

1 **Chapter 75.**
2 **Monopolies, Trusts and Consumer Protection.**
3 **Article 1.**
4 **General Provisions.**

5 **§ 75-1. Combinations in restraint of trade illegal.**

6 Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of
7 trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person
8 or corporation who shall make any such contract expressly or shall knowingly be a party
9 thereto by implication, or who shall engage in any such combination or conspiracy shall be
10 guilty of a Class H felony. (1913, c. 41, s. 1; C.S., s. 2559; 1981, c. 764, s. 2.)
11

12 **§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.**

13 (a) Unfair methods of competition in or affecting commerce, and unfair or deceptive
14 acts or practices in or affecting commerce, are declared unlawful.

15 (b) For purposes of this section, "commerce" includes all business activities, however
16 denominated, but does not include professional services rendered by a member of a learned
17 profession.

18 (c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or
19 employee of a newspaper, periodical or radio or television station, or other advertising medium
20 in the publication or dissemination of an advertisement, when the owner, agent or employee did
21 not have knowledge of the false, misleading or deceptive character of the advertisement and
22 when the newspaper, periodical or radio or television station, or other advertising medium did
23 not have a direct financial interest in the sale or distribution of the advertised product or
24 service.

25 (d) Any party claiming to be exempt from the provisions of this section shall have the
26 burden of proof with respect to such claim. (1969, c. 833; 1977, c. 747, ss. 1, 2.)
27

28 **§ 75-2. Any restraint in violation of common law included.**

29 Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or
30 commerce which violates the principles of the common law is hereby declared to be in
31 violation of G.S. 75-1. (1913, c. 41, s. 2; C.S., s. 2560.)
32

33 **§ 75-2.1. Monopolizing and attempting to monopolize prohibited.**

34 It is unlawful for any person to monopolize, or attempt to monopolize, or combine or
35 conspire with any other person or persons to monopolize, any part of trade or commerce in the
36 State of North Carolina. (1995 (Reg. Sess., 1996), c. 550, s. 1.)
37

38 **§ 75-3. Repealed by Session Laws 1961, c. 1153.**

39 **§ 75-4. Contracts to be in writing.**

40 No contract or agreement hereafter made, limiting the rights of any person to do business
41 anywhere in the State of North Carolina shall be enforceable unless such agreement is in
42 writing duly signed by the party who agrees not to enter into any such business within such
43 territory: Provided, nothing herein shall be construed to legalize any contract or agreement not
44 to enter into business in the State of North Carolina, or at any point in the State of North
45 Carolina, which contract is now illegal, or which contract is made illegal by any other section
46 of this Chapter. (1913, c. 41, s. 4; C.S., s. 2562.)
47
48

49 **§§ 75-5 through 75-7: Repealed by Session Laws 1995 (Regular Session, 1996), c. 550, s.**
50 **2.**
51

1 **§ 75-8. Continuous violations separate offenses.**

2 Where the things prohibited in this Chapter are continuous, then in such event, after the first
3 violation of any of the provisions hereof, each week that the violation of such provision shall
4 continue shall be a separate offense. (1913, c. 41, s. 7; C.S., s. 2566.)
5

6 **§ 75-9. Duty of Attorney General to investigate.**

7 The Attorney General of the State of North Carolina shall have power, and it shall be his
8 duty, to investigate, from time to time, the affairs of all corporations or persons doing business
9 in this State, which are or may be embraced within the meaning of the statutes of this State
10 defining and denouncing trusts and combinations against trade and commerce, or which he
11 shall be of opinion are so embraced, and all other corporations or persons in North Carolina
12 doing business in violation of law; and all other corporations of every character engaged in this
13 State in the business of transporting property or passengers, or transmitting messages, and all
14 other public service corporations of any kind or nature whatever which are doing business in
15 the State for hire. Such investigation shall be with a view of ascertaining whether the law or
16 any rule of the Utilities Commission or Commission of Banks [Commissioner of Banks] is
17 being or has been violated by any such corporation, officers or agents or employees thereof,
18 and if so, in what respect, with the purpose of acquiring such information as may be necessary
19 to enable him to prosecute any such corporation, its agents, officers and employees for crime,
20 or prosecute civil actions against them if he discovers they are liable and should be prosecuted.
21 (1913, c. 41, s. 8; C.S., s. 2567; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1969, c.
22 833.)
23

24 **§ 75-10. Power to compel examination.**

25 In performing the duty required in G.S. 75-9, the Attorney General shall have power, at
26 any and all times, to require the officers, agents or employees of any such corporation or
27 business, and all other persons having knowledge with respect to the matters and affairs of such
28 corporations or businesses, to submit themselves to examination by him, and produce for his
29 inspection any of the books and papers of any such corporations or businesses, or which are in
30 any way connected with the business thereof; and the Attorney General is hereby given the
31 right to administer oath to any person whom he may desire to examine. He shall also, if it may
32 become necessary, have a right to apply to any justice or judge of the appellate or superior
33 court divisions, after five days' notice of such application, for an order on any such person or
34 corporation he may desire to examine to appear and subject himself or itself to such
35 examination, and disobedience of such order shall constitute contempt, and shall be punishable
36 as in other cases of disobedience of a proper order of such judge. (1913, c. 41, s. 9; C.S., s.
37 2568; 1969, c. 44, s. 56; c. 833.)
38

39 **§ 75-11. Person examined exempt from prosecution.**

40 No natural person examined, as provided in G.S. 75-10, shall be subject to indictment,
41 criminal prosecution, criminal punishment or criminal penalty by reason of or on account of
42 anything disclosed by him upon examination, and full immunity from criminal prosecution and
43 criminal punishment by reason of or on account of anything so disclosed is hereby extended to
44 all natural persons so examined. The immunity herein granted shall not apply to civil actions
45 instituted pursuant to this Chapter. (1913, c. 41, s. 9; C.S., s. 2569; 1969, c. 833.)
46

47 **§ 75-12. Refusal to furnish information; false swearing.**

48 Any corporation or person unlawfully refusing or willfully neglecting to furnish the
49 information required by this Chapter, when it is demanded as herein provided, shall be guilty of
50 a Class 3 misdemeanor and only fined not less than one thousand dollars (\$1,000): Provided,
51 that if any corporation or person shall in writing notify the Attorney General that it objects to

1 the time or place designated by him for the examination or inspection provided for in this
2 Chapter, it shall be his duty to apply to a justice or judge of the appellate or superior court
3 division, who shall fix an appropriate time and place for such examination or inspection, and
4 such corporation or person shall, in such event, be guilty under this section only in the event of
5 its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish
6 the information required by this Chapter. False swearing by any person examined under the
7 provisions of this Chapter is a Class I felony. (1913, c. 41, s. 10; C.S., s. 2570; 1969, c. 44, s.
8 57; c. 833; 1993, c. 539, ss. 560, 1284; 1994, Ex. Sess., c. 24, s. 14(c).)

9
10 **§ 75-13. Criminal prosecution; district attorneys to assist; expenses.**

11 The Attorney General in carrying out the provisions of this Chapter shall have a right to
12 send bills of indictment before any grand jury in any county in which it is alleged this Chapter
13 has been violated or in any adjoining county, and may take charge of and prosecute all cases
14 coming within the purview of this Chapter, and shall have the power to call to his assistance in
15 the performance of any of these duties of his office which he may assign to them any of the
16 district attorneys in the State, who shall, upon being required to do so by the Attorney General,
17 send bills of indictment and assist him in the performance of the duties of his office. (1913, c.
18 41, s. 13; C.S., s. 2571; 1973, c. 47, s. 2.)

19
20 **§ 75-14. Action to obtain mandatory order.**

21 If it shall become necessary to do so, the Attorney General may prosecute civil actions in
22 the name of the State on relation of the Attorney General to obtain a mandatory order,
23 including (but not limited to) permanent or temporary injunctions and temporary restraining
24 orders, to carry out the provisions of this Chapter, and the venue shall be in any county as
25 selected by the Attorney General. (1913, c. 41, s. 11; C.S., s. 2572; 1969, c. 833.)

26
27 **§ 75-15. Actions prosecuted by Attorney General.**

28 It shall be the duty of the Attorney General, upon his ascertaining that the laws have been
29 violated by any trust or public service corporation, so as to render it liable to prosecution in a
30 civil action, to prosecute such action in the name of the State, or any officer or department
31 thereof, as provided by law, or in the name of the State on relation of the Attorney General, and
32 to prosecute all officers or agents or employees of such corporations, whenever in his opinion
33 the interests of the public require it. (1913, c. 41, s. 12; C.S., s. 2573.)

34
35 **§ 75-15.1. Restoration of property and cancellation of contract.**

36 In any suit instituted by the Attorney General to enjoin a practice alleged to violate G.S.
37 75-1.1, the presiding judge may, upon a final determination of the cause, order the restoration
38 of any moneys or property and the cancellation of any contract obtained by any defendant as a
39 result of such violation. (1973, c. 614, s. 2.)

40
41 **§ 75-15.2. Civil penalty.**

42 In any suit instituted by the Attorney General, in which the defendant is found to have
43 violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when
44 committed, knowingly violative of a statute, the court may, in its discretion, impose a civil
45 penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. In any
46 action brought by the Attorney General pursuant to this Chapter in which it is shown that an
47 action or practice when committed was specifically prohibited by a court order, the Court may,
48 in its discretion, impose a civil penalty of up to five thousand dollars (\$5,000) for each
49 violation. Civil penalties may be imposed in a new action or by motion in an earlier action,
50 whether or not such earlier action has been concluded. In determining the amount of the civil
51 penalty, the court shall consider all relevant circumstances, including, but not limited to, the

1 extent of the harm caused by the conduct constituting a violation, the nature and persistence of
2 such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net
3 worth of the person, whether corporate or individual, and any corrective action taken by the
4 defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and
5 Forfeiture Fund in accordance with G.S. 115C-457.2. (1977, c. 747, s. 3; 1983, c. 721, s. 1;
6 1998-215, s. 99.)

7
8 **§ 75-16. Civil action by person injured; treble damages.**

9 If any person shall be injured or the business of any person, firm or corporation shall be
10 broken up, destroyed or injured by reason of any act or thing done by any other person, firm or
11 corporation in violation of the provisions of this Chapter, such person, firm or corporation so
12 injured shall have a right of action on account of such injury done, and if damages are assessed
13 in such case judgment shall be rendered in favor of the plaintiff and against the defendant for
14 treble the amount fixed by the verdict. (1913, c. 41, s. 14; C.S., s. 2574; 1969, c. 833; 1977, c.
15 707.)

16
17 **§ 75-16.1. Attorney fee.**

18 In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the
19 presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed
20 attorney representing the prevailing party, such attorney fee to be taxed as a part of the court
21 costs and payable by the losing party, upon a finding by the presiding judge that:

- 22 (1) The party charged with the violation has willfully engaged in the act or
23 practice, and there was an unwarranted refusal by such party to fully resolve
24 the matter which constitutes the basis of such suit; or
25 (2) The party instituting the action knew, or should have known, the action was
26 frivolous and malicious. (1973, c. 614, s. 1; 1983, c. 417, s. 2.)

27
28 **§ 75-16.2. Limitation of actions.**

29 Any civil action brought under this Chapter to enforce the provisions thereof shall be
30 barred unless commenced within four years after the cause of action accrues.

31 When any civil or criminal proceeding shall be commenced by the Attorney General or by
32 any of the district attorneys of the State to prevent, restrain or punish a violation of Chapter 75,
33 the running of the period of limitation with respect to every private right of action arising
34 under Chapter 75 and based in whole or in part on any matter complained of in said proceeding
35 shall be suspended during the pendency thereof and for one year thereafter; provided that when
36 the running of the period of limitation with respect to a cause of action arising under Chapter
37 75 shall be suspended hereunder, any action to enforce such cause of action shall be barred
38 unless commenced either within the period of suspension or within four years after the cause of
39 action accrued, whichever is later. (1979, c. 169, s. 1.)

40
41 **§ 75-17. Lender may not require borrower to deal with particular insurer.**

42 No person, firm, or corporation engaged in lending money on the security of real or
43 personal property, and no trustee, director, officer, agent, employee, affiliate, or associate, of
44 any such person, firm, or corporation, shall either directly or indirectly require or impose as a
45 condition precedent

- 46 (1) To financing the purchase of such property, or
47 (2) To lending money upon the security of a mortgage, deed of trust, or other
48 security instrument, or
49 (3) For the renewal or extension of any such loan, mortgage, or deed of trust, or
50 (4) For the performance of any other act in connection therewith,

51 that such person, firm or corporation

- 1 a. For whom such purchase is to be financed, or
- 2 b. To whom the money is to be loaned, or
- 3 c. For whom such extension, renewal, or other act is to be granted,
- 4 negotiate, procure, or otherwise obtain any policy of insurance or renewal, or extension thereof,
- 5 covering such property, or a security interest therein, by or through a particular insurance
- 6 company, agent, broker, or other person so specified or otherwise designated in any manner by
- 7 the lenders, or their agents or employees or affiliated or related companies. (1969, c. 1032, s.
- 8 1.)
- 9

10 **§ 75-18. Lender may require nondiscriminatory approval of insurer.**

11 Although the lender and other persons enumerated in G.S. 75-17 may not specify or
12 designate as a condition precedent a particular insurance company or agent, those persons,
13 firms, or corporations engaged in lending money may approve the insurer selected by the
14 borrower on a reasonable, nondiscriminatory basis, related to the solvency of the company and
15 the type and provisions of policy coverage. (1969, c. 1032, s. 2.)

16

17 **§ 75-19. Violators subject to fine and injunction.**

18 The superior court, on complaint by any person that G.S. 75-17 or G.S. 75-18 is being
19 violated, may issue an injunction against such violation and may fine all persons, firms,
20 corporations, and officers, directors, trustees, agents, employees, or affiliates of such up to two
21 thousand dollars (\$2,000) per person for such violation. In event of a disregard of such
22 injunction or other court order, the superior court shall hold such parties in contempt and
23 prescribe such further penalties as the court in its discretion shall so determine. The clear
24 proceeds of fines provided for in this section shall be remitted to the Civil Penalty and
25 Forfeiture Fund in accordance with G.S. 115C-457.2. (1969, c. 1032, s. 3; 1998-215, s. 100.)

