

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1493*

Committee Substitute Favorable 5/31/00

Third Edition Engrossed 6/7/00

Senate Information Technology Committee Substitute Adopted 7/5/00

Short Title: Controlling Telephone Solicitations.

(Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CONSUMERS WITH CONTROL OVER TELEPHONE SOLICITATION CALLS TO THEIR HOMES.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) The use of the telephone to market goods and services to consumers is increasing;
- (2) Some citizens of this State wish to have a means of controlling these calls to their residences;
- (3) The rights to privacy and commercial speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices; and
- (4) The public interest requires the establishment of a mechanism under which the citizens of this State can decide whether or not they wish to receive telemarketing calls in their homes.

Section 2. Chapter 75 of the General Statutes is amended by adding a new section to read:

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1 "§ 75-30.1. Restrictions on telephone solicitations.

2 (a) For purposes of this section:

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

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

13 a. To any person with that person's prior express invitation or
14 permission;

15 b. To any person with whom the telephone solicitor has an
16 established business relationship; or

17 c. By or on behalf of a tax-exempt nonprofit organization.

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

21 (b) Any telephone solicitor who makes a telephone solicitation to a residential
22 telephone subscriber shall:

23 (1) At the beginning of the call, state clearly the identity of the business,
24 individual, or other legal entity initiating the call, and identify the
25 person making the call by that person's name.

26 (2) Upon request, provide the telephone subscriber with the telephone
27 number or address at which the person or entity may be contacted.

28 (3) Terminate the call if the person does not consent to the call.

29 (4) If the person called requests to be taken off the contact list of the
30 telephone solicitor, take all steps necessary to remove that person's
31 name and telephone number from the contact records of the business,
32 individual, or other legal entity initiating the call.

33 (c) Every telephone solicitor who makes telephone solicitations in this State shall
34 implement in-house systems and procedures designed to prevent further calls to persons
35 who have asked not to be called again. Compliance with section 47 C.F.R. § 64.1200(e)
36 of the Federal Communications Commission's Restrictions on Telephone Solicitation
37 constitutes compliance with this section.

38 (d) No telephone solicitor shall initiate a call to a residential telephone subscriber
39 who has communicated to that telephone solicitor a desire to be taken off the contact list
40 of that solicitor.

41 (e) No telephone solicitor shall initiate a call to a residential telephone subscriber
42 after 9:00 P.M. or before 8:00 A.M. at the called party's location.

1 (f) No telephone solicitor who makes a telephone solicitation to the telephone line
2 of a residential telephone subscriber in this State shall knowingly use any method to
3 block or otherwise circumvent that subscriber's use of a caller identification service. A
4 telephone solicitor who makes a telephone solicitation to the telephone line of a
5 residential subscriber through the use of a private branch exchange (PBX) or other call-
6 generating system that is not capable of transmitting caller identification information
7 shall not be in violation of this subsection. No provider of telephone caller identification
8 services shall be held liable for violations of this subsection committed by other persons
9 or entities.

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

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

24 (i) A person who has received more than one telephone solicitation within any 12-
25 month period by or on behalf of the same telephone solicitor in violation of subsections
26 (b) through (g) of this section may bring either or both of the following actions in the
27 General Court of Justice:

28 (1) An action to enjoin further violations.

29 (2) An action to recover five hundred dollars (\$500.00) in damages for each
30 violation.

31 In an action brought pursuant to this section, a prevailing plaintiff shall be entitled to
32 recover reasonable attorneys' fees, and the court may award reasonable attorneys' fees to
33 a prevailing defendant if the court finds that the plaintiff knew, or should have known,
34 that the action was frivolous and malicious.

35 (j) A citizen of this State is also entitled to bring an action in the General Court of
36 Justice to enforce the private rights of action established by federal law under 47 U.S.C. §
37 227(b)(3) and 47 U.S.C. § 227(c)(5).

38 (k) Actions brought pursuant to subsections (i) and (j) of this section shall be tried
39 in the county where the plaintiff resides at the time of the commencement of the action."

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

42 **"§ 62-53. Notification of opportunity to object to telephone solicitation.**

1 The Commission shall require each local exchange company to notify all persons who
2 subscribe to residential service from that company of the provisions of G.S. 75-30.1, of
3 the federal laws allowing consumers to object to receiving telephone solicitations, and of
4 programs made available by private industry that allow consumers to have their names
5 removed from telemarketing lists, by enclosing that information, at least annually, in
6 every telephone bill mailed to residential customers. The Commission shall also ensure
7 that this information is printed in a clear, conspicuous manner in the consumer
8 information pages of each telephone directory distributed to residential customers."

9 Section 4. This act becomes effective October 1, 2000, and applies to
10 telephone calls made on or after that date. Section 3 applies to all telephone directories
11 printed on or after that date.