

Security Breach Requirements

The Identity Theft Act of 2005 (N.C.G.S. §§ 75-60, et. seq.) requires businesses as well as state or local government to notify *each* individual when there has been a security breach involving their personal identifying information. Notification waivers are void and unenforceable. A violation of this provision constitutes an unfair trade practice.

WHAT IS A SECURITY BREACH?

A “security breach” is defined as the unauthorized access and acquisition of unencrypted or unredacted records/data containing personal information with corresponding names, such as a person’s first initial and last name. The acquisition of encrypted data only constitutes a breach if a confidential process or key is also acquired. In addition, the authorized access of personal information by an employee or agent does not constitute a security breach so long as the information is used for a lawful purpose and is not “subject to further unauthorized disclosure.”

“Personal information” includes an individual’s social security number (SSN), employer taxpayer identification number (TIN), driver’s license or state identification number, passport number, checking/saving account number, credit/debit card number, PIN, digital signature, biometric data, fingerprints, or any number that can be used to access his financial resources. In addition, the access and acquisition of an individual’s e-mail name or address, Internet account number, Internet username, or password may be considered a breach if it would permit access to his financial accounts or resources. Personal information does not include publicly available directories that an individual has consented to have made available to the general public, including name, address, and telephone number.

WHO MUST NOTIFY?

A business or government entity that owns or licenses records or data that contains personal information and that personal information has been subject to a security breach must notify. A business includes sole proprietorships, partnerships, corporations, associations, charities or any group, however organized. The business must be (1) located in North Carolina or (2) own/license the personal information (in any form) of North Carolina residents. Businesses that maintain or possess records/data that contain the personal information of North Carolina residents on behalf of an owner/licensee must notify the owner/licensee of a security breach.

NOTIFICATION REQUIREMENTS

Once an entity discovers or is informed of a security breach, the entity must notify those individuals affected, regardless of number. The notice must be clear and conspicuous and given without unreasonable delay. Notice shall be delayed if law enforcement informs the entity that disclosure of the breach would impede a criminal investigation or jeopardize national security. A request for delayed notification must be made in writing or documented contemporaneously by the entity, including the name of the officer and the officer's agency making the request.

The notice must include all of the following:

1. General description of the security breach incident;
2. Type of personal information that was the subject of the breach;
3. General description of the entity's efforts to avoid further unauthorized access to personal information;
4. Telephone number for further information and assistance, if one exists; and
5. Advice for the affected individuals including: review financial accounts, monitor credit reports (available free at 877-322-8228 or www.annualcreditreport.com); consider a Security Freeze etc. You may want to include the Attorney General's handout advising Security Breach victims the steps they can take, available at www.noscamnc.gov under "Protect Yourself."

The Notice can be mailed, e-mailed to those for whom the entity has a valid email and who have agreed to receive communications electronically, or given via telephone if communication is made directly with the affected person. Substitute notice may be given if (1) the cost of providing the notice exceeds \$250,000; (2) the number of affected persons is greater than 500,000; or (3) the entity does not have the necessary contact information to notify the individual in any of the aforementioned manners. Substitute notice must include posting a notice on the entity's website, e-mailing if the entity has email addresses of affected persons and notifying major statewide media.

ADDITIONAL NOTICE REQUIREMENTS

If a security breach involves more than 1,000 persons, the entity must provide written notice of the timing, distribution, and content of the notice to:

Consumer Protection Division
9001 Mail Service Center
Raleigh, NC 27699-9001

as well as to the three major consumer reporting agencies. The Consumer Protection Division will need a copy of the notice itself, the date of the security breach, the date the notice goes out, and the manner of distribution. In addition, the Consumer Protection Division will need the number of North Carolina residents affected and the total number of persons affected. The required form is available at www.noscamnc.gov under "Protect Your Business."

Disclaimer: Attorneys in the Attorney General's Office are bound by North Carolina General Statutes, Section 114-2(5) which permits the Attorney General to give his opinion "upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer." The Attorney General's office is not authorized to provide opinions regarding questions of North Carolina law to private citizens or entities.