26

27 **§ 75-20. Unsolicited checks to secure loans.**

28 (a) No person, firm, or corporation engaged in lending money shall deliver to a person
29 an unsolicited check made out to the recipient that upon cashing, obligates the recipient to
30 repay the amount of the check plus interest and fees, unless all of the following requirements
31 are satisfied:

- 32 (1) In addition to any disclosures otherwise required by law, the solicitation for
33 loans using a facsimile or negotiable check shall disclose both of the
34 following on the face of the check:
 - 35 a. In at least 10-point boldface type a statement in substantially the
36 following form: "THIS IS A SOLICITATION FOR A LOAN.
37 READ THE ATTACHED DISCLOSURES BEFORE SIGNING
38 THIS AGREEMENT."
 - 39 b. In at least 6-point type a statement in substantially the following
40 form: "By endorsing the back of this check, you accept our offer and
41 agree to the terms of your loan agreement contained in the disclosure
42 statement attached to this check."
- 43 (2) Notification of the loan agreement being activated by endorsement must be
44 conspicuously printed in at least 6-point type on the back of the check in
45 substantially the following form: "By endorsing this check, you agree to
46 repay this loan according to the terms of the attached loan agreement."
- 47 (3) The check is attached to a disclosure statement that is detachable and that
48 contains in at least 10-point boldface type a statement conspicuously placed
49 in substantially the following form: "This is a loan solicitation. If you cash
50 this check, you are agreeing to borrow the sum of \$____ at the ____ % rate
51 of interest for a period of ____ months. Your monthly payments will be

1 \$ ____ for ____ months. If you are late with a payment, you will be charged
2 the following fees in addition to your monthly payment: (list fees). All other
3 terms of this loan are clearly identified as loan terms and appear on the back
4 of the check or on this attachment. Read these terms carefully before you
5 cash this check. Cashing this check constitutes a loan transaction. You may
6 cancel this loan by returning the amount of the check to the lender within 10
7 days of the date this check is cashed. You may prepay this loan agreement at
8 anytime without penalty. READ THE AGREEMENT BEFORE SIGNING."

9 (4) The recipient has a right to cancel the loan by refunding to the lender the
10 amount of the check within 10 days of the date the check is cashed. The loan
11 is deemed refunded when a refund of the amount of the check is received by
12 the lender within 10 days of the date the check is cashed.

13 (b) In the event an unsolicited check is stolen or otherwise obtained by someone other
14 than the intended payee, and the check is cashed fraudulently or without authorization from the
15 payee, the lender who issued the check shall provide the following recourse to the intended
16 payee:

17 (1) The lender, upon receipt of notification that intended payee did not negotiate
18 the check, shall promptly provide the intended payee with a statement or
19 affidavit to be signed by the intended payee confirming that the intended
20 payee did not deposit or cash the check or receive the proceeds of the check.
21 The lender shall also provide the intended payee with the name and
22 telephone number of a contact person designated by the lender to provide
23 assistance to intended payees who have been victimized by the fraudulent
24 negotiation of unsolicited checks. The lender shall cease all collection
25 activity against the intended payee until the lender completes an
26 investigation into the transaction.

27 (2) The intended payee shall be directed to complete and return the confirmation
28 statement to the lender or an affiliate of the lender.

29 (3) Within 30 days of the receipt of the confirmation statement, the lender shall
30 conduct a reasonable investigation and determine whether the check was
31 fraudulently negotiated. Absent evidence to the contrary, the presumption
32 shall be that the confirmation statement submitted by the intended payee is
33 accurate. The lender shall notify the intended payee in writing of the results
34 of the investigation. If it is determined that the check was cashed
35 fraudulently, the lender shall take immediate action to remove the intended
36 payee from all liability on the account and to request all credit reporting
37 agencies to remove references to the transaction, if any, from the consumer's
38 credit reports.

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

42 (c) The provisions of this section shall not apply to a transaction in which a consumer
43 has submitted an application or requested an extension of credit from the lender before
44 receiving the check or instrument, or where the lender has an existing account relationship with
45 the consumer.

46 (d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject
47 to all of the enforcement and penalty provisions of an unfair trade practice under this Article.
48 (2001-391, s. 1.)

49
50 **§§ 75-21 through 75-26. Reserved for future codification purposes.**
51

1 **§ 75-27. Unsolicited merchandise.**

2 Unless otherwise agreed, where unsolicited goods are delivered to a person, he has a right
3 to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If
4 such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a
5 gift to the recipient, who may use them or dispose of them in any manner without any
6 obligation to the sender. (1969, c. 70, s. 1; 1977, c. 498.)
7

8 **§ 75-28. Unauthorized disclosure of tax information; violation a Class 1 misdemeanor.**

9 Except in accordance with proper judicial order, or as otherwise provided by law, it shall be
10 unlawful for any person, firm or corporation employed or engaged to prepare, or who or which
11 prepares or undertakes to prepare, for any other person or taxpayer any tax form, report or
12 return, to disclose, divulge or make known in any manner or use for any purpose or in any
13 manner other than in the preparation of such form, report or return, without the express consent
14 of the taxpayer or person for whom the form or return is prepared, the name or address of the
15 taxpayer or such other person, the amount of income, income tax or other taxes, or any other
16 information shown on or included in such form, report or return, or any information which may
17 be or may have been furnished by the taxpayer or such other person to the preparer of such
18 form, report or return or to the person, firm or corporation so employed or engaged.

19 Nothing in this section shall be construed to prohibit the examination of any person, books,
20 papers, records or other data in accordance with the authority provided in G.S. 105-258.

21 Any person, firm or corporation, or any officer, agent, clerk, employee, or former officer or
22 employee, of any firm or corporation engaged or formerly engaged in the preparation of tax
23 forms, reports or returns for others, whether acting for himself or as agent for such corporation,
24 who or which shall violate the provisions of this section shall be guilty of a Class 1
25 misdemeanor. (1971, c. 231; 1993, c. 485, s. 32, c. 539, s. 561; 1994, Ex. Sess., c. 14, s. 43, c.
26 24, s. 14(c).)
27

28 **§ 75-29. Unfair and deceptive trade names; use of term "wholesale" in advertising, etc.**

29 (a) No person, firm or corporation shall advertise the sale of its merchandise using the
30 term "wholesale" with regard to its sale prices, except as such word may appear in the
31 company or firm name, unless such advertised sale or sales is, or are, to a customer or
32 customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as
33 required by G.S. 105-164.25 or unless the wholesale price is established by an independent
34 agency not engaged in the manufacture, distribution or sale of such merchandise.

35 No person, firm or corporation shall utilize in any commercial transaction a company or
36 firm name which contains the word "wholesale" unless such person, firm or corporation is
37 engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of
38 determining whether sales are made principally at wholesale or retail, all sales to employees of
39 any such person, firm or corporation, all sales to organizations subject to refunds pursuant to
40 G.S. 105-164.14 through G.S. 105-164.14B and all exempt sales pursuant to G.S. 105-164.13
41 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the
42 purchaser at a location other than the seller's place of business shall be considered sales at
43 wholesale for the purposes of this section.

44 (b) The violation of any provision of this section shall be considered an unfair trade
45 practice, as prohibited by G.S. 75-1.1.

46 (c) This section shall not apply to the sales of farm products, fertilizers, insecticides,
47 pesticides or petroleum. (1973, c. 1392, ss. 1, 2; 2010-166, s. 3.1.)
48

49 **§§ 75-30, 75-30.1:** Repealed by Session Laws 2003-411, ss. 1, 2, effective October 1, 2003,
50 and applicable to telephone solicitations made on or after that date.
51

1 **§ 75-31. Work-at-home solicitations.**

2 No person, firm, association, or corporation shall advertise, represent, or imply that any
3 person can earn money by stuffing envelopes, addressing envelopes, mailing circulars, clipping
4 newspaper and magazine articles, or performing similar work, unless the person, firm,
5 association or corporation making the advertisement or representation:

- 6 (1) Actually pays a wage, salary, set fee, or commission to others for performing
7 the represented tasks; and
8 (2) At no time requires the person who will perform the represented tasks to
9 purchase from or make a deposit to the solicitor on any instructional
10 booklets, brochures, kits, programs or similar information materials, mailing
11 lists, directories, memberships in cooperative associations, or other items or
12 services. (1979, c. 724, s. 1.)
13

14 **§ 75-32. Representation of winning a prize.**

15 No person, firm or corporation engaged in commerce shall, in connection with the sale or
16 lease or solicitation for the sale or lease of any goods, property, or service, represent that any
17 other person, firm or corporation has won anything of value or is the winner of any contest,
18 unless all of the following conditions are met:

- 19 (1) The recipient of the prize must have been selected by a method in which no
20 more than ten percent (10%) of the names considered are selected as winners
21 of any prize;
22 (2) The recipient of the prize must be given the prize without any obligation;
23 and
24 (3) The prize must be delivered to the recipient at no expense to him, within 10
25 days of the representation.

26 The use of any language that has a tendency to lead a reasonable person to believe he has won a
27 contest or anything of value, including but not limited to "congratulations," and "you are
28 entitled to receive," shall be considered a representation of the type governed by this section.
29 (1979, c. 879, s. 1.)
30

31 **§ 75-33. Representation of eligibility to win a prize.**

32 (a) No person, firm or corporation engaged in commerce shall, in connection with the
33 sale or lease or solicitation for sale or lease of any goods, property or service, represent that
34 another person, firm, and/or corporation has a chance to receive any prize or item of value
35 without clearly disclosing on whose behalf the contest or promotion is conducted, and all
36 material conditions which a participant must meet. Additionally, each of the following must be
37 clearly and prominently disclosed immediately adjacent to the description of the item or prize
38 to which it relates:

- 39 (1) The actual retail value of each item or prize (the price at which substantial
40 sales of the item were made in the area within the last 90 days, or if no
41 substantial sales were made, the actual cost of the item or prize to the person
42 on whose behalf the contest or promotion is conducted);
43 (2) The actual number of each item or prize to be awarded;
44 (3) The odds of receiving each item or prize.

45 It shall be unlawful to make any representation of the type governed by this section, if it has
46 already been determined which items will be given to the person to whom the representation is
47 made.

48 (b) The provisions of this section shall not apply where (i) all that is asked of
49 participants is that they complete and mail, or deposit at a local retail commercial
50 establishment, an entry blank obtainable locally or by mail, or call in their entry by telephone,
51 and (ii) at no time are participants asked to listen to a sales presentation.

1 (c) To the extent that representations of the type governed by this section are broadcast
2 by radio or television or carried by cable-television, the required disclosures need not be made,
3 if the required information is made available to interested persons on request without charge or
4 cost to them.

5 (d) Nothing in this section shall create any liability for acts by the publisher, owner,
6 agent or employee of a newspaper, periodical, radio station, television station, cable-television
7 system or other advertising medium arising out of the publication or dissemination of any
8 advertisement or promotion governed by this section, when the publisher, owner, agent or
9 employee did not know that the advertisement or promotion violated the requirements of this
10 section. (1979, c. 879, s. 1; 1981, c. 806; 1983, c. 721, s. 3.)
11

12 **§ 75-34. Representation of being specially selected.**

13 No person, firm or corporation engaged in commerce shall represent that any other person,
14 firm or corporation has been specially selected in connection with the sale or lease or
15 solicitation for sale or lease of any goods, property, or service, unless all of the following
16 conditions are met:

- 17 (1) The selection process is designed to reach a particular type or particular
18 types of person, firm or corporation;
- 19 (2) The selection process uses a source other than telephone directories, city
20 directories, tax listings, voter registration records, purchased mailing lists, or
21 similar common sources of names;
- 22 (3) No more than ten percent (10%) of those considered are selected.

23 The use of any language that has a tendency to lead a reasonable person to believe he has been
24 specially selected, including but not limited to "carefully selected" and "you have been chosen,"
25 shall be considered a representation of the type governed by this selection [section]. (1979, c.
26 879, s. 1.)
27

28 **§ 75-35. Simulation of checks and invoices.**

29 No person engaged in commerce shall in any manner issue any writing which simulates or
30 resembles: (i) a negotiable instrument; or (ii) an invoice, unless the intended recipient has
31 actually contracted for goods, property, or services for which the issuer seeks proper payment.
32 (1979, c. 879, s. 1.)
33

34 **§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable 35 as a matter of public policy.**

36 Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or
37 refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy.
38 Nothing in this section shall prevent any maintenance contract that warrants the performance of
39 equipment under the contract from requiring the use of new or specified toner or inkjet
40 cartridges in the equipment under contract. (2003-386, s. 1.)
41

42 **§ 75-37. Declaration of State public policy.**

43 It is the public policy of this State to protect its citizens from price gouging during states of
44 disaster. The State also realizes the difficulty in regulating prices while not defeating the ability
45 of the market in goods and services from bringing supply back in balance with demand and not
46 defeating the function of price in allocating scarce resources. (2003-412, s. 1.)
47

48 **§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or 49 abnormal market disruptions.**

50 (a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for
51 any person to sell or rent or offer to sell or rent any goods or services which are consumed or

1 used as a direct result of an emergency or which are consumed or used to preserve, protect, or
2 sustain life, health, safety, or economic well-being of persons or their property with the
3 knowledge and intent to charge a price that is unreasonably excessive under the circumstances.
4 This prohibition shall apply to all parties in the chain of distribution, including, but not limited
5 to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This
6 prohibition shall apply in the area where the state of disaster or emergency has been declared or
7 the abnormal market disruption has been found.

8 In determining whether a price is unreasonably excessive, it shall be considered whether:

- 9 (1) The price charged by the seller is attributable to additional costs imposed by
10 the seller's supplier or other costs of providing the good or service during the
11 triggering event.
12 (2) The price charged by the seller exceeds the seller's average price in the
13 preceding 60 days before the triggering event. If the seller did not sell or rent
14 or offer to sell or rent the goods or service in question prior to the time of the
15 triggering event, the price at which the goods or service was generally
16 available in the trade area shall be used as a factor in determining if the
17 seller is charging an unreasonably excessive price.
18 (3) The price charged by the seller is attributable to fluctuations in applicable
19 commodity markets; fluctuations in applicable regional, national, or
20 international market trends; or to reasonable expenses and charges for
21 attendant business risk incurred in procuring or selling the goods or services.

22 (b) In the event the Attorney General investigates a complaint for a violation of this
23 section and determines that the seller has not violated the provisions of this section and if the
24 seller so requests, the Attorney General shall promptly issue a signed statement indicating that
25 the Attorney General has not found a violation of this section.

26 (c) For the purposes of this section, the end of a triggering event is the earlier of 45
27 days after the triggering event occurs or the expiration or termination of the triggering event
28 unless the prohibition is specifically extended by the Governor.

29 (d) A "triggering event" means the declaration of a state of emergency pursuant to G.S.
30 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of
31 disaster pursuant to G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S.
32 75-38(e).

33 (e) An "abnormal market disruption" means a significant disruption, whether actual or
34 imminent, to the production, distribution, or sale of goods and services in North Carolina,
35 which are consumed or used as a direct result of an emergency or used to preserve, protect, or
36 sustain life, health, safety, or economic well-being of a person or his or her property. A
37 significant disruption may result from a natural disaster, weather, acts of nature, strike, power
38 or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency,
39 or other extraordinary adverse circumstances. A significant market disruption can be found
40 only if a declaration of a state of emergency, state of disaster, or similar declaration is made by
41 the President of the United States or an issuance of Code Red/Severe Risk of Attack in the
42 Homeland Security Advisory System is made by the Department of Homeland Security,
43 whether or not such declaration or issuance applies to North Carolina.

