

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1408

Short Title: Unsolicited Checks and Unsolicited Services.

(Public)

Sponsors: Representatives Barnhart; and Steen.

Referred to: Commerce.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DELIVERY OF UNSOLICITED CHECKS THAT OBLIGATE THE RECIPIENTS UPON CASHING, TO ESTABLISH A REMEDY FOR RECIPIENTS OF UNSOLICITED SERVICES WHO ARE BILLED FOR THOSE SERVICES, AND TO EXPAND THE REMEDIES FOR RECIPIENTS OF UNSOLICITED GOODS.

The General Assembly of North Carolina enacts:

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

"§ 75-21. Unsolicited checks to obligate recipients.

(a) No person, firm, or corporation engaged in commerce shall deliver to a person an unsolicited check made out to the recipient that, upon cashing, results in the recipient entering into a contract, agreeing to enter into a contract, or otherwise accepting an offer of any kind.

(b) A consumer who is an intended payee of an unsolicited check under this section may bring a civil action to recover damages, costs, and attorney fees for any violation of this subsection.

(c) The provisions of this section do not apply to a transaction in which a consumer has submitted an application or requested an extension of credit from the payor of the check before receiving the check or instrument, or where the payor of the check has an existing account relationship with the consumer. The provisions of this section do not apply to an unsolicited check to secure a loan under G.S. 75-20.

(d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article."

SECTION 2. G.S. 75-27 reads as rewritten:

"§ 75-27. Unsolicited merchandise, goods or services.

~~Unless otherwise agreed, where unsolicited—~~ (a) When goods or services that are not affirmatively ordered or requested by a recipient are in any manner delivered to a

1 ~~person, he~~ the recipient, the recipient has a right to refuse to accept delivery of the
2 goods or services and is not bound—required to return such—the goods to the
3 sender-supplier. If such—the unsolicited goods or services are addressed to and intended
4 for the recipient, they shall be deemed a—an unconditional gift to the recipient, who may
5 use them or dispose of them in any manner without any obligation to the
6 sender-supplier. Goods or services are not affirmatively ordered or requested unless the
7 recipient specifically requests, in writing, the receipt of the goods or services according
8 to the terms under which the goods or services are being offered. Goods or services are
9 not affirmatively ordered or requested if the recipient fails to respond to a negative
10 option invitation or announcement to purchase the goods or services and the goods or
11 services are provided notwithstanding. In any action for the return of the goods or for
12 the payment of the purchase price of the goods or services or any other consideration, it
13 is a complete defense that the goods or services were delivered to the recipient
14 voluntarily and that the recipient did not affirmatively order or request the goods or
15 services.

16 (b) As used in this section, 'negative option invitation or announcement' means
17 any material sent by a supplier that identifies goods or services that the supplier
18 proposes to deliver or delivers to recipients, and the recipients are thereafter billed for
19 the goods or services identified in the material, unless by a date or within a time
20 specified by the supplier, the recipient, in conformity with the supplier's terms set forth
21 in the material, instructs the supplier to not send the identified goods or services.

22 (c) Any attempt to bill or collect for unsolicited goods or services under this
23 section is an unfair and deceptive act under this Article.

24 (d) A person who has received goods or services under this section for which the
25 supplier seeks the payment of the purchase price of the goods or services or the return of
26 the goods or services may bring any of following actions in civil court against the
27 supplier:

28 (1) To enjoin further violations of this section.

29 (2) For each violation, to recover damages under G.S. 75-16 or five
30 hundred dollars (\$500.00), whichever amount is greater.

31 (3) Costs and an award for a reasonable attorney's fee.

32 (e) Each day the supplier continues to make the good or the service available to
33 the recipient for compensation is a separate violation, even when the recipient does not
34 actively make use of the good or the service.

35 (f) This section does not apply to contractual plans or arrangements whereby the
36 supplier periodically ships property to a consumer who has affirmatively ordered or
37 requested in advance to receive that property on a periodic basis. This section does not
38 apply to contracts that provide for changing local or long-distance phone service
39 providers."

40 **SECTION 3.** This act becomes effective October 1, 2005, and applies to
41 contracts entered into on or after that date.