Received a Security Breach Letter?

Under North Carolina law, businesses and state and local government agencies must notify you if your personal information was compromised and if you are at greater risk of identity theft.

What Is a Security Breach?

A security breach happens when data or records containing personal information such as Social Security numbers, bank account numbers or drivers license numbers are lost, stolen, or accessed improperly. This kind of information can be used by criminals to commit identity theft.

Being notified that your information was part of a security breach does not necessarily mean you will become a victim of identity theft. However, you are at a greater risk and need to take steps to protect yourself.

Step 1: Sign Up for Free Services

Some businesses or government agencies offer security breach victims a free service such as credit monitoring. While most offers are genuine and should be utilized by the victim, do not provide private information to the number provided without independently verifying that the credit monitoring service or other business is legitimate.

Step 2: Notify the Credit Bureaus

A fraud alert tells banks and other creditors to take extra steps to verify your identity before issuing credit in your name, but it will not stop new credit in your name. A fraud alert is free and will last 90 days unless you request an extended seven-year fraud alert and provide a police report.

To request a fraud alert, contact one of the three nationwide credit bureaus. The alert will be shared and a flag will be placed on your credit file with all three. Each credit bureau provides you with a free credit report. Review these reports carefully for any fraudulent activity and notify the credit bureaus online or in writing of any discrepancies.

- www.Equifax.com – 1-800-525-6285
- www.Experian.com – 1-888-397-3742
- www.TransUnion.com – 1-800-680-7289

Step 3: Consider a Security Freeze

A security freeze stops credit reporting agencies from releasing any information about you to new creditors without your approval, which can stop identity thieves from getting new credit in your name. All North Carolinians can get security freezes for free online. For more details on how to apply online, visit www.ncdoj.gov.

Identity theft victims who provide a copy of a police report and seniors can also freeze their credit for free by mail or phone.

- Provide your full name, past home addresses, SSN, birth date, and two proofs of residence (examples: copy of driver's license, utility bill, insurance statement, bank statement) if applying by certified mail.
- A sample letter is available at www.ncdoj.gov.
- To get a security freeze by phone, contact the three major credit bureaus at the numbers below each address:

Equifax Security Freeze

PO Box 105788
Atlanta, GA 30348
1-800-685-1111

Experian Security Freeze

PO Box 9554
Allen, TX 75013
1-866-997-0418

TransUnion Security Freeze

PO Box 6790
Fullerton, CA 92834
1-888-909-8872

*Innovis is not a nationwide credit bureau but does permit security freezes for a \$10 fee by following the same instructions and mailing the information to P.O. Box 725, Columbus, Ohio 43216.

For detailed instructions about the security freeze, see our webpage about free security freezes at www.ncdoj.gov.

Step 4: Monitor Your Credit Report

Continue to review your credit reports every few months. Your private information may not be used immediately so watch over your file regularly. You can request a free credit report annually by calling 1-877-322-8228 or going online at www.annualcreditreport.com.

Notifying Law Enforcement

Most law enforcement will not issue you a police report until your private information is actually used. If you have any suspicion that your private information is being used, contact local law enforcement immediately. Filing a police report triggers helpful protections under both federal and state law, such as an extended fraud alert and a free security freeze. A police report will be useful as you contact creditors to try to restore your credit. Request a copy of the police report and keep a copy in your files.

Consumer Protection in North Carolina

Automobile Purchases, Consumer Scams and Identity Theft

Brian C. Tarr

North Carolina Department of Justice

In 1969, the North Carolina General Assembly enacted G.S. § 75-1.1. Since that time, the North Carolina Attorney General has held powers similar to the Federal Trade Commission when it comes to protecting consumers from Unfair and Deceptive Trade Practices.