44 (f) The existence of an abnormal market disruption shall be found and declared by the
45 Governor pursuant to the definition in subsection (e) of this section. The duration of an
46 abnormal market disruption shall be 45 days from the triggering event, but may be renewed by
47 the Governor if the Governor finds and declares the disruption continues to affect the economic
48 well-being of North Carolinians beyond the initial 45-day period. (2003-412, s. 1; 2006-245, s.
49 1; 2006-259, s. 41.)

50
51 **§ 75-39. Conditioning services on electric service prohibited.**

1 (a) No municipality or other provider of water or sewer services may offer, or agree to
2 provide, extend, enhance, or accelerate the provision of water or sewer services, or facilities or
3 other municipal services or facilities, to any person in consideration of that person or another
4 person agreeing to receive electric service from the municipality or another electric supplier.

5 (b) No municipality or other provider of water or sewer services may refuse to provide,
6 or threaten or act to deny, delay, or terminate the provision of, water or sewer services or
7 facilities, or other municipal services or facilities, to any person as a result of, or in an attempt
8 to influence, the choice of an electric supplier by that person or another person.

9 (c) A violation of this section by any municipality or other provider of water or sewer
10 services shall constitute an unfair method of competition and an unfair act or practice under
11 G.S. 75-1.1. (2005-150, s. 1.)
12

13 **§ 75-40. Deadline for mailing consumer rebates.**

14 (a) Any person, firm, or corporation engaged in commerce that offers a rebate shall
15 provide the rebate to the consumer within 60 days of the date of receipt by the person, firm, or
16 corporation of the completed rebate form submitted by the consumer. If the rebate claim is
17 submitted electronically, the rebate shall be provided to the consumer within 60 days of the
18 date upon which the claim is submitted. However, a person, firm, or corporation shall not be
19 responsible for delays in providing rebates to consumers caused by conditions beyond their
20 reasonable control including, but not limited to, natural disasters, wars, terrorist acts, and states
21 of emergency. As used in this section, the following apply:

22 (1) The term "rebate" means the return of a portion of the purchase price paid by
23 a consumer for goods or services that is conditioned upon the consumer
24 submitting a request for redemption after satisfying the terms and conditions
25 of the offer.

26 (2) The term "rebate" shall not include any refund that may be given to a
27 consumer in accordance with a company's frequent shopper customer
28 rewards program.

29 (3) The term "consumer" does not apply to those individuals who are eligible for
30 rebates as result of their eligibility under Medicaid.

31 (b) Rebate forms shall include the telephone number or e-mail address of the person,
32 firm, or corporation that is offering the rebate. Rebate forms shall also include all of the
33 following conspicuously printed on the rebate form:

34 (1) The terms of the rebate.

35 (2) Requirements for a valid claim, including any additional information to be
36 submitted with the rebate form.

37 (3) The expiration date of the rebate offer, if applicable.

38 (c) A rebate offer shall provide a period of at least 30 days during which the consumer
39 may submit the rebate form. The time period allowed for submission shall begin as soon as
40 reasonably possible, but no later than six months, after the date of purchase.

41 (d) Nothing in this section shall apply to a rebate offer of five dollars (\$5.00) or less.

42 (e) Nothing in this section shall be construed to create liability on the part of a retailer
43 for a rebate offered by a manufacturer or liability on the part of a manufacturer for a rebate
44 offered by a retailer.

45 (f) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject
46 to all of the enforcement and penalty provisions of an unfair trade practice under this Article.
47 (2007-170, s. 1.)
48

49 **§ 75-41. Contracts with automatic renewal clauses.**

50 (a) Any person, firm, or corporation engaged in commerce that sells, leases, or offers to
51 sell or lease, any products or services to a consumer pursuant to a contract, where the contract

1 automatically renews unless the consumer cancels the contract, shall disclose the automatic
2 renewal clause clearly and conspicuously in the contract or contract offer.

3 (b) Any person, firm, or corporation engaged in commerce that sells, leases, or offers to
4 sell or lease, any products or services to a consumer pursuant to a contract, where the contract
5 automatically renews unless the consumer cancels the contract, shall disclose clearly and
6 conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery
7 of products or services.

8 (c) A person, firm, or corporation that fails to comply with the requirements of this
9 section is in violation of this section unless the person, firm, or corporation demonstrates that
10 all of the following are its routine business practice:

11 (1) It has established and implemented written procedures to comply with this
12 section and enforces compliance with the procedures.

13 (2) Any failure to comply with this section is the result of error.

14 (3) Where an error has caused the failure to comply with this section, it provides
15 a full refund or credit for all amounts billed to or paid by the consumer from
16 the date of the renewal until the date of the termination of the contract, or the
17 date of the subsequent notice of renewal, whichever occurs first.

18 (d) This section does not apply to insurers licensed under Chapter 58 of the General
19 Statutes, or to banks, trust companies, savings and loan associations, savings banks, or credit
20 unions licensed or organized under the laws of any state or the United States, or any foreign
21 bank maintaining a branch or agency licensed under the laws of the United States, or any
22 subsidiary or affiliate thereof.

23 (e) A violation of this section renders the automatic renewal clause void and
24 unenforceable. (2007-288, s. 1; 2007-507, s. 17.)

25
26 **§ 75-42. Deceptive representation of geographical location in telephone directory, print**
27 **advertisement, or on the Internet.**

28 (a) A person who is in the business of supplying a perishable product shall not
29 misrepresent the geographical location of the business in the listing of the business in a
30 telephone directory, other directory assistance database, or on the Internet. A person
31 misrepresents the geographical location of the business under this subsection if the name of the
32 business, or any other part of the listing, indicates that the business is located in a geographical
33 area and all of the following apply:

34 (1) The business is not located within the geographical area indicated.

35 (2) The listing fails to identify the municipality and state of the business's
36 geographical location.

37 (3) A telephone call to the local telephone number listed in the telephone
38 directory, directory assistance database, or on the Internet routinely is
39 forwarded or transferred to a location that is outside the calling area covered
40 by the telephone directory or directory assistance database in which the
41 number is listed, or outside the local calling area for the local telephone
42 number posted on the Internet.

43 (b) A person who is in the business of supplying a perishable product shall not
44 misrepresent the geographical location of the business in print advertisement. A person
45 misrepresents the geographical location of the business under this subsection if a fictitious
46 business name, an assumed business name, or any other part of the advertisement is listed in
47 print advertisement and all of the following apply:

48 (1) The name or any other part of the advertisement misrepresents the
49 geographic location of the supplier.

1 (2) A telephone call to the local telephone number listed on the print
2 advertisement routinely is forwarded or transferred to a location that is
3 outside the calling area in which the number is listed.

4 (c) A person who misrepresents the geographical location of the business under
5 subsection (a) or subsection (b) of this section is not in violation of this section if a conspicuous
6 notice in the listing or in the print advertisement states the municipality and state in which the
7 business is located and identifies this as the location of the business.

8 (d) For purposes of this section, a newspaper publisher, magazine or other publication,
9 telephone directory or directory assistance service, its officer or agent, the owner or operator of
10 a radio or television station, or any other owner or operator of a media primarily devoted to
11 listing phone numbers or to advertising who publishes, broadcasts, or otherwise disseminates a
12 directory, a database, or print advertisement in good faith without knowledge of its false,
13 deceptive, or misleading character is immune from liability under this section unless the
14 directory service, the database service, or the advertiser is the same person as the person, firm,
15 or corporation that has committed the act prohibited by this section.

16 (e) A violation of this section is an unfair trade practice under G.S. 75-1.1. (2007-545,
17 s. 1; 2009-199, s. 1.)

18
19 **§ 75-43. Reserved for future codification purposes.**

20
21 **§ 75-44. Reserved for future codification purposes.**

22
23 **§ 75-45. Reserved for future codification purposes.**

24
25 **§ 75-46. Reserved for future codification purposes.**

26
27 **§ 75-47. Reserved for future codification purposes.**

28
29 **§ 75-48. Reserved for future codification purposes.**

30
31 **§ 75-49. Reserved for future codification purposes.**

32
33 Article 2.

34 Prohibited Acts by Debt Collectors.

35 **§ 75-50. Definitions.**

36 The following words and terms as used in this Article shall be construed as follows:

37 (1) "Consumer" means any natural person who has incurred a debt or alleged
38 debt for personal, family, household or agricultural purposes.

39 (2) "Debt" means any obligation owed or due or alleged to be owed or due from
40 a consumer.

41 (3) "Debt collector" means any person engaging, directly or indirectly, in debt
42 collection from a consumer except those persons subject to the provisions of
43 Article 70, Chapter 58 of the General Statutes. (1977, c. 747, s. 4; 1989, c.
44 770, s. 15.)

45
46 **§ 75-51. Threats and coercion.**

47 No debt collector shall collect or attempt to collect any debt alleged to be due and owing
48 from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts
49 include, but are not limited to, the following:

50 (1) Using or threatening to use violence or any illegal means to cause harm to
51 the person, reputation or property of any person.

- 1 (2) Falsely accusing or threatening to accuse any person of fraud or any crime,
2 or of any conduct that would tend to cause disgrace, contempt or ridicule.
- 3 (3) Making or threatening to make false accusations to another person, including
4 any credit reporting agency, that a consumer has not paid, or has willfully
5 refused to pay a just debt.
- 6 (4) Threatening to sell or assign, or to refer to another for collection, the debt of
7 the consumer with an attending representation that the result of such sale,
8 assignment or reference would be that the consumer would lose any defense
9 to the debt or would be subjected to harsh, vindictive, or abusive collection
10 attempts.
- 11 (5) Representing that nonpayment of an alleged debt may result in the arrest of
12 any person.
- 13 (6) Representing that nonpayment of an alleged debt may result in the seizure,
14 garnishment, attachment, or sale of any property or wages unless such action
15 is in fact contemplated by the debt collector and permitted by law.
- 16 (7) Threatening to take any action not in fact taken in the usual course of
17 business, unless it can be shown that such threatened action was actually
18 intended to be taken in the particular case in which the threat was made.
- 19 (8) Threatening to take any action not permitted by law. (1977, c. 747, s. 4.)
20

21 **§ 75-52. Harassment.**

22 No debt collector shall use any conduct, the natural consequence of which is to oppress,
23 harass, or abuse any person in connection with the attempt to collect any debt. Such unfair acts
24 include, but are not limited to, the following:

- 25 (1) Using profane or obscene language, or language that would ordinarily abuse
26 the typical hearer or reader.
- 27 (2) Placing collect telephone calls or sending collect telegrams unless the caller
28 fully identifies himself and the company he represents.
- 29 (3) Causing a telephone to ring or engaging any person in telephone
30 conversation with such frequency as to be unreasonable or to constitute a
31 harassment to the person under the circumstances or at times known to be
32 times other than normal waking hours of the person.
- 33 (4) Placing telephone calls or attempting to communicate with any person,
34 contrary to his instructions, at his place of employment, unless the debt
35 collector does not have a telephone number where the consumer can be
36 reached during the consumer's nonworking hours. (1977, c. 747, s. 4.)
37

38 **§ 75-53. Unreasonable publication.**

39 No debt collector shall unreasonably publicize information regarding a consumer's debt.
40 Such unreasonable publication includes, but is not limited to, the following:

- 41 (1) Any communication with any person other than the debtor or his attorney,
42 except:
 - 43 a. With the written permission of the debtor or his attorney given after
44 default;
 - 45 b. To persons employed by the debt collector, to a credit reporting
46 agency, to a person or business employed to collect the debt on
47 behalf of the creditor, or to a person who makes a legitimate request
48 for the information;
 - 49 c. To the spouse (or one who stands in place of the spouse) of the
50 debtor, or to the parent or guardian of the debtor if the debtor is a
51 minor and lives in the same household with such parent;

- 1 d. For the sole purpose of locating the debtor, if no indication of
2 indebtedness is made;
3 e. Through legal process.
- 4 (2) Using any form of communication which ordinarily would be seen or heard
5 by any person other than the consumer that displays or conveys any
6 information about the alleged debt other than the name, address and phone
7 number of the debt collector except as otherwise provided in this Article.
8 (3) Disclosing any information relating to a consumer's debt by publishing or
9 posting any list of consumers, except for credit reporting purposes and the
10 publication and distribution of otherwise permissible "stop lists" to the
11 point-of-sale locations where credit is extended, or by advertising for sale
12 any claim to enforce payment thereof or in any other manner other than
13 through legal process. (1977, c. 747, s. 4; 1979, c. 910.)
14

15 **§ 75-54. Deceptive representation.**

16 No debt collector shall collect or attempt to collect a debt or obtain information concerning
17 a consumer by any fraudulent, deceptive or misleading representation. Such representations
18 include, but are not limited to, the following:

- 19 (1) Communicating with the consumer other than in the name (or unique
20 pseudonym) of the debt collector and the person or business on whose behalf
21 the debt collector is acting or to whom the debt is owed.
22 (2) Failing to disclose in all communications attempting to collect a debt that the
23 purpose of such communication is to collect a debt.
24 (3) Falsely representing that the debt collector has in his possession information
25 or something of value for the consumer.
26 (4) Falsely representing the character, extent, or amount of a debt against a
27 consumer or of its status in any legal proceeding; falsely representing that
28 the collector is in any way connected with any agency of the federal, State or
29 local government; or falsely representing the creditor's rights or intentions.
30 (5) Using or distributing or selling any written communication which simulates
31 or is falsely represented to be a document authorized, issued, or approved by
32 a court, an official, or any other legally constituted or authorized authority,
33 or which creates a false impression about its source.
34 (6) Falsely representing that an existing obligation of the consumer may be
35 increased by the addition of attorney's fees, investigation fees, service fees,
36 or any other fees or charges.
37 (7) Falsely representing the status or true nature of the services rendered by the
38 debt collector or his business.
39 (8) Communicating with the consumer in violation of the provisions of G.S.
40 62-159.1(a), 153A-277(b1), or 160A-314(b1). (1977, c. 747, s. 4; 2009-302,
41 s. 5.)
42

43 **§ 75-55. Unconscionable means.**

44 No debt collector shall collect or attempt to collect any debt by use of any unconscionable
45 means. Such means include, but are not limited to, the following:

- 46 (1) Seeking or obtaining any written statement or acknowledgment in any form
47 containing an affirmation of any debt by a consumer who has been declared
48 bankrupt, an acknowledgment of any debt barred by the statute of
49 limitations, or a waiver of any legal rights of the debtor without disclosing
50 the nature and consequences of such affirmation or waiver and the fact that
51 the consumer is not legally obligated to make such affirmation or waiver.

