

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 429

Short Title: Telephone Consumer Protection Act/AB.

(Public)

Sponsors: Representatives Thompson; Berry, Black, Buchanan, Culp, Gardner, Justus, Kiser, McMahan, K. Miller, Richardson, Robinson, Russell, and Sherrill.

Referred to: Public Utilities.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
NORTH CAROLINA AND TO MAKE THE OFFERING OF TELEPHONE SALES
RECOVERY SERVICES A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 32.

"TELEPHONIC SELLER REGISTRATION AND BOND REQUIREMENT.

"§ 66-251. Definitions.

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

- (1) 'Gift or Prize' means any premium, bonus, award, or any other thing of value.
- (2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the seller's business.
- (3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.

- 1 (4) 'Person' includes any individual, firm, association, corporation,
2 partnership, joint venture, or any other business entity.
- 3 (5) 'Principal' means an owner, an executive officer of a corporation, a
4 general partner of a partnership, a sole proprietor of a sole
5 proprietorship, a trustee of a trust, or any other individual with similar
6 supervisory functions with respect to any person.
- 7 (6) 'Purchaser' or 'Prospective Purchaser' means a person who is solicited to
8 become obligated to a telephonic seller.
- 9 (7) 'Room Operator' means any principal, employee, or agent responsible
10 for the operational management and supervision of facilities from which
11 telephonic sales calls are made or received.
- 12 (8) 'Salesperson' means any individual employed, appointed, or authorized
13 by a telephonic seller, whether referred to by the telephonic seller as an
14 agency, representative, or independent contractor, who attempts to
15 solicit or solicits a sale on behalf of the telephonic seller.
- 16 (9) 'Secretary' means the Office of the Secretary of State.
- 17 (10) 'Telephone solicitation' or 'attempted telephone solicitation' means any
18 communication designed to persuade any person to purchase goods or
19 services, to enter a contest, or to contribute to a charity, regardless of
20 whether the telephone call initiating the solicitation is initiated by the
21 telephonic seller or a person responding to notices sent or provided by
22 or on behalf of the seller.
- 23 (11) 'Telephonic Seller' or 'Seller' means a person who, directly or through
24 salespersons, causes a telephone solicitation or attempted telephone
25 solicitation to occur. 'Telephonic seller' and 'seller' does not mean:
- 26 a. A person who is offering or selling a registered security and is
27 licensed to sell such security in North Carolina;
- 28 b. Any person conducting sales or solicitations on behalf of a
29 licensed utility regulated by the North Carolina Utilities
30 Commission;
- 31 c. Any insurance agent or broker who is properly licensed by the
32 Department of Insurance and who is engaged in transactions
33 regulated by the Department of Insurance;
- 34 d. Any bank or savings institution properly licensed by the State or
35 subject to federal regulating authorities;
- 36 e. Any charity already accorded Section 501(c)(3) nonprofit status
37 under the Internal Revenue Code or any 'charitable solicitor'
38 properly licensed under Article 2 of Chapter 131F of the General
39 Statutes;
- 40 f. Any person who has made a related sale of an item to the
41 purchaser within the previous year; and
- 42 g. Any person taking callers' orders for the purchase of an item that
43 has been offered for sale through an advertisement or a catalog.

1 provided that the person taking the order makes no effort to
2 solicit the purchase of additional items.

3 **"§ 66-252. Registration of telephonic sellers.**

- 4 (1) Not less than 10 days before commencing telephone solicitations in this
5 State, a telephonic seller shall register with the Secretary by filing the
6 information required in G.S. 66-253 and paying a filing fee of one
7 hundred dollars (\$100.00). A telephonic seller is doing business in this
8 State if it solicits or attempts to solicit prospective purchasers from
9 locations in this State or solicits or attempts to solicit prospective
10 purchasers who are located in this State.
- 11 (2) The information required in G.S. 66-253 shall be submitted on a form
12 provided by the Secretary and shall contain the notarized signatures of
13 each principal of the telephonic seller.
- 14 (3) Registration of a telephonic seller shall be valid for one year from the
15 effective date thereof and may be annually renewed by making the filing
16 required in G.S. 66-253 and paying the filing fee of one hundred dollars
17 (\$100.00).
- 18 (4) Whenever, prior to expiration of a seller's annual registration, there is a
19 material change in the information required by G.S. 66-253, the seller
20 shall, within 10 days after the material change, file an addendum with
21 the Secretary updating the information.