The Consumer Protection Division exercises the statutory authority of the Attorney General (*NCGS §114-2*) in the areas of consumer protection, antitrust, utilities, and managed care. The Division protects consumers from fraud, deception, price fixing, price gouging, restraint of trade, commercial invasions of privacy, and other unfair and deceptive trade practices. It also represents the using and consuming public in matters before the North Carolina Public Utilities Commission. It contains the Managed Care Patient Assistance Program, which advises patients experiencing difficulties with their managed care companies. Finally, the Division has the Victims and Citizens Services Section (VCS). VCS aggressively develops and implements proactive strategies to address the current and developing issues facing the citizens of North Carolina. The Section creates awareness and active involvement in a variety of areas including, but not limited to:

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| ■ Consumer Protection | ■ Domestic Violence |
| ■ Child Abuse | ■ Elder Abuse |
| ■ Open Government | ■ Victim's Rights |
| ■ Juvenile Issues | ■ Hate Crimes Reporting |
| ■ Sexual Assault | ■ Internet Safety |
| ■ Methamphetamine | ■ ID Theft |

The primary responsibilities of the Consumer Protection Division are: (1) the handling of consumer complaints; (2) investigating and prosecuting violations of the antitrust and consumer protection laws; (3) monitoring, commenting on, and occasionally drafting legislation that impacts North Carolina consumers, both at the state and federal levels; (4) educating North Carolinians about their rights as consumers; and (5) representing the consuming public before the Utilities Commission.

The Division consists of 13 attorneys who specialize in different legal areas, as well as 34 other support staff, including investigators, paralegals and three receptionists. Since 2001, the Division handled an average of 17,000 written complaints per year. Approximately 100,000 telephone calls and a thousand email message are processed each year.

Complaint forms are available by calling (919) 716-6000 or (877) 566-7226 (toll free within N.C.). The forms can also be downloaded from www.ncdoj.com. The completed complaint forms should be mailed to:

North Carolina Department of Justice
Consumer Protection Division
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

Automobile Advertising

N.C.G.S. § 75-1.1 makes all unfair and deceptive advertisements a violation of North Carolina Law. Virtually all bad automobile advertisements will constitute a violation of N.C.G.S. § 75-1.1. In addition to unfair and deceptive trade practice violations, there are numerous statutes that address specific advertising practices.

- 1) N.C.G.S § 75-29. Unfair and deceptive trade names; use of term "wholesale" in advertising.
- 2) N.C.G.S § 75-32. Representation of winning a prize.
- 3) N.C.G.S § 75-33. Representation of eligibility to win a prize.
- 4) N.C.G.S § 75-34. Representation of being specially selected.
- 5) N.C.G.S § 75-35. Simulation of checks and invoices.

The North Carolina Lemon Law

The “Lemon Law” defines a consumer as anyone who (1) purchases a motor vehicle for a purpose other than resale; (2) leases a motor vehicle from a commercial lender, lessor, or from a manufacturer or dealer; or (3) is entitled by the terms of an express warranty to enforce the obligations of that warranty.

WHAT VEHICLES ARE COVERED?

The lemon law covers all *new* vehicles that are self-propelled and every vehicle designed to run on the highways that is pulled by a self-propelled vehicle. New cars, pickup trucks, and motorcycles are covered by the lemon law. Most vans are covered as well as any other motor vehicles that do not weigh more than 10,000 pounds. The lemon law does not cover used vehicles, recreational vehicles, mopeds, or house trailers.

WHEN IS A VEHICLE A LEMON?

The law provides that the manufacturer must either replace or buy back, at the consumer’s option, any seriously defective vehicle that cannot be repaired after a reasonable number of attempts. A serious defect is “any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer.” The defect must be in a part of the vehicle covered by the manufacturer’s express warranty.

The defects must have appeared within the express warranty period, which must last at least twelve months or twelve thousand miles. However, the consumer’s right to a replacement or refund is limited to defects that first occur no later than 24 months or 24,000 miles following original delivery of the vehicle, even if the warranty lasts longer.