- 1 (2) Collecting or attempting to collect from the consumer all or any part of the
2 debt collector's fee or charge for services rendered, collecting or attempting
3 to collect any interest or other charge, fee or expense incidental to the
4 principal debt unless legally entitled to such fee or charge.
- 5 (3) Communicating with a consumer (other than a statement of account used in
6 the normal course of business) whenever the debt collector has been notified
7 by the consumer's attorney that he represents said consumer.
- 8 (4) Bringing suit against the debtor in a county other than that in which the debt
9 was incurred or in which the debtor resides if the distances and amounts
10 involved would make it impractical for the debtor to defend the claim.
11 (1977, c. 747, s. 4.)
12

13 **§ 75-56. Application.**

14 (a) The specific and general provisions of this Article shall exclusively constitute the
15 unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce
16 regulated by this Article.

17 (b) Any debt collector who fails to comply with any provision of this Article with
18 respect to any person is liable to such person in a private action in an amount equal to the sum
19 of (i) any actual damage sustained by such person as a result of such failure and (ii) civil
20 penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than
21 four thousand dollars (\$4,000) for each violation.

22 (c) The remedies provided by this section shall be cumulative and in addition to
23 remedies otherwise available. Any punitive damages assessed against a debt collector shall not
24 be reduced by the amount of the civil penalty assessed against such debt collector pursuant to
25 subsection (d) of this section.

26 (d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or
27 actions instituted by the Attorney General, civil penalties in excess of four thousand dollars
28 (\$4,000) shall not be imposed.

29 (e) The clear proceeds of civil penalties imposed in actions instituted by the Attorney
30 General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
31 115C-457.2. (1977, c. 747, s. 4; 1983, c. 417, s. 1; 1985 (Reg. Sess., 1986), c. 802; 1991, c. 68,
32 s. 1; 1998-215, s. 101; 2009-573, s. 9.)
33

34 **§§ 75-57 through 75-59. Reserved for future codification purposes.**
35

36 Article 2A.

37 Identity Theft Protection Act.

38 **§ 75-60. Title.**

39 This Article shall be known and may be cited as the "Identity Theft Protection Act".
40 (2005-414, s. 1.)
41

42 **§ 75-61. Definitions.**

43 The following definitions apply in this Article:

- 44 (1) "Business". – A sole proprietorship, partnership, corporation, association, or
45 other group, however organized and whether or not organized to operate at a
46 profit. The term includes a financial institution organized, chartered, or
47 holding a license or authorization certificate under the laws of this State, any
48 other state, the United States, or any other country, or the parent or the
49 subsidiary of any such financial institution. Business shall not include any
50 government or governmental subdivision or agency.
- 51 (2) "Consumer". – An individual.

- 1 (3) "Consumer report" or "credit report". – Any written, oral, or other
2 communication of any information by a consumer reporting agency bearing
3 on a consumer's creditworthiness, credit standing, credit capacity, character,
4 general reputation, personal characteristics, or mode of living which is used
5 or expected to be used or collected in whole or in part for the purpose of
6 serving as a factor in establishing the consumer's eligibility for any of the
7 following:
8 a. Credit to be used primarily for personal, family, or household
9 purposes.
10 b. Employment purposes.
11 c. Any other purpose authorized under 15 U.S.C. § 1681(b).
- 12 (4) "Consumer reporting agency". – Any person who, for monetary fees, dues,
13 or on a cooperative nonprofit basis, regularly engages in whole or in part in
14 the practice of assembling or evaluating consumer credit information or
15 other information on consumers for the purpose of furnishing consumer
16 reports to third parties.
- 17 (5) "Credit card". – Has the same meaning as in section 103 of the Truth in
18 Lending Act (15 U.S.C. § 160, et seq.).
- 19 (6) "Debit card". – Any card or device issued by a financial institution to a
20 consumer for use in initiating an electronic fund transfer from the account
21 holding assets of the consumer at such financial institution, for the purpose
22 of transferring money between accounts or obtaining money, property, labor,
23 or services.
- 24 (7) "Disposal" includes the following:
25 a. The discarding or abandonment of records containing personal
26 information.
27 b. The sale, donation, discarding, or transfer of any medium, including
28 computer equipment or computer media, containing records of
29 personal information, or other nonpaper media upon which records of
30 personal information are stored, or other equipment for nonpaper
31 storage of information.
- 32 (8) "Encryption". – The use of an algorithmic process to transform data into a
33 form in which the data is rendered unreadable or unusable without use of a
34 confidential process or key.
- 35 (9) "Person". – Any individual, partnership, corporation, trust, estate,
36 cooperative, association, government, or governmental subdivision or
37 agency, or other entity.
- 38 (10) "Personal information". – A person's first name or first initial and last name
39 in combination with identifying information as defined in G.S. 14-113.20(b).
40 Personal information does not include publicly available directories
41 containing information an individual has voluntarily consented to have
42 publicly disseminated or listed, including name, address, and telephone
43 number, and does not include information made lawfully available to the
44 general public from federal, state, or local government records.
- 45 (11) "Proper identification". – Information generally deemed sufficient to identify
46 a person. If a person is unable to reasonably identify himself or herself with
47 the information described above, a consumer reporting agency may require
48 additional information concerning the consumer's employment and personal
49 or family history in order to verify the consumer's identity.

- 1 (12) "Records". – Any material on which written, drawn, spoken, visual, or
2 electromagnetic information is recorded or preserved, regardless of physical
3 form or characteristics.
- 4 (13) "Redaction". – The rendering of data so that it is unreadable or is truncated
5 so that no more than the last four digits of the identification number is
6 accessible as part of the data.
- 7 (14) "Security breach". – An incident of unauthorized access to and acquisition of
8 unencrypted and unredacted records or data containing personal information
9 where illegal use of the personal information has occurred or is reasonably
10 likely to occur or that creates a material risk of harm to a consumer. Any
11 incident of unauthorized access to and acquisition of encrypted records or
12 data containing personal information along with the confidential process or
13 key shall constitute a security breach. Good faith acquisition of personal
14 information by an employee or agent of the business for a legitimate purpose
15 is not a security breach, provided that the personal information is not used
16 for a purpose other than a lawful purpose of the business and is not subject
17 to further unauthorized disclosure.
- 18 (15) "Security freeze". – Notice placed in a credit report, at the request of the
19 consumer and subject to certain exceptions, that prohibits the consumer
20 reporting agency from releasing all or any part of the consumer's credit
21 report or any information derived from it without the express authorization
22 of the consumer. (2005-414, s. 1.)
23

24 **§ 75-62. Social security number protection.**

25 (a) Except as provided in subsection (b) of this section, a business may not do any of
26 the following:

- 27 (1) Intentionally communicate or otherwise make available to the general public
28 an individual's social security number.
- 29 (2) Intentionally print or imbed an individual's social security number on any
30 card required for the individual to access products or services provided by
31 the person or entity.
- 32 (3) Require an individual to transmit his or her social security number over the
33 Internet, unless the connection is secure or the social security number is
34 encrypted.
- 35 (4) Require an individual to use his or her social security number to access an
36 Internet Web site, unless a password or unique personal identification
37 number or other authentication device is also required to access the Internet
38 Web site.
- 39 (5) Print an individual's social security number on any materials that are mailed
40 to the individual, unless state or federal law requires the social security
41 number to be on the document to be mailed.
- 42 (6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an
43 individual's social security number to a third party without written consent to
44 the disclosure from the individual, when the party making the disclosure
45 knows or in the exercise of reasonable diligence would have reason to
46 believe that the third party lacks a legitimate purpose for obtaining the
47 individual's social security number.

48 (b) Subsection (a) of this section shall not apply in the following instances:

- 49 (1) When a social security number is included in an application or in documents
50 related to an enrollment process, or to establish, amend, or terminate an
51 account, contract, or policy; or to confirm the accuracy of the social security

1 number for the purpose of obtaining a credit report pursuant to 15 U.S.C. §
2 1681(b)(2). A social security number that is permitted to be mailed under
3 this section may not be printed, in whole or in part, on a postcard or other
4 mailer not requiring an envelope, or visible on the envelope or without the
5 envelope having been opened.

- 6 (2) To the collection, use, or release of a social security number for internal
7 verification or administrative purposes.
8 (3) To the opening of an account or the provision of or payment for a product or
9 service authorized by an individual.
10 (4) To the collection, use, or release of a social security number to investigate or
11 prevent fraud, conduct background checks, conduct social or scientific
12 research, collect a debt, obtain a credit report from or furnish data to a
13 consumer reporting agency pursuant to the Fair Credit Reporting Act, 15
14 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under
15 Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is
16 missing, a lost relative, or due a benefit, such as a pension, insurance, or
17 unclaimed property benefit.
18 (5) To a business acting pursuant to a court order, warrant, subpoena, or when
19 otherwise required by law.
20 (6) To a business providing the social security number to a federal, state, or
21 local government entity, including a law enforcement agency, court, or their
22 agents or assigns.
23 (7) To a social security number that has been redacted.

24 (c) A business covered by this section shall make reasonable efforts to cooperate,
25 through systems testing and other means, to ensure that the requirements of this Article are
26 implemented.

27 (d) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1.)
28

29 **§ 75-63. Security freeze.**

30 (a) A consumer may place a security freeze on the consumer's credit report by making a
31 request to a consumer reporting agency in accordance with this subsection. A security freeze
32 shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting
33 agency from releasing the consumer's credit report or any information from it without the
34 express authorization of the consumer. When a security freeze is in place, a consumer reporting
35 agency may not release the consumer's credit report or information to a third party without
36 prior express authorization from the consumer. This subsection does not prevent a consumer
37 reporting agency from advising a third party that a security freeze is in effect with respect to the
38 consumer's credit report, provided that the consumer reporting agency does not state or
39 otherwise imply to the third party that the consumer's security freeze reflects a negative credit
40 score, history, report, or rating. A consumer reporting agency shall place a security freeze on a
41 consumer's credit report if the consumer requests a security freeze by any of the following
42 methods:

- 43 (1) First-class mail.
44 (2) Telephone call.
45 (3) Secure Web site or secure electronic mail connection.

46 (a1) A nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. §
47 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., that receives a
48 request from a consumer residing in this State to place a security freeze on the consumer's file,
49 shall provide a notice communicating to the consumer that the freeze is only placed with the
50 consumer reporting agency to which the consumer directed the request. The notice shall
51 provide to the consumer the Web site, postal address, and telephone number of the other

1 nationwide consumer reporting agencies and of the North Carolina Attorney General's Office
2 and shall inform the consumer that he or she may use this information to contact other
3 nationwide consumer reporting agencies to make security freeze requests and obtain
4 information on combating identity theft. No part of the notice to the consumer shall be used to
5 make a solicitation for other goods and services.

6 (b) A consumer reporting agency shall place a security freeze on a consumer's credit
7 report no later than three business days after receiving a written request from the consumer by
8 mail. A consumer reporting agency that receives such a request electronically or by telephone
9 shall comply with the request within 24 hours of receiving the request.

10 (c) The consumer reporting agency shall send a written confirmation of the security
11 freeze to the consumer within three business days of placing the freeze and at the same time
12 shall provide the consumer with a unique personal identification number or password, other
13 than the consumer's social security number, to be used by the consumer when providing
14 authorization for the release of the consumer's credit report for a specific period of time, or to a
15 specific party, or for permanently lifting the freeze.

16 (d) If the consumer wishes to allow the consumer's credit report to be accessed for a
17 specific period of time or by a specific party while a freeze is in place, the consumer shall
18 contact the consumer reporting agency by mail, phone, or electronically, request that the freeze
19 be lifted or lifted with respect to a specific party, and provide all of the following:

20 (1) Proper identification.

21 (2) The unique personal identification number or password provided by the
22 consumer reporting agency pursuant to subsection (c) of this section.

23 (3) The proper information regarding the third party who is authorized to
24 receive the consumer credit report or the time period for which the report
25 shall be available to users of the credit report.

26 (e) Repealed by Session Laws 2009-355, s. 1, effective October 1, 2009.

27 (f) A consumer reporting agency that receives a request by mail from a consumer to lift
28 a freeze on a credit report pursuant to subsection (d) of this section shall comply with the
29 request no later than three business days after receiving the request. A consumer reporting
30 agency that receives such a request electronically or by telephone shall comply with the request
31 within 15 minutes of receiving the request.

32 (g) A consumer reporting agency shall remove, temporarily lift, or lift with respect to a
33 specific third party a freeze placed on a consumer's credit report only in the following cases:

34 (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this
35 section.

36 (2) If the consumer's credit report was frozen due to a material
37 misrepresentation of fact by the consumer. If a consumer reporting agency
38 intends to remove a freeze upon a consumer's credit report pursuant to this
39 subdivision, the consumer reporting agency shall notify the consumer in
40 writing prior to removing the freeze on the consumer's credit report.

41 (g1) A consumer reporting agency need not meet the time requirements provided in this
42 section, only for such time as the occurrences prevent compliance, if any of the following
43 occurrences apply:

44 (1) The consumer fails to meet the requirements of subsection (d) or (j) of this
45 section.

46 (2) The consumer reporting agency's ability to remove, place, temporarily lift, or
47 lift with respect to a specific party the security freeze is prevented by any of
48 the following:

49 a. An act of God, including fire, earthquakes, hurricanes, storms, or
50 similar natural disaster or phenomena.

- b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.
- c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
- d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
- e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.
- f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
- g. Receipt of a request outside of normal business hours.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. A consumer reporting agency shall remove a security freeze within 15 minutes of receiving an electronic request for removal from the consumer or within three business days of receiving a written or telephonic request for removal from the consumer, who provides all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

- (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.
- (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.
- (3) Any person acting pursuant to a court order, warrant, or subpoena.
- (4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.
- (5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.
- (6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

- 1 (7) A person for the purposes of prescreening as defined by the Fair Credit
2 Reporting Act, 15 U.S.C. § 1681, et seq.
- 3 (8) Any person for the sole purpose of providing for a credit file monitoring
4 subscription service to which the consumer has subscribed.
- 5 (9) A consumer reporting agency for the purpose of providing a consumer with
6 a copy of the consumer's credit report upon the consumer's request.
- 7 (10) Any depository financial institution for checking, savings, and investment
8 accounts.
- 9 (11) Any property and casualty insurance company for use in setting or adjusting
10 a rate, adjusting a claim, or underwriting for property and casualty insurance
11 purposes.
- 12 (12) A person for the purpose of furnishing or using credit reports for
13 employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening
14 pursuant to 15 U.S.C. § 1681b(a)(3)(F).
- 15 (13) A person for the purpose of criminal background record information.

16 (m) If a security freeze is in place, a consumer reporting agency shall not change any of
17 the following official information in a credit report without sending a written confirmation of
18 the change to the consumer within 30 days of the change being posted to the consumer's file:
19 name, date of birth, social security number, and address. Written confirmation is not required
20 for technical modifications of a consumer's official information, including name and street
21 abbreviations, complete spellings, or transposition of numbers or letters. In the case of an
22 address change, the written confirmation shall be sent to both the new address and the former
23 address.

