

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 872
Commerce Committee Substitute Adopted 4/29/03
House Committee Substitute Favorable 7/9/03

Short Title: Unwanted Telephone Solicitations.

(Public)

Sponsors:

Referred to:

April 3, 2003

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

5 The General Assembly of North Carolina enacts:

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 G.S. 75-30 is repealed.

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 G.S. 75-30.1 is repealed.

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

10 "Article 4.

11 "Telephone Solicitations.

12 "**§ 75-100. Findings.**

13 The General Assembly finds all of the following:

- 14 (1) The use of the telephone to market goods and services to the home is
15 now pervasive due to the increased use of cost-effective telephone
16 solicitation technologies and techniques.
- 17 (2) While some consumers enjoy and benefit from telephone solicitations
18 from legitimate telephone solicitors, many others object to these
19 telephone solicitations as an intrusive invasion of their privacy in the
20 home.
- 21 (3) In addition, the proliferation of telephone solicitations, especially
22 during the evening hours, creates a nuisance and a disturbance upon
23 the home and family life of telephone subscribers during a time of day
24 used by many families for traditional family activities.
- 25 (4) North Carolina residents should have the freedom to choose whether
26 or not to permit telephone solicitors to contact them.
- 27 (5) Individual privacy rights, personal safety, prevention of fraud, and
28 commercial freedom of speech and trade must be balanced in a way

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

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

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

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

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

27 **"§ 75-101. Definitions.**

28 The following definitions apply in this Article:

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

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

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

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

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

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

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

9 (a) Except as provided in G.S. 75-103, no telephone solicitor shall make a
10 telephone solicitation to a telephone subscriber's telephone number if the telephone
11 subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

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

16 (c) Any telephone solicitor who makes a telephone solicitation shall do all of the
17 following:

18 (1) At the beginning of the telephone solicitation, state clearly the identity
19 of the telephone solicitor and identify the individual making the
20 telephone solicitation.

21 (2) Upon request, provide the telephone subscriber with the telephone
22 number or address at which the telephone solicitor may be contacted.

23 (3) If the telephone subscriber requests to be taken off the contact list of
24 the telephone solicitor, the telephone solicitor shall take all steps
25 necessary to remove the telephone subscriber's name and telephone
26 number from the contact list of the telephone solicitor and stop calling
27 the telephone subscriber within 30 business days.

28 (4) If the telephone subscriber objects to the telephone solicitation,
29 terminate the telephone solicitation and promptly disconnect from the
30 telephone line of the person receiving the call.

31 (5) Notwithstanding subdivision (3) of this subsection, if a telephone
32 solicitor relies on the established business relationship of an affiliate to
33 solicit a residential telephone subscriber whose telephone number is
34 listed in the latest edition of the 'Do Not Call' Registry and the person
35 called communicates a desire to receive no further telephone
36 solicitations from the telephone solicitor, the telephone solicitor shall
37 take all steps necessary to remove that telephone subscriber's
38 telephone number from the contact list of the telephone solicitor and
39 all of its affiliates, unless the telephone subscriber indicates otherwise,
40 and the telephone solicitor and its affiliates shall stop calling the
41 telephone subscriber at that number within 30 business days.

42 (d) Every telephone solicitor shall implement systems and written procedures to
43 prevent further telephone solicitations to any telephone subscriber who has asked not to
44 be called again at a specific number or numbers or whose telephone number appears in

1 the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce
2 compliance by its employees and shall monitor and enforce compliance by its
3 independent contractors in those systems and procedures. Every telephone solicitor shall
4 ensure that lists of telephone numbers that may not be contacted by the telephone
5 solicitor are maintained and recorded. Compliance with the time requirements within
6 the Telemarketing Sales Rule for incorporating and complying with updated versions of
7 the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

8 (e) No telephone solicitor shall violate any requirement of section 310.3 of the
9 Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of
10 the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section
11 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

12 (f) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or
13 after 9:00 P.M.

14 (g) A telephone solicitor shall inquire as to whether the telephone subscriber is
15 under the age of 18. If the telephone subscriber purports to be less than 18 years of age,
16 the telephone solicitor shall discontinue the call immediately. No inquiry is required
17 where the solicitor has taken reasonable steps to remove all telephone contacts who are
18 less than 18 years of age from its list of subscribers being contacted or can demonstrate
19 that it does not target subscribers who are less than 18 years of age.