The express warranty on a new motor vehicle stated in a number of miles begins from the date the vehicle is delivered to the consumer. For example, if a demonstrator with a 24,000 mile warranty has 4,000 miles on it when purchased by the consumer, the warranty will remain in effect until the vehicle has reached 28,000 miles.

WHAT IS A REASONABLE NUMBER OF ATTEMPTS?

The law presumes that “a reasonable number of attempts have been undertaken” if:

- (1) the same defect has been presented to the manufacturer or its authorized dealer for repair 4 or more times without success, or
- (2) if the vehicle has been out of service during or while awaiting repair of a defect or series of defects for a cumulative total of 20 or more business days during any 12 month period of the warranty, provided that the consumer has notified the manufacturer directly *in writing* of the existence of the defects or series of defects and has allowed the manufacturer a reasonable period, but not more than 15 calendar days, to fix them. *This requirement makes it vital that customers write the manufacturer directly about the vehicle’s problems early on if the dealer is having trouble getting the problems fixed.*

WHAT AM I ENTITLED TO IF MY VEHICLE IS A LEMON?

If the manufacturer has not fixed your vehicle after a reasonable number of attempts, a purchaser or lessee is entitled to choose a comparable, new replacement vehicle or a refund. The statute is not specific as to what is a comparable new replacement vehicle, though it would clearly appear to include an identical make and model.

The statute is very specific about what a consumer is entitled to if refund is selected. A new car purchaser is entitled to:

- (1) the full contract price including, but not limited to, charges for undercoating, dealer preparation and installed options, plus the non-refundable portions of extended warranties and service contracts;
- (2) all collateral charges including, but not limited to, sales tax, license and registration fees, and similar government charges;
- (3) all finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and;
- (4) any incidental damages and monetary consequential damages, less a reasonable allowance for the consumer’s use of the vehicle.

Incidental damages could include reasonable towing, car rental, and hotel expenses. Monetary consequential damages could include the value of lost use.

A lessee is entitled to a refund as set out in the statute at N.C.G.S § 20-351.3(b).

All refunds are reduced by a reasonable allowance for the use of your vehicle. The statute defines a reasonable allowance for use to be the amount directly attributable to use by the consumer before the date of the third attempt to repair the problem that is the subject of the claim, or the twentieth business day the vehicle is out of service, whichever occurs first. The reasonable allowance is presumed to be the purchase price of the vehicle multiplied by a fraction having as its denominator 120,000 miles and its numerator the number of miles on the vehicle attributed to the consumer. For example, if the purchase price of a vehicle was \$20,000 and it was driven 12,000 miles before the third repair attempt, or before the car was out of service 20 days, a consumer would be entitled to a refund of \$18,000. (\$20,000 minus the reasonable use amount of \$2,000).

$$\text{\$20,000} - \frac{\text{\$20,000} \times \text{12,000}}{\text{120,000}} = \text{\$18,000}$$

WHAT STEPS SHOULD CONSUMERS TAKE?

- (1) Consumers should read their warranty and owner's manual carefully, and follow all maintenance guidelines.
- (2) Take defective vehicles to an authorized dealer for repairs as soon as possible. Prepare and leave a detailed list describing each defect each time a vehicle is taken in for repair. Consumers should keep a copy of the list of defects.
- (3) Get repair orders for all warranty work. Ask for detailed repair orders and keep them.
- (4) Be sure the repair orders show how many days the vehicle was in the shop.
- (5) Keep a personal record of the number of days the vehicle is in the shop, dates and mileage.
- (6) Keep a record of all related expenses, such as towing charges and rental car fees, and save receipts.
- (7) After the third repair for the same defect, or if the vehicle has been out of service for 15 business days, notify the manufacturer and the finance company *in writing* and send it certified mail, return receipt requested. Ask the manufacturer to have the vehicle fixed. Send a copy of the letter to the dealer.
- (8) Keep copies of all correspondence.
- (9) Consumers should *not* return the vehicle or stop making payments.
- (10) Consider talking to an attorney.

WHAT ABOUT ARBITRATION?