24 (n) The following persons are not required to place in a credit report a security freeze
25 pursuant to this section provided, however, that any person that is not required to place a
26 security freeze on a credit report under the provisions of subdivision (3) of this subsection shall
27 be subject to any security freeze placed on a credit report by another consumer reporting
28 agency from which it obtains information:

- 29 (1) A check services or fraud prevention services company, which reports on
30 incidents of fraud or issues authorizations for the purpose of approving or
31 processing negotiable instruments, electronic fund transfers, or similar
32 methods of payment.
- 33 (2) A deposit account information service company, which issues reports
34 regarding account closures due to fraud, substantial overdrafts, ATM abuse,
35 or other similar negative information regarding a consumer to inquiring
36 banks or other financial institutions for use only in reviewing a consumer
37 request for a deposit account at the inquiring bank or financial institution.
- 38 (3) A consumer reporting agency that does all of the following:
 - 39 a. Acts only to resell credit information by assembling and merging
40 information contained in a database of one or more credit reporting
41 agencies.
 - 42 b. Does not maintain a permanent database of credit information from
43 which new credit reports are produced.

44 (o) A consumer reporting agency shall not charge a fee to put a security freeze in place,
45 remove a freeze, or lift a freeze pursuant to subsection (d) or (j) of this section, provided that
46 any such request is made electronically. If a request to put a security freeze in place is made by
47 telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to
48 exceed three dollars (\$3.00), except that a consumer reporting agency may not charge any fee
49 to a consumer over the age of 62, to a victim of identity theft who has submitted a copy of a
50 valid investigative or incident report or complaint with a law enforcement agency about the
51 unlawful use of the victim's identifying information by another person, or to the victim's

1 spouse. A consumer reporting agency shall not charge an additional fee to a consumer who
2 requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or
3 remove a security freeze. A consumer reporting agency shall not charge a consumer for a
4 onetime reissue of a replacement personal identification number. A consumer reporting agency
5 may charge a fee not to exceed three dollars (\$3.00) to provide any subsequent replacement
6 personal identification number.

7 (o1) A parent or guardian of a minor residing in this State may, upon appropriate proof
8 of identity and proof of their relationship to the minor, inquire of a nationwide consumer
9 reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit
10 Reporting Act, 15 U.S.C. § 1681, et seq., as to the existence of a credit report for the minor of
11 the parent or guardian. If a credit report for the minor exists, the nationwide consumer reporting
12 agency shall make reasonable efforts to prevent providing a credit report on the minor until the
13 minor reaches the age of majority. If a credit report for the minor does not exist, the nationwide
14 consumer reporting agency has no obligation to create one.

15 (p) At any time that a consumer is required to receive a summary of rights required
16 under section 609 of the federal Fair Credit Reporting Act, the following notice shall be
17 included:

18 **"North Carolina Consumers Have the Right to Obtain a Security Freeze.**

19 You have a right to place a "security freeze" on your credit report pursuant to North
20 Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any
21 information in your credit report without your express authorization. A security freeze can be
22 requested in writing by first-class mail, by telephone, or electronically. You also may request a
23 freeze by visiting the following Web site: [URL] or calling the following telephone number:
24 [NUMBER].

25 The security freeze is designed to prevent credit, loans, and services from being approved in
26 your name without your consent. However, you should be aware that using a security freeze to
27 take control over who gains access to the personal and financial information in your credit
28 report may delay, interfere with, or prohibit the timely approval of any subsequent request or
29 application you make regarding new loans, credit, mortgage, insurance, rental housing,
30 employment, investment, license, cellular phone, utilities, digital signature, Internet credit card
31 transactions, or other services, including an extension of credit at point of sale.

32 The freeze will be placed within three business days if you request it by mail, or within 24
33 hours if you request it by telephone or electronically. When you place a security freeze on your
34 credit report, within three business days, you will be sent a personal identification number or a
35 password to use when you want to remove the security freeze, temporarily lift it, or lift it with
36 respect to a particular third party.

37 A freeze does not apply when you have an existing account relationship and a copy of your
38 report is requested by your existing creditor or its agents or affiliates for certain types of
39 account review, collection, fraud control, or similar activities.

40 You should plan ahead and lift a freeze if you are actively seeking credit or services as a
41 security freeze may slow your applications, as mentioned above.

42 You can remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a
43 particular third party by contacting the consumer reporting agency and providing all of the
44 following:

- 45 (1) Your personal identification number or password,
- 46 (2) Proper identification to verify your identity, and
- 47 (3) Proper information regarding the period of time you want your report
48 available to users of the credit report, or the third party with respect to which
49 you want to lift the freeze.

50 A consumer reporting agency that receives a request from you to temporarily lift a freeze or
51 to lift a freeze with respect to a particular third party on a credit report shall comply with the

1 request no later than three business days after receiving the request by mail and no later than 15
2 minutes after receiving a request by telephone or electronically. A consumer reporting agency
3 may charge you up to three dollars (\$3.00) to institute a freeze if your request is made by
4 telephone or by mail. A consumer reporting agency may not charge you any amount to freeze,
5 remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party,
6 if any of the following are true:

- 7 (1) Your request is made electronically.
- 8 (2) You are over the age of 62.
- 9 (3) You are the victim of identity theft and have submitted a copy of a valid
10 investigative or incident report or complaint with a law enforcement agency
11 about the unlawful use of your identifying information by another person, or
12 you are the spouse of such a person.

13 You have a right to bring a civil action against someone who violates your rights under the
14 credit reporting laws. The action can be brought against a consumer reporting agency or a user
15 of your credit report."

16 (q) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1; 2006-158,
17 s. 1; 2009-355, s. 1; 2009-550, s. 5.)

18
19 **§ 75-64. Destruction of personal information records.**

20 (a) Any business that conducts business in North Carolina and any business that
21 maintains or otherwise possesses personal information of a resident of North Carolina must
22 take reasonable measures to protect against unauthorized access to or use of the information in
23 connection with or after its disposal.

24 (b) The reasonable measures must include:

- 25 (1) Implementing and monitoring compliance with policies and procedures that
26 require the burning, pulverizing, or shredding of papers containing personal
27 information so that information cannot be practicably read or reconstructed.
- 28 (2) Implementing and monitoring compliance with policies and procedures that
29 require the destruction or erasure of electronic media and other nonpaper
30 media containing personal information so that the information cannot
31 practicably be read or reconstructed.
- 32 (3) Describing procedures relating to the adequate destruction or proper disposal
33 of personal records as official policy in the writings of the business entity.

34 (c) A business may, after due diligence, enter into a written contract with, and monitor
35 compliance by, another party engaged in the business of record destruction to destroy personal
36 information in a manner consistent with this section. Due diligence should ordinarily include
37 one or more of the following:

- 38 (1) Reviewing an independent audit of the disposal business's operations or its
39 compliance with this statute or its equivalent.
- 40 (2) Obtaining information about the disposal business from several references or
41 other reliable sources and requiring that the disposal business be certified by
42 a recognized trade association or similar third party with a reputation for
43 high standards of quality review.
- 44 (3) Reviewing and evaluating the disposal business's information security
45 policies or procedures or taking other appropriate measures to determine the
46 competency and integrity of the disposal business.

47 (d) A disposal business that conducts business in North Carolina or disposes of personal
48 information of residents of North Carolina must take all reasonable measures to dispose of
49 records containing personal information by implementing and monitoring compliance with
50 policies and procedures that protect against unauthorized access to or use of personal
51 information during or after the collection and transportation and disposing of such information.

1 (e) This section does not apply to any of the following:

2 (1) Any bank or financial institution that is subject to and in compliance with
3 the privacy and security provision of the Gramm Leach Bliley Act, 15
4 U.S.C. § 6801, et seq., as amended.

5 (2) Any health insurer or health care facility that is subject to and in compliance
6 with the standards for privacy of individually identifiable health information
7 and the security standards for the protection of electronic health information
8 of the Health Insurance Portability and Accountability Act of 1996.

9 (3) Any consumer reporting agency that is subject to and in compliance with the
10 Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

11 (f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed
12 against a business because of the acts or omissions of its nonmanagerial employees shall not be
13 trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision,
14 or monitoring of those employees. No private right of action may be brought by an individual
15 for a violation of this section unless such individual is injured as a result of the violation.
16 (2005-414, s. 1.)

17
18 **§ 75-65. Protection from security breaches.**

19 (a) Any business that owns or licenses personal information of residents of North
20 Carolina or any business that conducts business in North Carolina that owns or licenses
21 personal information in any form (whether computerized, paper, or otherwise) shall provide
22 notice to the affected person that there has been a security breach following discovery or
23 notification of the breach. The disclosure notification shall be made without unreasonable
24 delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of
25 this section, and consistent with any measures necessary to determine sufficient contact
26 information, determine the scope of the breach and restore the reasonable integrity, security,
27 and confidentiality of the data system. For the purposes of this section, personal information
28 shall not include electronic identification numbers, electronic mail names or addresses, Internet
29 account numbers, Internet identification names, parent's legal surname prior to marriage, or a
30 password unless this information would permit access to a person's financial account or
31 resources.

32 (b) Any business that maintains or possesses records or data containing personal
33 information of residents of North Carolina that the business does not own or license, or any
34 business that conducts business in North Carolina that maintains or possesses records or data
35 containing personal information that the business does not own or license shall notify the owner
36 or licensee of the information of any security breach immediately following discovery of the
37 breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of
38 this section.

39 (c) The notice required by this section shall be delayed if a law enforcement agency
40 informs the business that notification may impede a criminal investigation or jeopardize
41 national or homeland security, provided that such request is made in writing or the business
42 documents such request contemporaneously in writing, including the name of the law
43 enforcement officer making the request and the officer's law enforcement agency engaged in
44 the investigation. The notice required by this section shall be provided without unreasonable
45 delay after the law enforcement agency communicates to the business its determination that
46 notice will no longer impede the investigation or jeopardize national or homeland security.

47 (d) The notice shall be clear and conspicuous. The notice shall include all of the
48 following:

49 (1) A description of the incident in general terms.

50 (2) A description of the type of personal information that was subject to the
51 unauthorized access and acquisition.

- 1 (3) A description of the general acts of the business to protect the personal
2 information from further unauthorized access.
- 3 (4) A telephone number for the business that the person may call for further
4 information and assistance, if one exists.
- 5 (5) Advice that directs the person to remain vigilant by reviewing account
6 statements and monitoring free credit reports.
- 7 (6) The toll-free numbers and addresses for the major consumer reporting
8 agencies.
- 9 (7) The toll-free numbers, addresses, and Web site addresses for the Federal
10 Trade Commission and the North Carolina Attorney General's Office, along
11 with a statement that the individual can obtain information from these
12 sources about preventing identity theft.

13 (e) For purposes of this section, notice to affected persons may be provided by one of
14 the following methods:

- 15 (1) Written notice.
- 16 (2) Electronic notice, for those persons for whom it has a valid e-mail address
17 and who have agreed to receive communications electronically if the notice
18 provided is consistent with the provisions regarding electronic records and
19 signatures for notices legally required to be in writing set forth in 15 U.S.C.
20 § 7001.
- 21 (3) Telephonic notice provided that contact is made directly with the affected
22 persons.
- 23 (4) Substitute notice, if the business demonstrates that the cost of providing
24 notice would exceed two hundred fifty thousand dollars (\$250,000) or that
25 the affected class of subject persons to be notified exceeds 500,000, or if the
26 business does not have sufficient contact information or consent to satisfy
27 subdivisions (1), (2), or (3) of this subsection, for only those affected
28 persons without sufficient contact information or consent, or if the business
29 is unable to identify particular affected persons, for only those unidentifiable
30 affected persons. Substitute notice shall consist of all the following:
 - 31 a. E-mail notice when the business has an electronic mail address for
32 the subject persons.
 - 33 b. Conspicuous posting of the notice on the Web site page of the
34 business, if one is maintained.
 - 35 c. Notification to major statewide media.

36 (e1) In the event a business provides notice to an affected person pursuant to this section,
37 the business shall notify without unreasonable delay the Consumer Protection Division of the
38 Attorney General's Office of the nature of the breach, the number of consumers affected by the
39 breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the
40 future, and information regarding the timing, distribution, and content of the notice.

41 (f) In the event a business provides notice to more than 1,000 persons at one time
42 pursuant to this section, the business shall notify, without unreasonable delay, the Consumer
43 Protection Division of the Attorney General's Office and all consumer reporting agencies that
44 compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. §
45 1681a(p), of the timing, distribution, and content of the notice.

46 (g) Any waiver of the provisions of this Article is contrary to public policy and is void
47 and unenforceable.

48 (h) A financial institution that is subject to and in compliance with the Federal
49 Interagency Guidance Response Programs for Unauthorized Access to Consumer Information
50 and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal
51 Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of

1 the Currency, and the Office of Thrift Supervision; or a credit union that is subject to and in
2 compliance with the Final Guidance on Response Programs for Unauthorized Access to
3 Member Information and Member Notice, issued on April 14, 2005, by the National Credit
4 Union Administration; and any revisions, additions, or substitutions relating to any of the said
5 interagency guidance, shall be deemed to be in compliance with this section.

6 (i) A violation of this section is a violation of G.S. 75-1.1. No private right of action
7 may be brought by an individual for a violation of this section unless such individual is injured
8 as a result of the violation.

9 (j) Causes of action arising under this Article may not be assigned. (2005-414, s. 1;
10 2009-355, s. 2; 2009-573, s. 10.)

11
12 **§ 75-66. Publication of personal information.**

13 (a) It shall be a violation of this section for any person to knowingly broadcast or
14 publish to the public on radio, television, cable television, in a writing of any kind, or on the
15 Internet, the personal information of another with actual knowledge that the person whose
16 personal information is disclosed has previously objected to any such disclosure.

17 (b) As used in this section, "person" means any individual, partnership, corporation,
18 trust, estate, cooperative, association, or other entity, but does not include any:

19 (1) Government, government subdivision or agency.

20 (2) Entity subject to federal requirements pursuant to the Health Insurance
21 Portability and Accountability Act (HIPAA).

22 (c) As used in this section, the phrase "personal information" includes a person's first
23 name or first initial and last name in combination with any of the following information:

24 (1) Social security or employer taxpayer identification numbers.

25 (2) Drivers license, State identification card, or passport numbers.

26 (3) Checking account numbers.

27 (4) Savings account numbers.

28 (5) Credit card numbers.

29 (6) Debit card numbers.

30 (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).

31 (8) Digital signatures.

32 (9) Any other numbers or information that can be used to access a person's
33 financial resources.

34 (10) Biometric data.

35 (11) Fingerprints.

36 (12) Passwords.

37 (d) Nothing in this section shall:

38 (1) Limit the requirements or obligations under any other section of this Article,
39 including, but not limited to, G.S. 75-62 and G.S. 75-65.

40 (2) Apply to the collection, use, or release of personal information for a purpose
41 permitted, authorized, or required by any federal, state, or local law,
42 regulation, or ordinance.