20 (h) No telephone solicitor shall knowingly use any method to block or otherwise
21 circumvent a telephone subscriber's use of a caller identification service. A telephone
22 solicitor who makes a telephone solicitation through the use of a private branch
23 exchange (PBX) or other call-generating system that is not capable of transmitting caller
24 identification information shall not be in violation of this subsection. No provider of
25 telephone caller identification services shall be held liable for violations of this
26 subsection committed by other individuals or entities.

27 (i) A telephone solicitor or its agent that makes telephone solicitations on its
28 behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep
29 a record for a period of 24 months from the date a telephone solicitation is made of the
30 legal name, any fictitious name used, the resident address, the telephone number, and
31 the job title of each individual who makes a telephone solicitation for that telephone
32 solicitor. If an individual who makes telephone solicitations for a telephone solicitor
33 uses a fictitious name, the fictitious name shall be traceable only to the specific
34 individual.

35 (j) Nothing in this section prohibits a telephone solicitor from contacting by
36 nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do
37 Not Call' Registry to obtain the telephone subscriber's express invitation or permission
38 allowing the telephone solicitor to make telephone solicitations to the telephone
39 subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to
40 obtain this express invitation or permission.

41 (k) Nothing in this section prohibits a telephone solicitor from advertising in a
42 general medium or contacting by nontelephonic notice a telephone subscriber whose
43 telephone number appears in the 'Do Not Call' Registry to encourage the telephone
44 subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor

1 shall not contact a telephone subscriber by telephone to obtain this express invitation or
2 permission.

3 (l) The Attorney General, in consultation with the Public Staff of the Public
4 Utilities Commission, shall draft the contents of a bill insert that notifies consumers of
5 the existence of the 'Do Not Call' Registry and provides information to consumers on
6 how to use it and the other provisions of this Article to object to receiving telephone
7 solicitations. Local exchange companies shall distribute the insert pursuant to G.S.
8 62-54.

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

13 (n) In telephone solicitation transactions involving telephone subscribers, no
14 contract or purchase agreement entered into during a telephone solicitation is valid, and
15 no money from the prospective purchaser is due thereunder, unless all the following
16 conditions are satisfied:

17 (1) The contract and the sales representations that precede it are not
18 deceptive or abusive telemarketing acts or practices as elaborated in
19 sections 310.3 and 310.4 of the Telemarketing Sales Rule.

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

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

25 **"§ 75-103. Limited exceptions.**

26 (a) Except as provided in subsection (b) of this section, G.S. 75-102 does not
27 apply to any of the following telephone solicitations that are made:

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

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

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

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

38 (5) To any telephone subscriber for the sole purpose of arranging a
39 subsequent face-to-face meeting between the telephone solicitor and
40 the telephone subscriber and the telephone solicitor does none of the
41 following during the telephone solicitation:

42 a. Seek payment from the telephone subscriber in connection with
43 the sale or rental of, or investment in, property, goods, or
44 services.

- 1 b. Complete the sale or rental of, or investment in, property,
2 goods, or services.
3 c. Obtain provisional acceptance of a sale, rental, or investment.
4 d. Obtain the agreement of the telephone subscriber to participate
5 in any contest, sweepstakes, raffle, or lottery.
6 e. Directly following the telephone solicitation, go or cause an
7 individual to go to the telephone subscriber to collect a payment
8 or deliver any item purchased.

9 (6) By or on behalf of a newspaper publisher, radio station, television
10 station, or operator of a cable television system franchised under G.S.
11 153A-137 or G.S. 160A-319.

12 (b) G.S. 75-102(b), 75-102(c)(1), (2), and (4), 75-102(f), and 75-102(h) shall
13 apply to any telephone solicitation made under subsection (a) of this section.

14 (c) In any dispute regarding whether a telephone subscriber has provided an
15 express invitation or permission under subsection (a) of this section, the telephone
16 solicitor has the burden of proving that the telephone subscriber has provided this
17 permission by producing the original document, a facsimile document, or an electronic
18 form, signed by the telephone subscriber, or other authentication that evidences
19 permission. A telephone subscriber may subsequently retract express invitation or
20 permission by indicating a desire not to receive further telephone solicitations under
21 G.S. 75-102(b).

