

NORTH CAROLINA

N.C. Stat. Ann.

§75-101. Definitions Pertaining to Telephone and Fax Solicitations.

The following definitions apply in this Article [*§75-100 - 75-104, which govern telephone solicitations*]:

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

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

(3) "Do Not Call" Registry.--The registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to §75-102(n).

(4) Doing business in this State.--To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(5) Established business relationship.--A relationship between a seller and a consumer based on:

(5)a. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of a telephone solicitation; or

(5)b. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telephone solicitation.

(6) Express invitation or permission.--Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.

(7) Person.--Any individual, business establishment, business, or other legal entity.

(8) Telemarketing Sales Rule.--The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§6101-6108, as amended.

(9) Telephone solicitation.--A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. "Telephone solicitation" also includes those transactions that are defined as "telemarketing" under the Telemarketing Sales Rule.

(10) Telephone solicitor.--Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made. "Telephone solicitor" also includes any party defined as a "telemarketer" under the Telemarketing Sales Rule.

(11) Telephone subscriber.--An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the individuals living or residing with that individual.

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

Created by Chapter 411, §3, Session Laws of 2003, effective October 1, 2003.

§75-102. Restrictions on Telephone and Fax Solicitations.

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

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

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

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

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

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

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

(c)(5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor relies on the established business relationship of an affiliate to solicit a residential telephone

subscriber whose telephone number is listed in the latest edition of the "Do Not Call" Registry and the person called communicates a desire to receive no further telephone solicitations from the telephone solicitor, the telephone solicitor shall take all steps necessary to remove that telephone subscriber's telephone number from the contact lists of the telephone solicitor and that affiliate, unless the telephone subscriber indicates otherwise, and the telephone solicitor and that affiliate shall stop calling the telephone subscriber at that number within 60 business days.

(d) Every telephone solicitor shall implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the "Do Not Call" Registry. Every telephone solicitor shall train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures. Every telephone solicitor shall ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded. Compliance with the time requirements within the Telemarketing Sales Rule for incorporating and complying with updated versions of the "Do Not Call" Registry shall constitute compliance with North Carolina law.

(e) Except as provided in §75-103, no telephone solicitor shall violate any requirement of §310.3 of the Telemarketing Sales Rule (deceptive telemarketing acts or practices), §310.4 of the Telemarketing Sales Rule (abusive telemarketing acts or practices), and §310.5 of the Telemarketing Sales Rule (recordkeeping requirements).

(f) No telephone solicitor shall make a telephone solicitation before 8:00 a.m. or after 9:00 p.m.

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

(h) No telephone solicitor shall engage in threats, intimidation, or the use of profane or obscene language.

(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities.

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

(k) Nothing in this section prohibits a telephone solicitor from contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to obtain the telephone subscriber's express invitation or permission allowing the telephone

solicitor to make telephone solicitations to the telephone subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(l) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to encourage the telephone subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill insert that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the insert pursuant to §62-54 *[which directs the North Carolina Utilities Commission to require telephone companies to notify their subscribers of their rights concerning solicitations]*.

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

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

(o)(1) The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in §§310.3 and 310.4 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.

(o)(2) The telephone solicitor has complied with the record keeping requirements of §310.5 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.

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

Created by Chapter 411, §§3-4, Session Laws of 2003, effective October 1, 2003.

§75-103. Exemptions From Restrictions on Telephone and Fax Solicitations.

(a) §75-102(a) does not apply to any of the following telephone solicitations that are made:

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

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

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

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

(a)(5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber

and the telephone solicitor does none of the following during the telephone solicitation:

(a)(5)a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.

(a)(5)b. Complete the sale or rental of, or investment in, property, goods, or services.

(a)(5)c. Obtain provisional acceptance of a sale, rental, or investment.

(a)(5)d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.

(a)(5)e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(a)(6) By a person primarily soliciting the sale of a subscription for a newspaper of general circulation.

(b) §§75-102(c)(3), 75-102(d), 75-102(g), and 75-102(j) do not apply to any telephone solicitations described in §§75-103(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5).

(c) §75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(4) and (a)(5) of this section.

(d) §75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(1), (a)(2), and (a)(3) of this section, except that these types of telephone solicitations shall comply with §§310.3(a)(2), (a)(3), and (a)(4), 310.3(c), 310.3(d), 310.4(a), 310.4(b)(1)(i) and 310.4(b)(1)(iv), (b)(2), (b)(3), and (b)(4), and 310.4(e) of the Telemarketing Sales Rule.

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

Created by Chapter 411, §3, Session Laws of 2003, effective October 1, 2003.