22 **"§ 66-253. Filing information.**

- 23 (1) Each filing submitted to the Secretary shall contain all of the following
24 information:
- 25 a. The name or names, including any assumed names, under which
26 the telephonic seller is doing or intends to do business in this
27 State.
- 28 b. The telephonic seller's business form and place of organization
29 and, if the seller is a corporation, copies of its articles of
30 incorporation and bylaws and amendments thereto, or if a
31 partnership, a copy of the partnership agreement.
- 32 c. Complete street address of the telephonic seller's principal place
33 of business.
- 34 d. The complete street address of each location from which
35 telephone solicitations are placed by the telephonic seller.
- 36 e. A listing of all telephone numbers to be used by the telephonic
37 seller, including area codes, and the complete street address of
38 the business premises served by each number.
- 39 f. The name and title of each principal.
- 40 g. The complete street address of the residence, the date of birth,
41 and the social security number of each principal.
- 42 h. The true name, street address, date of birth, and the social
43 security number of each room operator, together with the room

1 operator's full employment history during the preceding two
2 years.

3 i. The name and address of all banks or savings institutions where
4 the telephonic seller maintains deposit accounts.

5 j. The name and address of each long distance telephone carrier
6 used by the telephonic seller.

7 k. A summary of each civil or criminal proceeding brought against
8 the telephonic seller, any of its principals, or any of its room
9 operators during the preceding five years by federal, State, or
10 local officials relating to telephonic sales practices of each. The
11 summary shall include the date each action was commenced, the
12 criminal or civil charges alleged, the case caption, the court file
13 number, the court venue, and the disposition of the action. For
14 purposes of this section, assurances of voluntary compliance,
15 assurances of discontinuance, consent judgments, and similar
16 agreements executed with federal, State, or local officials, is a
17 'civil action'.

18 **"§ 66-254. Bond requirement: prizes and gifts.**

19 (a) At least 10 days before the commencement of any promotion offering any gift
20 or prize with an actual or represented market value of five hundred dollars (\$500.00) or
21 more, the telephonic seller shall notify the Secretary in writing of the details of the
22 promotion, describing all gifts or prizes and their current market value, the seller's rules
23 and regulations governing the promotion, and the date the gifts or prizes are to be
24 awarded. All gifts or prizes offered shall be awarded. The telephonic seller shall
25 maintain a bond for the market value or the advertised value, whichever is greater, of all
26 gifts or prizes represented as available under the promotion. They must be issued by a
27 surety company authorized to do business in this State. The bond shall be in favor of the
28 State of North Carolina for any person entitled to receive a gift or prize under the
29 promotion who did not receive it within 30 days of the specified date of award. The
30 amount recoverable by any person under the bond shall not be greater than the market
31 value or the advertised value of the gift or prize, whichever is greater.

32 (b) Within 45 days after the specified date of the award of the gift or prize, the
33 seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were
34 awarded. The writing shall include the name, address, and telephone number of all
35 persons receiving awards or prizes. The bond shall be maintained until the Secretary
36 confirms the awards.

37 (c) The Attorney General or any person who obtains a judgment for restitution or
38 damages against the telephonic seller may file a motion in the court which entered the
39 judgment to enforce liability on the bond without first attempting to enforce the judgment
40 against the party liable under the judgment.

41 **"§ 66-255. Calls made to minors.**

1 A telephonic seller must inquire as to the age of the prospective purchaser it is
2 contacting. If the prospective purchaser is under 18 years of age, the telephonic seller
3 must discontinue the call immediately.

4 **"§ 66-256. Offers of gifts or prizes.**

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

8 (1) Requests or directs the consumer to further the transaction by calling a
9 900 number or a pay per call number.

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

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

13 **"§ 66-257. Penalties.**

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

16 (b) In an action by the Attorney General against a telephonic seller for violation of
17 this Article, or for any other act or practice constituting a violation of G.S. 75-1.1, the
18 court may impose civil penalties of up to twenty-five thousand dollars (\$25,000) for each
19 violation involving North Carolina purchasers or prospective purchasers who are more
20 than 64 years of age.

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 Sec. 2. Chapter 14 of Article 52 of the General Statutes is amended by adding
26 a new section to read:

27 **"§ 14-401.15. Telephone sales recovery services.**

28 (a) Except as provided in subsection (c) of this section, it shall be unlawful for any
29 person or firm to solicit or require payment of money or other consideration in exchange
30 for recovering or attempting to recover:

31 (1) Money or other valuable consideration previously tendered to a
32 telephonic seller, as defined in G.S. 66-251; or

33 (2) Prizes, awards, or other things of value that the telephonic seller
34 represented would be delivered.

35 (b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any
36 violation involving actual collection of money or other consideration from a customer
37 shall be punishable as a Class H felony. Any violation involving collection of money or
38 other consideration from a customer more than 65 years of age shall be punishable as a
39 Class G felony.

40 (c) This section does not apply to attorneys licensed to practice law in this State, to
41 persons licensed by the North Carolina Private Protective Services Board, or to any
42 collection agent properly holding a permit issued by the Department of Insurance to do
43 business in this State."

1 Sec. 3. Section 2 of this act becomes effective January 1, 1996. The
2 remaining sections of this act are effective upon ratification.