22 "**§ 75-104. Restrictions on use of automatic dialing and recorded message players.**

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

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

28 (1) All of the following are satisfied:

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

- 30 1. A tax-exempt charitable or civic organization.
31 2. A political party or political candidate.
32 3. A governmental official.
33 4. An opinion polling organization, radio station, television
34 station, cable television company, or broadcast rating
35 service conducting a public opinion poll.

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

42 c. The person making the call clearly identifies the person's name
43 and contact information and the nature of the unsolicited
44 telephone call.

- 1 (2) Prior to the playing of the recorded message, a live operator complies
2 with G.S. 75-102(c), states the nature and length in minutes of the
3 recorded message, and asks for and receives prior approval to play the
4 recorded message from the person receiving the call.
- 5 (3) The unsolicited telephone call is in connection with an existing debt or
6 contract for which payment or performance has not been completed at
7 the time of the unsolicited telephone call.
- 8 (4) The call is placed by a person with whom the telephone subscriber has
9 made an appointment, provided that the call is conveying information
10 only about the appointment, or by a utility, telephone company, cable
11 television company, satellite television company, or similar entity for
12 the sole purpose of conveying information or news about network
13 outages, repairs or service interruptions, and confirmation calls related
14 to restoration of service.
- 15 (5) The person plays the recorded message in order to comply with section
16 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

17 **"§ 75-105. Enforcement.**

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

- 28 (1) Five hundred dollars (\$500.00) for the first violation, one thousand
29 dollars (\$1,000) for the second violation, and five thousand dollars
30 (\$5,000) for the third and any other violation that occurs within two
31 years of the first violation.
- 32 (2) One hundred dollars (\$100.00) for each violation within two years of
33 the first violation, if the solicitor can show that the violations are the
34 result of a mistake and the telephone solicitor either made the
35 telephone solicitation under G.S. 75-103 or can show that the
36 telephone solicitor complied with G.S. 75-102(d).

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

- 40 (1) An action to enjoin further violations of this Article by the telephone
41 solicitor.
- 42 (2) An action to recover five hundred dollars (\$500.00) for the first
43 violation, one thousand dollars (\$1,000) for the second violation, and

1 five thousand dollars (\$5,000) for the third and any other violation that
2 occurs within two years of the first violation.

3 (c) No action may be brought under subsection (b) of this section if the violations
4 are a result of mistake and the telephone solicitor either made the telephone solicitation
5 under G.S. 75-103 or can show that the telephone solicitor complied with G.S.
6 75-102(d).

7 (d) In an action brought pursuant to this Article, the court may award a prevailing
8 plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in
9 the act or practice, and the court may award reasonable attorneys' fees to a prevailing
10 defendant if the court finds that the plaintiff knew, or should have known, that the
11 action was frivolous and malicious.

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

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

18 **SECTION 4.** G.S. 75-102(h), as enacted in Section 3 of this act, reads as
19 rewritten:

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

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

28 "**§ 62-54. Notification of opportunity to object to telephone solicitation.**

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

41 **SECTION 6.** Should one or more of the terms or provisions of this act or
42 any application thereof be held or declared unenforceable or invalid to any extent, the
43 remainder of this act, and the applications thereof that have not been held or declared
44 unenforceable or invalid, shall remain in effect. In the specific event that the provisions

1 of G.S. 75-102, 75-103, or 75-104, as enacted in Section 3 of this act, are declared to be
2 preempted or otherwise unenforceable in relation to interstate telephone calls, those
3 provisions shall remain in force and effect with respect to intrastate telephone calls.

4 **SECTION 7.** Consistent with protected speech rights of businesses that
5 engage in telephone solicitations, the provisions of this act shall be given broad
6 construction so as to protect telephone subscribers from unwanted telephone
7 solicitations and from problematic sales techniques and payment procedures often
8 associated with these solicitations.

9 **SECTION 8.** Section 4 of this act becomes effective January 1, 2006. G.S.
10 62-54, as amended by Section 5 of this act, applies to all telephone directories printed
11 on or after January 1, 2004. All other sections of this act become effective October 1,
12 2003, and apply to telephone solicitations made on or after that date.