43 (e) Any person whose property or person is injured by reason of a violation of this
44 section may sue for civil damages pursuant to the provisions of G.S. 1-539.2C. (2007-534, s.
45 2.)

46
47 **§ 75-67.** Reserved for future codification purposes.

48
49 **§ 75-68.** Reserved for future codification purposes.

50
51 **§ 75-69.** Reserved for future codification purposes.

- 1
2 § 75-70. Reserved for future codification purposes.
3
4 § 75-71. Reserved for future codification purposes.
5
6 § 75-72. Reserved for future codification purposes.
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8 § 75-73. Reserved for future codification purposes.
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10 § 75-74. Reserved for future codification purposes.
11
12 § 75-75. Reserved for future codification purposes.
13
14 § 75-76. Reserved for future codification purposes.
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16 § 75-77. Reserved for future codification purposes.
17
18 § 75-78. Reserved for future codification purposes.
19
20 § 75-79. Reserved for future codification purposes.
21

22 Article 3.
23 Motor Fuel Marketing Act.

24 § 75-80. **Title.**

25 This Article shall be known and may be cited as the "Motor Fuel Marketing Act". (1985
26 (Reg. Sess., 1986), c. 972, s. 1.)
27

28 § 75-81. **Definitions.**

29 The following terms shall have the meanings ascribed to them in this section unless
30 otherwise stated and unless the context or subject matter clearly indicates otherwise:

- 31 (1) "Person" shall mean any person, firm, association, organization, partnership,
32 business trust, joint stock company, company, corporation or legal entity.
33 (2) "Sale" shall mean selling, offering for sale or advertising for sale.
34 (3) "Motor Fuel" means motor fuel, as defined in G.S. 105-449.60, and
35 alternative fuel, as defined in G.S. 105-449.130.
36 (4) "Cost" or "Costs" shall mean as follows:
37 a. For a refiner or terminal supplier, costs shall be presumed to be the
38 refiner's or terminal supplier's prevailing price to the wholesale class
39 of trade at the terminal used by the refiner or terminal supplier to
40 obtain the motor fuel in question or the lowest prevailing price within
41 10 days prior to a sale alleged to be in violation of G.S. 75-82 hereof
42 plus all transportation expenses including freight expenses (incurred
43 and not otherwise included in the cost of the motor fuel), and motor
44 fuel taxes. If a refiner or terminal supplier does not regularly sell to
45 the wholesale class of trade at the terminal in question, then such
46 refiner or terminal supplier shall use as the prevailing price either (i)
47 the lowest price to the wholesale class of trade of those other refiners
48 or terminal suppliers at the same terminal who regularly sell to the
49 wholesaler class or (ii) a price determined by using standard
50 functional accounting procedures.

1 b. For all other sellers, cost includes the invoice or replacement cost,
2 whichever is less, of the grade, brand or blend, of motor fuel within
3 10 days prior to the date of sale, in the quantity or quantities last
4 purchased, less all rebates and discounts received including prompt
5 payment discounts and plus all applicable State, federal and local
6 taxes, and transportation expenses including freight expenses,
7 incurred and not otherwise included in the cost of the motor fuel.

8 (5) "Prompt Payment Discounts" shall mean any allowance for payment within
9 a specified time, but shall not include discounts for cash made to the
10 motoring public at motor fuel outlets.

11 (6) "Affiliate" shall mean any person who (other than by means of a franchise)
12 controls, is controlled by or is under common control with, any other person.

13 (7) "Motor Fuel Merchant" is any person selling motor fuel to the public.

14 (8) "Motor Fuel Outlet" is any retail facility selling motor fuel to the motoring
15 public.

16 (9) "New Retail Outlet" shall mean a new retail facility constructed from the
17 ground or an existing retail facility that is offering motor fuel to the
18 motoring public for the first time.

19 (10) "Refiner" shall mean any person engaged in the production or refining of
20 motor fuel, whether such production or refining occurs in this State or
21 elsewhere, and includes any affiliate of such person or firm.

22 (11) "Terminal Supplier" shall mean any person engaged in selling or brokering
23 motor fuel to wholesalers or retailers from a storage facility of more than
24 2,000,000 gallons capacity and such person has an ownership interest in or
25 control of the storage facility. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1991
26 (Reg. Sess., 1992), c. 1007, s. 36; 1995, c. 390, s. 12; 1997-456, s. 27.)
27

28 **§ 75-82. Unlawful below-cost selling; exceptions.**

29 (a) It shall be unlawful where the intent is to injure competition for any motor fuel
30 merchant or the affiliate of any motor fuel merchant to sell with such frequency as to indicate a
31 general business practice of selling at a motor fuel outlet any grade, brand or blend of motor
32 fuel for less than the cost of that grade, brand or blend of motor fuel except where (i) the price
33 is established in good faith to meet or compete with the lower price of a competitor in the same
34 market area on the same level of distribution selling the same or comparable product of like
35 quality, (ii) the price remains in effect for no more than 10 days after the first sale of that grade,
36 brand or blend by the merchant at a new retail outlet, (iii) the sale is made in good faith to
37 dispose of a grade, brand or blend of motor fuel for the purpose of discontinuing sales of that
38 product, or (iv) the sale is made pursuant to the order or authority of any court or governmental
39 agency.

40 (b) For purposes of this Article, motor fuel cost shall be computed separately for each
41 grade, brand or blend of each motor fuel at each location where said motor fuel is offered for
42 sale; however, nothing in this subsection shall prevent a motor fuel merchant from using a
43 weighted average motor fuel cost for comparable grade, brand or blend when such motor fuel
44 merchant is supplied by more than one refiner or terminal supplier at one or more terminals.

45 (c) This Article shall apply only to retail sales of motor fuel at motor fuel outlets.
46 (1985 (Reg. Sess., 1986), c. 972, s. 1.)
47

48 **§ 75-83. Unlawful inducement; civil penalty.**

49 It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of
50 this Article, whether by otherwise lawful or unlawful means. In any action initiated by the
51 Attorney General, anyone found to have violated this provision shall be subject to the civil

1 penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a
2 civil penalty of one thousand dollars (\$1,000). The clear proceeds of any civil penalties
3 imposed in any actions initiated by the Attorney General under this section shall be remitted to
4 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess.,
5 1986), c. 972, s. 1; 1998-215, s. 102.)

6
7 **§ 75-84. Separate offenses; injunctions.**

8 Each act of establishing a price in violation of this Article shall constitute a separate offense
9 by the seller and the civil penalty for each offense shall be not more than one thousand dollars
10 (\$1,000). Upon a proper showing by the Attorney General or his delegate, further violations
11 may be temporarily or permanently enjoined.

12 The clear proceeds of civil penalties provided for in this section shall be remitted to the
13 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess.,
14 1986), c. 972, s. 1; 1998-215, s. 103.)

15
16 **§ 75-85. Investigations by Attorney General.**

17 The Attorney General is authorized to investigate any allegation of a violation of this
18 Article made by a motor fuel merchant or by an association or group of motor fuel merchants.
19 If an investigation discloses a violation, the Attorney General may exercise the authority under
20 this Article to seek an injunction and he may also seek civil penalties. The clear proceeds of
21 civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture
22 Fund in accordance with G.S. 115C-457.2. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1998-215, s.
23 104.)

24
25 **§ 75-86. Private actions.**

26 Any person, corporation, or other business entity which is engaged in the sale of motor fuel
27 for resale or consumption and which is directly or indirectly injured by a violation of this
28 Article may bring an action in the district court district as defined in G.S. 7A-133 or superior
29 court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the
30 violation is alleged to have occurred to recover actual damages, exemplary damages, costs and
31 reasonable attorneys' fees. The court shall also grant such equitable relief as is proper, including
32 a declaratory judgment and injunctive relief. Any action under this Article must be brought
33 within one year of the alleged violation. (1985 (Reg. Sess., 1986), c. 972, s. 1; 1987 (Reg.
34 Sess., 1988), c. 1037, s. 97.)

35
36 **§ 75-87. Private action presumptions.**

37 (a) In any private action brought under this Article, a violation shall be presumed to
38 have occurred if: (i) the prevailing price under G.S. 75-81(4)(a) for any grade, brand or blend
39 of a motor fuel sold by a refiner or terminal supplier to a wholesaler or retailer is greater than
40 the price of the same grade, brand or blend of motor fuel sold by such refiner or terminal
41 supplier directly through its own motor fuel outlet or through the outlet of an affiliate of said
42 refiner or terminal supplier; or (ii) if the product price of any grade, brand or blend of a motor
43 fuel sold by a wholesaler to a retailer is greater than the retail price of the same grade, brand or
44 blend of motor fuel sold by such wholesaler through its own motor fuel outlet or the outlet of
45 an affiliate of said wholesaler, provided the method of delivery and quantities of each delivery
46 of motor fuel to the retailer and to the wholesaler's outlet or affiliate's outlet are the same or
47 comparable.

48 (b) A party may rebut the presumption created by this section by presenting evidence to
49 establish his cost of the grade, brand or blend of motor fuel in question, or by qualifying for an
50 exception under G.S. 75-82. (1985 (Reg. Sess., 1986), c. 972, s. 1.)

1 **§ 75-88. Public disclosure.**

2 Any refiner or terminal supplier computing prevailing price under the provisions of G.S.
3 75-81(4)(a)(i) or (ii) shall be required to publicly disclose said price. (1985 (Reg. Sess., 1986),
4 c. 972, s. 1.)
5

6 **§ 75-89. Powers and remedies supplementary.**

7 The powers and remedies provided by this Article shall be cumulative and supplementary
8 to all powers and remedies otherwise provided by law. (1985 (Reg. Sess., 1986), c. 972, s. 1.)
9

10 **§ 75-90. Availability of gasoline suitable for blending with fuel alcohol; blender of record.**

11 (a) The following definitions apply in this section:

- 12 (1) Blender. – Defined in G.S. 105-449.60.
- 13 (2) Distributor. – Defined in G.S. 105-449.60.
- 14 (3) Fuel Alcohol. – Defined in G.S. 105-449.60.
- 15 (4) Gasoline. – Defined in G.S. 105-449.60(22)a.
- 16 (5) Retailer. – Defined in G.S. 105-449.60.
- 17 (6) Supplier. – Defined in G.S. 105-449.60.

18 (b) A supplier that imports gasoline into the State shall offer gasoline for sale to a
19 distributor or retailer that is not preblended with fuel alcohol and that is suitable for subsequent
20 blending with fuel alcohol.

21 (c) The General Assembly finds that use of blended fuels reduces dependence on
22 imported oil and is therefore in the public interest. The General Assembly further finds that
23 gasoline may be blended with fuel alcohol below the terminal rack by distributors and retailers
24 as well as above the terminal rack by suppliers and that there is no reason to restrict or prevent
25 blending by suppliers, distributors, or retailers. Therefore, any provision of any contract that
26 would restrict or prevent a distributor or retailer from blending gasoline with fuel alcohol or
27 from qualifying for any federal or State tax credit due to blenders is contrary to public policy
28 and is void. This subsection does not impair the obligation of existing contracts, but does apply
29 if such contract is modified, amended, or renewed. (2008-198, s. 11.7; 2008-222, s. 1.)
30

31 **§ 75-91:** Reserved for future codification purposes.

32 **§ 75-92:** Reserved for future codification purposes.

33 **§ 75-93:** Reserved for future codification purposes.

34 **§ 75-94:** Reserved for future codification purposes.

35 **§ 75-95:** Reserved for future codification purposes.

36 **§ 75-96:** Reserved for future codification purposes.

37 **§ 75-97:** Reserved for future codification purposes.

38 **§ 75-98:** Reserved for future codification purposes.

39 **§ 75-99:** Reserved for future codification purposes.

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50 Telephone Solicitations.

51 **§ 75-100. Findings.**

1 The General Assembly finds all of the following:

- 2 (1) The use of the telephone to market goods and services to the home is now
3 pervasive due to the increased use of cost-effective telephone solicitation
4 technologies and techniques.
- 5 (2) While some consumers enjoy and benefit from telephone solicitations from
6 legitimate telephone solicitors, many others object to these telephone
7 solicitations as an intrusive invasion of their privacy in the home.
- 8 (3) In addition, the proliferation of telephone solicitations, especially during the
9 evening hours, creates a nuisance and a disturbance upon the home and
10 family life of telephone subscribers during a time of day used by many
11 families for traditional family activities.
- 12 (4) North Carolina residents should have the freedom to choose whether or not
13 to permit telephone solicitors to contact them.
- 14 (5) Individual privacy rights, personal safety, prevention of fraud, and
15 commercial freedom of speech and trade must be balanced in a way that
16 protects the privacy of individuals and permits legitimate telephone
17 solicitation practices.
- 18 (6) Legitimate telephone solicitors have no interest in continuing to invade the
19 privacy of those telephone subscribers who affirmatively express their
20 desires to receive no further telephone solicitations.
- 21 (7) Many telephone subscribers who have transacted business with firms that
22 employ telephone solicitations have experienced problems with their
23 checking and credit card accounts being debited before they can evaluate the
24 terms and conditions of the transaction, before they can evaluate the
25 merchandise or service to be delivered, or without their agreement to enter
26 into the transaction or authorize such transactions in the first place. Other
27 telephone subscribers have had unauthorized charges placed on their
28 telephone bill and have had their long-distance carrier switched without their
29 authorization as a result of telephone solicitations.
- 30 (8) New technologies that make telephone solicitations more cost-effective also
31 allow for the creation of a "Do Not Call" Registry through which North
32 Carolina consumers can easily register their desires not to receive further
33 telephone solicitations and telephone solicitors can easily access and employ
34 lists of consumers who have registered those desires.
- 35 (9) The public interest requires an efficient mechanism for telephone subscribers
36 to notify telephone solicitors that their telephone numbers cannot be called
37 and additional protections for North Carolina residents who enter into
38 consumer transactions initiated through telephone solicitations. (2003-411, s.
39 3.)
40

41 **§ 75-101. Definitions.**

42 The following definitions apply in this Article:

- 43 (1) Affiliate. – A business establishment, business, or other legal entity that
44 wholly or substantially owns, is wholly or substantially owned by, or is
45 under common ownership with a telephone solicitor.
- 46 (2) Automatic dialing and recorded message player. – Any automatic equipment
47 that incorporates a storage capability of telephone numbers to be called or a
48 random or a sequential number generator capable of producing numbers to
49 be called that, working alone or in conjunction with other equipment,
50 disseminates a prerecorded message to the telephone number called.

