

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-364  
HOUSE BILL 1034**

AN ACT TO ALLOW AUTOMATIC DIALING AND RECORDED MESSAGE PLAYERS  
TO BE USED TO MAKE UNSOLICITED TELEPHONE CALLS TO PROTECT THE  
PUBLIC HEALTH, SAFETY, OR WELFARE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 75-104 reads as rewritten:

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

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

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

(1) All of the following are satisfied:

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

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

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

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

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

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

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

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

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

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

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

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

(6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or



other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered ~~benefits~~ benefits, and both of the following are satisfied:

- a. No part of the call is used to make a telephone solicitation.
- b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:

- a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.
- b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by the government agency or product manufacturer, distributor, or retailer instituting the recall.
- c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy."

**SECTION 2.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of July, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 9:35 a.m. this 27<sup>th</sup> day of July, 2009