
33                 ~~years under the same business name; and~~
- 34                 3.     ~~For whom at least seventy five percent (75%) of the~~  
35                 ~~person's contracts are performed on behalf of other~~  
36                 ~~persons exempt under this section.~~
- 37           v.     ~~A person soliciting political contributions in accordance with~~  
38           ~~Article 22A of Chapter 163 of the General Statutes.~~
- 39           w.     ~~The seller of a "business opportunity" as defined in G.S. 66-94,~~  
40           ~~while engaged in activities subject to regulation under Article~~  
41           ~~19 of Chapter 66 of the General Statutes, provided that such~~  
42           ~~seller has complied with the provisions of G.S. 66-97.~~
- 43           x.     ~~A "loan broker" as defined in G.S. 66-106, while engaged in~~  
44           ~~activities subject to regulation under Article 20 of Chapter 66 of~~

1 the General Statutes, provided that such loan broker has  
2 complied with the provisions of G.S. 66-109.

3 y. A "membership camping operator" as defined in G.S. 66-  
4 232(10) or a "salesperson" as defined in G.S. 66-232(16), while  
5 engaged in activities subject to regulation under Article 31 of  
6 Chapter 66 of the General Statutes, provided that such persons  
7 have complied with the provisions of G.S. 66-234 and 66-237,  
8 as applicable.

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

11 **"§ 66-261. Registration of telephonic sellers.telephone solicitors.**

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

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

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

28 (d) Whenever, prior to expiration of a ~~seller's solicitor's~~ annual registration, there  
29 is a change in the information required by G.S. 66-262, the ~~seller~~ solicitor shall, within  
30 10 days after the change, file an addendum with the ~~Secretary~~ Attorney General  
31 updating the information.

32 **"§ 66-262. Filing information.**

33 (a) Each filing submitted to the ~~Secretary~~ Attorney General shall contain all of  
34 the following information:

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

38 (2) The ~~telephonic seller's~~ telephone solicitor's business form and place of  
39 ~~organization and, if the seller is a corporation, copies of its articles of~~  
40 ~~incorporation and bylaws and amendments thereto, or if a partnership,~~  
41 ~~a copy of the partnership agreement.~~ organization.

42 (3) Complete street address of the ~~telephonic seller's~~ telephone solicitor's  
43 principal place of business.

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

1                   means ~~assurances of voluntary compliance, assurances of~~  
2                   ~~discontinuance, consent judgments, and similar agreements executed~~  
3                   ~~with federal, State, or local officials.~~ The summary of settlement  
4                   agreements, assurances of discontinuance, and assurances of voluntary  
5                   compliance shall include the date each was executed, the violations  
6                   alleged or resolved, and the name and address of the agency or official  
7                   that executed the document with the telephone solicitor.

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

11   **"§ 66-263. Bond requirement; prizes and gifts.**

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

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

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

39   **"§ 66-264. Calls made to minors.**

40           A ~~telephonic seller~~ telephone solicitor must inquire as to whether the prospective  
41           purchaser it is contacting is under 18 years of age. If the prospective purchaser purports  
42           to be under 18 years of age, the ~~telephonic seller~~ telephone solicitor must discontinue  
43           the call immediately.

44   **"§ 66-265. Offers of gifts or prizes.**



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

4 (1) Requests or directs the consumer to further the transaction by calling a  
5 900 number or a pay-per-call number.

6 (2) Requests or directs the consumer to send any payment or make a  
7 donation in order to collect the gift or prize.

8 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

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

12 "**§ 66-266. Penalties.**

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

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

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

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

25 (e) In any civil proceeding alleging a violation of this Article, the burden of  
26 proving an exemption or an exception from a definition is upon the person claiming it,  
27 and in any criminal proceeding alleging a violation of this Article, the burden of  
28 producing evidence to support a defense based upon an exemption or an exception from  
29 a definition is upon the person claiming it."

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

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

39 **SECTION 9.** There is appropriated from the General Fund to the  
40 Department of Justice the sum of nine hundred thousand dollars (\$900,000) for the  
41 2002-2003 fiscal year to establish and maintain the No-Call Registry established by  
42 G.S. 75-30.2, as enacted in Section 3 of this act.

43 **SECTION 10.** This act is effective when it becomes law and applies to  
44 telephone solicitations made on or after that date. G.S. 75-30.2, as enacted in Section 3

1 of this act, becomes effective 90 days after the current operations appropriations act for  
2 the 2002-2003 fiscal year is enacted. G.S. 66-54, as amended in Section 4 of this act,  
3 applies to all telephone directories printed on or after that date.