- 1 (3) "Do Not Call" Registry. – The registry created and maintained by the
2 Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also
3 means any other telemarketing registry created by the federal government,
4 including the Federal Communications Commission. It also means any
5 registry created by the Attorney General pursuant to G.S. 75-102(n).
- 6 (4) Doing business in this State. – To make or cause to be made any telephone
7 solicitation to North Carolina telephone subscribers, whether the telephone
8 solicitations are made from a location inside North Carolina or outside North
9 Carolina.
- 10 (5) Established business relationship. – A relationship between a seller and a
11 consumer based on:
- 12 a. The consumer's purchase, rental, or lease of the seller's goods or
13 services or a financial transaction between the consumer and the
14 seller or one or more of its affiliates within the 18 months
15 immediately preceding the date of a telephone solicitation; or
- 16 b. The consumer's inquiry or application regarding a product or service
17 offered by the seller within the three months immediately preceding
18 the date of a telephone solicitation.
- 19 (6) Express invitation or permission. – Any invitation or permission that is
20 registered by the telephone subscriber on an independent form and that
21 contains the telephone number to which calls can be placed and the signature
22 of the telephone subscriber. The form may be completed and signed
23 electronically.
- 24 (7) Person. – Any individual, business establishment, business, or other legal
25 entity.
- 26 (8) Telemarketing Sales Rule. – The federal regulation promulgated by the
27 Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition),
28 as amended, to implement the Telemarketing and Consumer Fraud and
29 Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.
- 30 (9) Telephone solicitation. – A voice communication, whether prerecorded, live,
31 or a facsimile, over a telephone line or wireless telephone network or via a
32 commercial mobile radio service that is made by a telephone solicitor to a
33 telephone subscriber for the purpose of soliciting or encouraging the
34 purchase or rental of, or investment in, property, goods, or services;
35 obtaining or providing information that will or may be used for that purpose;
36 soliciting or encouraging a telephone subscriber's participation in any
37 contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining
38 a charitable donation. "Telephone solicitation" also includes those
39 transactions that are defined as "telemarketing" under the Telemarketing
40 Sales Rule.
- 41 (10) Telephone solicitor. – Any individual, business establishment, business, or
42 other legal entity doing business in this State that, directly or through
43 salespersons or agents, makes or attempts to make telephone solicitations or
44 causes telephone solicitations to be made. "Telephone solicitor" also
45 includes any party defined as a "telemarketer" under the Telemarketing Sales
46 Rule.
- 47 (11) Telephone subscriber. – An individual who subscribes to a residential
48 telephone service from a local exchange company, a competing local
49 provider certified to do business in North Carolina, or a wireless telephone
50 company; or the individuals living or residing with that individual.

- 1 (12) Unsolicited telephone call. – A voice communication, whether prerecorded,
2 live, or a facsimile, over a telephone line or wireless telephone network or
3 via a commercial mobile radio service that is made by a person to a
4 telephone subscriber without prior express invitation or permission.
5 (2003-411, s. 3.)
6

7 **§ 75-102. Restrictions on telephone solicitations.**

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

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

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

- 17 (1) At the beginning of the telephone solicitation, state clearly the identity of the
18 telephone solicitor and identify the individual making the telephone
19 solicitation.
20 (2) Upon request, provide the telephone subscriber with the telephone number
21 or address at which the telephone solicitor may be contacted.
22 (3) If the telephone subscriber requests to be taken off the contact list of the
23 telephone solicitor, the telephone solicitor shall take all steps necessary to
24 remove the telephone subscriber's name and telephone number from the
25 contact list of the telephone solicitor and stop calling the telephone
26 subscriber within 30 business days.
27 (4) If the telephone subscriber objects to the telephone solicitation, terminate the
28 telephone solicitation and promptly disconnect from the telephone line of the
29 person receiving the call.
30 (5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor
31 relies on the established business relationship of an affiliate to solicit a
32 residential telephone subscriber whose telephone number is listed in the
33 latest edition of the "Do Not Call" Registry and the person called
34 communicates a desire to receive no further telephone solicitations from the
35 telephone solicitor, the telephone solicitor shall take all steps necessary to
36 remove that telephone subscriber's telephone number from the contact lists
37 of the telephone solicitor and that affiliate, unless the telephone subscriber
38 indicates otherwise, and the telephone solicitor and that affiliate shall stop
39 calling the telephone subscriber at that number within 60 business days.

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

50 (e) Except as provided in G.S. 75-103, no telephone solicitor shall violate any
51 requirement of section 310.3 of the Telemarketing Sales Rule (Deceptive telemarketing acts or

1 practices), section 310.4 of the Telemarketing Sales Rule (Abusive telemarketing acts or
2 practices), and section 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

3 (f) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or after
4 9:00 P.M.

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

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

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

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

24 (k) Nothing in this section prohibits a telephone solicitor from contacting by
25 nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not
26 Call" Registry to obtain the telephone subscriber's express invitation or permission allowing the
27 telephone solicitor to make telephone solicitations to the telephone subscriber. A telephone
28 solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation
29 or permission.

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

35 (m) The Attorney General, in consultation with the Public Staff of the Public Utilities
36 Commission, shall draft the contents of a bill insert or bill message, a direct mailing, and an
37 e-mail that notifies consumers of the existence of the "Do Not Call" Registry and provides
38 information to consumers on how to use it and the other provisions of this Article to object to
39 receiving telephone solicitations. Local exchange companies shall distribute the notification
40 pursuant to G.S. 62-54.

41 (n) In the event that the federal "Do Not Call" Registry is not operational by January 1,
42 2004, or ceases to operate for any reason after January 1, 2004, the Attorney General may
43 develop, operate, and maintain such a registry for the benefit of North Carolina telephone
44 subscribers.

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

- 48 (1) The contract and the sales representations that precede it are not deceptive or
49 abusive telemarketing acts or practices as elaborated in sections 310.3 and
50 310.4 of the Telemarketing Sales Rule only to the extent that this Article
51 requires telephone solicitors to comply with these regulations.

- 1 (2) The telephone solicitor has complied with the record keeping requirements
2 of section 310.5 of the Telemarketing Sales Rule only to the extent that this
3 Article requires telephone solicitors to comply with these regulations.
4 (3) The contract and the sales representations that precede it comply with all
5 other applicable federal and State laws, including Article 1 of this Chapter.
6 (2003-411, ss. 3, 4; 2009-122, s. 1.)
7

8 **§ 75-103. Limited exceptions.**

9 (a) G.S. 75-102(a) does not apply to any of the following telephone solicitations that
10 are made:

- 11 (1) To any telephone subscriber with the telephone subscriber's prior express
12 invitation or permission.
13 (2) To any telephone subscriber with whom the telephone solicitor has an
14 established business relationship.
15 (3) By or on behalf of a tax-exempt nonprofit organization.
16 (4) By or on behalf of a telephone solicitor that employs fewer than 10 full-time
17 or part-time direct employees, the telephone solicitations are made by the
18 direct employees, and the direct employees collectively make or attempt to
19 make no more than an average of 10 telephone solicitations to telephone
20 subscribers per week during a calendar year.
21 (5) To any telephone subscriber for the sole purpose of arranging a subsequent
22 face-to-face meeting between the telephone solicitor and the telephone
23 subscriber and the telephone solicitor does none of the following during the
24 telephone solicitation:
25 a. Seek payment from the telephone subscriber in connection with the
26 sale or rental of, or investment in, property, goods, or services.
27 b. Complete the sale or rental of, or investment in, property, goods, or
28 services.
29 c. Obtain provisional acceptance of a sale, rental, or investment.
30 d. Obtain the agreement of the telephone subscriber to participate in any
31 contest, sweepstakes, raffle, or lottery.
32 e. Directly following the telephone solicitation, go or cause an
33 individual to go to the telephone subscriber to collect a payment or
34 deliver any item purchased.
35 (6) By a person primarily soliciting the sale of a subscription for a newspaper of
36 general circulation.

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

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

41 (d) G.S. 75-102(e) does not apply to any of the telephone solicitations described in
42 subdivisions (a)(1), (a)(2), and (a)(3) of this section, except that these types of telephone
43 solicitations shall comply with sections 310.3(a)(2), (a)(3), and (a)(4), 310.3(c), 310.3(d),
44 310.4(a), 310.4(b)(1)(i) and (iv), (b)(2), (b)(3), and (b)(4), and 310.4(e) of the Telemarketing
45 Sales Rule.

46 (e) In any dispute regarding whether a telephone subscriber has provided an express
47 invitation or permission under subsection (a) of this section, the telephone solicitor has the
48 burden of proving that the telephone subscriber has provided this permission by producing the
49 original document, a facsimile document, or an electronic form, signed by the telephone
50 subscriber, or other authentication that evidences permission. A telephone subscriber may

1 subsequently retract express invitation or permission by indicating a desire not to receive
2 further telephone solicitations under G.S. 75-102(b). (2003-411, s. 3.)

3
4 **§ 75-104. Restrictions on use of automatic dialing and recorded message players.**

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

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

10 (1) All of the following are satisfied:

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

- 12 1. A tax-exempt charitable or civic organization.
- 13 2. A political party or political candidate.
- 14 3. A governmental official.
- 15 4. An opinion polling organization, radio station, television
16 station, cable television company, or broadcast rating service
17 conducting a public opinion poll.

18 b. No part of the call is used to make a telephone solicitation.

19 c. The person making the call clearly identifies the person's name and
20 contact information and the nature of the unsolicited telephone call.

21 (2) Prior to the playing of the recorded message, a live operator complies with
22 G.S. 75-102(c), states the nature and length in minutes of the recorded
23 message, and asks for and receives prior approval to play the recorded
24 message from the person receiving the call.

25 (3) The unsolicited telephone call is in connection with an existing debt or
26 contract for which payment or performance has not been completed at the
27 time of the unsolicited telephone call, and both of the following are satisfied:

28 a. No part of the call is used to make a telephone solicitation.

29 b. The person making the call clearly identifies the person's name and
30 contact information and the nature of the unsolicited telephone call.

31 (4) The unsolicited telephone call is placed by a person with whom the
32 telephone subscriber has made an appointment, provided that the call is
33 conveying information only about the appointment, or by a utility, telephone
34 company, cable television company, satellite television company, or similar
35 entity for the sole purpose of conveying information or news about network
36 outages, repairs or service interruptions, and confirmation calls related to
37 restoration of service, and both of the following are satisfied:

38 a. No part of the call is used to make a telephone solicitation.

39 b. The person making the call clearly identifies the person's name and
40 contact information and the nature of the unsolicited telephone call.

41 (5) The person plays the recorded message in order to comply with section 16
42 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

43 (6) The unsolicited telephone call is placed by, or on behalf of, a health insurer
44 as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or
45 other covered family member of the health insurer receives health care
46 coverage or the administration of such coverage, provided that the call is
47 conveying information related to the telephone subscriber or family
48 member's health care, preventive services, medication or other covered
49 benefits, and both of the following are satisfied:

50 a. No part of the call is used to make a telephone solicitation.

- 1 b. The person making the call clearly identifies the person's name and
2 contact information and the nature of the unsolicited telephone call.
- 3 (7) No part of the call is used to make a telephone solicitation, the person
4 making the call clearly identifies the person's contact information and the
5 nature of the unsolicited telephone call, and the sole purpose of the
6 unsolicited telephone call is to protect the public health, safety, or welfare,
7 by informing the telephone subscriber of any of the following:
- 8 a. That the telephone subscriber has purchased a product that is subject
9 to a recall by the product's manufacturer, distributor or retailer, or by
10 the federal Consumer Product Safety Commission or another
11 government agency or department with legal authority to recall the
12 product which is the subject of the call, due to safety or health
13 concerns, provided that (i) there is a reasonable basis to believe that
14 the telephone subscriber has purchased the product, and (ii) the
15 message complies with any requirements imposed by any
16 government agency instituting the recall.
- 17 b. That the telephone subscriber may have received a prescription or
18 over-the-counter medication that is subject to a recall by the product's
19 manufacturer, distributor or retailer, or by the federal Food and Drug
20 Administration or another government agency or department with
21 legal authority to recall the product which is the subject of the call,
22 due to safety or health concerns, provided that (i) the call and its
23 message comply with the requirements of the Health Insurance
24 Portability and Accountability Act (P.L. 104-191) (HIPAA) and any
25 corresponding regulations pertaining to privacy, (ii) there is a
26 reasonable basis to believe that the telephone subscriber has
27 purchased or received the medication, and (iii) the message complies
28 with any requirements imposed by the government agency or product
29 manufacturer, distributor, or retailer instituting the recall.
- 30 c. That the telephone subscriber has not picked up a filled prescription
31 drug for which a valid prescription is on file with a pharmacy
32 licensed pursuant to G.S. 90-85.21 and the telephone subscriber
33 requested that the prescription be filled, provided that the call and its
34 message comply with the requirements of the Health Insurance
35 Portability and Accountability Act (P.L. 104-191) (HIPAA) and any
36 corresponding regulations pertaining to privacy. (2003-411, s. 3;
37 2008-124, s. 10.3; 2009-364, s. 1.)

38
39 **§ 75-105. Enforcement.**

40 (a) The Attorney General may investigate any complaints received alleging violation of
41 this Article. If the Attorney General finds that there has been a violation of this Article, the
42 Attorney General may bring an action to impose civil penalties and to seek any other
43 appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If
44 the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection
45 (b) of this section, the Attorney General may not seek treble damages on behalf of telephone
46 subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be
47 consistent with the provisions of this Chapter except that the penalty imposed for a violation of
48 this Article shall be either of the following:

- 49 (1) Five hundred dollars (\$500.00) for the first violation, one thousand dollars
50 (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the

1 third and any other violation that occurs within two years of the first
2 violation.

- 3 (2) One hundred dollars (\$100.00) for each violation within two years of the
4 first violation, if the solicitor can show that the violations are the result of a
5 mistake and the telephone solicitor either made the telephone solicitation
6 under G.S. 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone
7 solicitor complied with G.S. 75-102(d).

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

- 11 (1) An action to enjoin further violations of this Article by the telephone
12 solicitor.
13 (2) An action to recover five hundred dollars (\$500.00) for the first violation,
14 one thousand dollars (\$1,000) for the second violation, and five thousand
15 dollars (\$5,000) for the third and any other violation that occurs within two
16 years of the first violation.

17 (c) No action may be brought under subsection (b) of this section if the violations are a
18 result of mistake and the telephone solicitor either made the telephone solicitation under G.S.
19 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone solicitor complied with G.S.
20 75-102(d).

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

26 (e) A citizen of this State may also bring an action in civil court to enforce the private
27 rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. §
28 227(c)(5).

29 (f) Actions brought by telephone subscribers pursuant to this section shall be tried in
30 the county where the plaintiff resides at the time of the commencement of the action.
31 (2003-411, s. 3.)

32
33 **§§ 75-106 through 75-114. Reserved for future codification purposes.**

34
35 Article 5.

36 Unsolicited Facsimiles.

37 **§ 75-115. Definitions.**

38 The following definitions apply in this Article:

- 39 (1) Established business relationship. –
40 a. A relationship between a seller and a consumer based on:
41 1. The consumer's purchase, rental, or lease of the seller's goods
42 or services or a financial transaction between the consumer
43 and the seller or one or more of its affiliates within the 18
44 months immediately preceding the date of an unsolicited
45 advertisement; or
46 2. The consumer's inquiry or application regarding a product or
47 service offered by the seller within the three months
48 immediately preceding the date of an unsolicited
49 advertisement.
50 b. A relationship between a tax-exempt nonprofit organization and a
51 person based on:

- 1 1. The person's association with the tax-exempt nonprofit
2 organization as a member, contributor, or volunteer of the
3 tax-exempt nonprofit organization within the 18 months
4 immediately preceding the date of an unsolicited
5 advertisement;
 - 6 2. The person's subscription to or use of the services of the
7 tax-exempt nonprofit organization within the 18 months
8 immediately preceding the date of an unsolicited
9 advertisement; or
 - 10 3. The person's inquiry regarding the tax-exempt nonprofit
11 organization within the three months immediately preceding
12 the date of an unsolicited advertisement.
- 13 (2) Telephone facsimile machine. – Equipment that has the capacity to do either
14 or both of the following:
- 15 a. Transcribe text or images or both from paper into an electronic signal
16 and to transmit that signal over a regular telephone line.
 - 17 b. Transcribe text or images or both from an electronic signal received
18 over a regular telephone line onto paper.
- 19 (3) Unsolicited advertisement. – Any material advertising the commercial
20 availability or quality of any property, goods, or services that is transmitted
21 to any person or entity without that person's or entity's prior express
22 invitation or permission. Prior express invitation or permission may be
23 obtained for a specific or unlimited number of advertisements and may be
24 obtained for a specific or unlimited period of time. (2006-207, s. 1.)
25

26 **§ 75-116. Prohibition of unsolicited facsimiles; exception.**

27 (a) No person or entity, if either the person or entity or the recipient is located within
28 the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other
29 device to send or (ii) cause another person or entity to use a telephone facsimile machine to
30 send an unsolicited advertisement to a telephone facsimile machine.

31 (b) This section shall not apply to a person or entity that has an established business
32 relationship with the recipient of the facsimile. However, the person or entity who sends an
33 unsolicited advertisement under this subsection shall provide a notice in the unsolicited
34 advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited
35 advertisement; (ii) states that the recipient may make a request to the sender to "do not send"
36 any future unsolicited advertisements to a telephone facsimile machine and that the sender's
37 failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone
38 number or facsimile machine number that the recipient may call at any time on any day of the
39 week to transmit a request to "do not send" future facsimiles. (2006-207, s. 1.)
40

41 **§ 75-117. Facsimiles to contain identifying material.**

42 (a) It shall be a violation of this Article for any person or entity, if either the person or
43 entity or the recipient is located in the State of North Carolina, to do either of the following:

- 44 (1) Initiate any communication using a telephone facsimile machine that does
45 not clearly mark in a margin at the top or bottom of each transmitted page or
46 on the first page of each transmission the date and time sent; an
47 identification of the business, other entity, or person sending the message,
48 and the telephone number of the sending machine or of the business, other
49 entity, or person.
- 50 (2) Use a computer or other electronic device to send any message via a
51 telephone facsimile machine unless it is clearly marked in a margin at the

1 top or bottom of each transmitted page of the message or on the first page of
2 the transmission the date and time it is sent, the identification of the
3 business, other entity, or person sending the message, and the telephone
4 number of the sending machine or of the business, other entity, or person.

5 (b) This section shall not apply to a facsimile sent by or on behalf of a professional or
6 trade association that is a tax-exempt nonprofit organization and in furtherance of the
7 association's tax-exempt purpose to a member of the association if all of the following
8 conditions are met:

- 9 (1) The member voluntarily provided the association the facsimile number to
10 which the facsimile was sent.
11 (2) The facsimile is not primarily for the purpose of advertising the commercial
12 availability or quality of any property, goods, or services of one or more
13 third parties.
14 (3) The member who is sent the facsimile has not requested that the association
15 stop sending facsimiles. (2006-207, s. 1.)
16

17 **§ 75-118. Enforcement.**

18 (a) A person or entity who receives an unsolicited advertisement in violation of this
19 Article may bring any of the following actions in civil court:

- 20 (1) An action to enjoin further violations of this Article by the person or entity
21 who sent the unsolicited advertisement.
22 (2) An action to recover five hundred dollars (\$500.00) for the first violation,
23 one thousand dollars (\$1,000) for the second violation, and five thousand
24 dollars (\$5,000) for the third and any other violation that occurs within two
25 years of the first violation.

26 (b) In an action brought pursuant to this Article, the court may award a prevailing
27 plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act
28 or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the
29 court finds that the plaintiff knew, or should have known, that the action was frivolous and
30 malicious.

31 (c) Actions brought by a person or entity pursuant to this section shall be tried in the
32 county where the plaintiff resides at the time of the commencement of the action.

33 (d) This section shall not be construed to alter or restrict any remedy a person may have
34 under federal law, including the Junk Fax Prevention Act of 2005, against a person or entity
35 who sends an unsolicited advertisement.

36 (e) A violation of G.S. 75-116 is a violation of G.S. 75-1.1. (2006-207, s. 1.)
37

38 **§ 75-119:** Reserved for future codification purposes.
39

40 Article 5A.

41 Home Foreclosure Rescue Scams.

42 **§ 75-120. Definitions.**

43 The following definitions shall apply in this Article:

- 44 (1) Default. – Whenever a property owner is more than 60 days delinquent on
45 any loan or debt that is secured by the property, including real estate taxes.
46 (2) Exempt transaction. – A foreclosure rescue transaction in which the
47 transferee is any of the following:
48 a. A member of the transferor's immediate family as defined in G.S.
49 53-244-030(13).
50 b. A state, federal, or local government agency or organization.

- 1 c. A bank, savings institution, or credit union, including operating
2 subsidiaries and affiliates, organized under the laws of the United
3 States or any state.
- 4 d. A mortgage lender or mortgage servicer licensed by the
5 Commissioner of Banks under Article 19B of Chapter 53 of the
6 General Statutes.
- 7 (3) Foreclosure rescue transaction. – A transfer of residential real property,
8 including a manufactured home that is permanently attached to the real
9 property, which includes all of the following features:
- 10 a. The real property is the principal residence of the transferor.
11 b. The transferor is in default or legal proceedings have been initiated to
12 foreclose on the transferor's property.
13 c. The transferee, an agent of the transferee, or others acting in concert
14 with the transferee make representations that the transfer of the
15 residential property will enable the transferor to prevent, postpone, or
16 reverse the effect of foreclosure and to remain in the residence.
17 d. The transferor retains an interest in the property conveyed, including
18 a tenancy interest, an interest under a lease-purchase agreement, an
19 option to reacquire the property, or any other legal, equitable, or
20 possessory interest in the property conveyed.
- 21 (4) Property. – Real property upon which there is located one or more
22 single-family dwellings, including an individual condominium unit,
23 cooperative unit, manufactured home, or mobile home. (2010-164, s. 2.)
24

25 **§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

26 (a) It is unlawful for a person or entity other than the transferor to engage in, promise to
27 engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue
28 transaction for financial gain or with the expectation of financial gain, unless prior to or at the
29 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market
30 value of the property as determined by a licensed appraiser. An appraisal to determine the fair
31 market value of the property must be performed no more than 90 days prior to the transfer. The
32 appraisal shall be delivered to the transferor no more than three days after the appraisal is
33 performed and no less than seven days prior to the transfer of the property. This section does
34 not apply to exempt transactions.

35 (b) Every contract to effectuate a foreclosure rescue transaction in which the transferee
36 pays at least 50% of the fair market value of the property, shall be in writing, shall be signed
37 and acknowledged by all parties to it, and shall contain all the terms to which the parties have
38 agreed. The contract shall contain at least all of the following:

- 39 (1) The names and addresses of all parties to the contract.
40 (2) The legal description of the property being transferred.
41 (3) Any financial obligation of the transferor that will be assumed by the
42 transferee.
43 (4) The total amount to be paid by the transferee in connection with the
44 transaction.
45 (5) The fair market value of the property as determined by a licensed appraiser.
46 (6) A description of the interest in the property retained by the transferor as
47 provided in G.S. 75-120(3)d.
48 (7) The terms of the transferor's right to any future possessory or ownership
49 interest in the property. (2010-164, s. 2.)
50

51 **§ 75-122. Remedies.**

1 A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may
2 bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction,
3 as well as for declaratory or equitable relief for a violation of this Article. The provisions of this
4 section shall not be enforceable against a bona fide purchaser for value. The rights and
5 remedies provided herein are cumulative to, and not a limitation of, any other rights and
6 remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an
7 individual homeowner selling his or her primary residence to liability under G.S. 75-1.1.
8 (2010-164, s. 2; 2010-97, s. 15(a).)
9

10 **§ 75-123:** Reserved for future codification purposes.

11
12 **§ 75-124:** Reserved for future codification purposes.

13
14 **Article 6.**

15 **Truth in Music Advertising Act.**

16 **§ 75-125. Short title and definitions.**

17 (a) Short Title. – This Article may be cited as the Truth in Music Advertising Act.

18 (b) Definitions. – The following definitions apply in this Article:

- 19 (1) Performing group. – A vocal or instrumental group seeking to use the name
20 of another group that has previously released a commercial sound recording
21 under that name.
- 22 (2) Recording group. – A vocal or instrumental group at least one of whose
23 members has previously released a commercial sound recording under that
24 group's name and in which the member or members have a legal right by
25 virtue of use or operation under the group name without having abandoned
26 the name or affiliation with the group.
- 27 (3) Sound recording. – A work that results from the fixation on a material object
28 of a series of musical, spoken, or other sounds regardless of the nature of the
29 material object, such as a disk, tape, or other phono-record, in which the
30 sounds are embodied. (2009-284, s. 1.)
31

32 **§ 75-126. Production.**

33 No person shall advertise or conduct a live musical performance or production in this State
34 through the use of a false, deceptive, or misleading affiliation, connection, or association
35 between a performing group and a recording group. This section does not apply if any of the
36 following apply:

- 37 (1) The performing group is the authorized registrant and owner of a federal
38 service mark for that group registered in the United States Patent and
39 Trademark Office.
- 40 (2) At least one member of the performing group was a member of the recording
41 group and has a legal right by virtue of use or operation under the group
42 name without having abandoned the name or affiliation with the group.
- 43 (3) The live musical performance or production is identified in all advertising
44 and promotion as a salute or tribute, or the vocal or instrumental group
45 performing is not so closely related or similar to that used by the recording
46 group that it would tend to confuse or mislead the public.
- 47 (4) The advertising does not relate to a live musical performance or production
48 taking place in this State.
- 49 (5) The performance or production is expressly authorized by the recording
50 group. (2009-284, s. 1.)
51

1 **§ 75-127. Penalty.**

2 A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than
3 five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) per violation,
4 which civil penalty shall be in addition to any other relief which may be granted under other
5 applicable laws. Each performance or production in violation of G.S. 75-126 shall constitute a
6 separate violation. (2009-284, s. 1.)
7

8 **§ 75-128. Unfair and deceptive trade practice.**

9 A violation of this Article shall be an unfair and deceptive trade practice under G.S. 75-1.1.
10 (2009-284, s. 1.)
11

12 **§ 75-129:** Reserved for future codification purposes.

13
14 **§ 75-130:** Reserved for future codification purposes.

15
16 **§ 75-131:** Reserved for future codification purposes.

17
18 **§ 75-132:** Reserved for future codification purposes.
19

20 Article 7.
21 Credit Monitoring Services Act.

22 **§ 75-133. Title.**

23 This Article shall be known and may be cited as the "Credit Monitoring Services Act."
24 (2009-355, s. 7.)
25

26 **§ 75-134. Definitions.**

27 The following definitions apply in this Article:

- 28 (1) Consumer. – An individual.
- 29 (2) Consumer report. – As defined in G.S. 75-61(3).
- 30 (3) Credit monitoring service. – Any person who offers, for a fee or
31 compensation, to obtain, provide, or monitor a credit report on behalf of a
32 consumer, or to assist a consumer in obtaining or monitoring the consumer's
33 credit report, and provides or purports to provide the foregoing services. The
34 term also includes any person who offers, for a fee or compensation, to
35 obtain or provide a fraud alert on behalf of a consumer or to assist a
36 consumer in obtaining such fraud alert. The term does not include the
37 following activities of a consumer reporting agency, as defined in section
38 603(f) [15 U.S.C. § 1681a(f)] of the federal Fair Credit Reporting Act,
39 provided that, while the excluded activities themselves do not fall within the
40 definition of the term "credit monitoring service" none of these excluded
41 activities exempts a consumer reporting agency from the duty to provide the
42 notice required under G.S. 75-135 where the sale of a credit monitoring
43 service occurs as a result of an offer for the credit monitoring service made
44 at a time during communications involving such activities:
 - 45 a. Providing a credit report to another party that monitors a credit report
46 on behalf of a consumer;
 - 47 b. Providing a disclosure to a consumer of the information in the
48 consumer's file pursuant to section 609(a) [15 U.S.C. § 1681g(a)] of
49 the federal Fair Credit Reporting Act and also imposing a charge
50 permitted under section 612(f) [15 U.S.C. § 1681j(f)] of the federal
51 Fair Credit Reporting Act;

- 1 c. Providing the disclosure of a score pursuant to section 609(f) [15
- 2 U.S.C. § 1681g(f)] of the federal Fair Credit Reporting Act and also
- 3 imposing a charge permitted under section 609(f)(8) [15 U.S.C. §
- 4 1681g(f)(8)] of the federal Fair Credit Reporting Act;
- 5 d. Providing a notice required by G.S. 75-63(m); or
- 6 e. Providing a monitoring service to individuals who receive a notice
- 7 provided by a person who experienced a security breach and where
- 8 the monitoring service was paid for by the person who experienced
- 9 the security breach.
- 10 (4) Fraud alert. – As defined in the federal Fair Credit Reporting Act, 15 U.S.C.
- 11 § 1681c-1.
- 12 (5) Person. – Any individual, partnership, corporation, association, business
- 13 establishment, or any other legal or commercial entity. (2009-355, s. 7.)
- 14

15 **§ 75-135. Required disclosure.**

16 (a) Prior to charging or collecting any fee or compensation from a consumer for

17 obtaining, providing, or monitoring the consumer's credit report on behalf of the consumer, a

18 credit monitoring service shall provide a clear and conspicuous written description of a

19 consumer's right to one free credit report per year pursuant to section 612(a) [15 U.S.C. §

20 1681j(a)] of the federal Fair Credit Reporting Act, and how to obtain those credit reports from

21 each of the nationwide consumer reporting agencies, as defined in section 603(p) [15 U.S.C. §

22 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

23 (b) If the credit monitoring service is offered and fees are collected during a telephone

24 call, the notice required by subsection (a) of this section will be offered in the same manner.

25 (c) A violation of this section is a violation of G.S. 75-1.1, except that compliance with

26 the requirement that the notice required by this section be clear and conspicuous shall be

27 enforced exclusively by the Attorney General under G.S. 75-15. (2009-355, s. 7.)