Many auto manufacturers have established dispute resolution programs for customers with warranty problems. We recommend that consumers contact an attorney to assist with the arbitration process.

It is important to note that in addition to the North Carolina Lemon Law consumers may be able to under the Uniform Commercial Code or Magnuson Moss Warranty Act.

Used and “AS-IS” Vehicles

Used and “As-Is” vehicles do not fall under the protection of the North Carolina Lemon Laws. There are few remedies and protections for purchases of used and “As-Is” vehicles. When someone purchases a Used or “As-Is” vehicle, it is being purchased without any warranties, unless a warranty is explicitly stated, such as the manufacturer’s warranty remaining on a used car. A vehicle listed as “As-Is” is just that, without warranties.

Make sure to tell any clients to always take a used car to a reliable mechanic **BEFORE** purchasing the vehicle. Also, remind clients to get a CARFAX report.

One law that does help protect consumers purchasing used and “As-Is” vehicles is N.C.G.S § 20-71.4 - ***Failure to disclose damage to a vehicle shall be a misdemeanor.***

- If a used vehicle is no more than 5 years old, and it has been damaged so that repairs to the vehicle exceed 25% of its fair market value at the time of the collision, the transferor must disclose this information if they have knowledge of it.
- If the car was a flood vehicle, reconstructed vehicle or salvaged vehicle, and the transferor has knowledge, this information must be disclosed.
- Failure to disclose this information will result in civil liability under N.C.G.S. 20-348 and shall constitute a Class 2 misdemeanor.
- Any person found to be intentionally violating the disclosure requirement shall be liable for the sum of 3X the actual damages, or \$1,500, whichever is greater, as well as for costs and reasonable attorney’s fees.

Conditional Deliveries

Conditional deliveries are addressed in N.C.G.S § 20-75.1. A dealer is allowed to enter into a contract with a consumer, as well as turn over the vehicle to the consumer, on the condition that they are approved for financing. However, some things to watch out for:

- If dealer calls consumer and tells them they were not approved at the agreed upon interest rate, but they were approved at a higher rate, the consumer does not have to sign the purchase documents.
- Consumer has a right to return the vehicle and get back any down payment, and/or trade-in vehicle given in exchange for the newly purchased vehicle.
- If dealer has sold consumer's trade-in, dealer must either retrieve the trade-in, or put the consumer in as good a position as they were in at the time of the conditional sale.
 - It is unclear how much, if any, a consumer will have to pay for mileage accrued on the newly purchased vehicle if they decide to return it in lieu of signing purchase documents with a higher interest rate than previously agreed.

Automobile Repair

The Motor Vehicle Repair Act (N.C.G.S § 20-354) which went into effect January 1, 2000, provides certain protections for consumers in dealing with auto repair shops when the cost of the repairs exceeds \$350.

- The Act provides that the consumer should be given a written estimate and sign an authorization for the repair unless the car is dropped off by a third party or at a time when the repair shop is closed.
- At the time the repair is authorized the consumer has the right to request the used parts be returned or made available for examination, and the consumer must be notified of any storage charges that will accrue if the car is not picked up once the repair is completed.
- The repair shop may not exceed the amount authorized by more than ten percent without first obtaining authorization from the consumer.
- If diagnosis is first required, the repair shop must divulge the cost of the diagnosis and contact the consumer for authorization once an estimate for the repair has been determined.
- Businesses must provide the consumer with a detailed invoice for the repair, itemizing charges for labor and parts and identifying all parts used as either new, used, or reconditioned.
- Auto repair shops are required to post a sign advising consumers of these provisions.

Note: This act does not apply in cases where an insurance company is paying for the repairs. There are also exceptions for certain types of vehicles, such as agricultural equipment and vehicles with a GVWR exceeding 26,000 pounds.

Complaint Steps

- A consumer calls one of the specialists in the Consumer Protection division with a complaint about their auto.
- A file is opened with the specialist. The specialist will need as many, if not all, of the purchase documents available (Bill of Sale, Damage Disclosure, Odometer, Financing paperwork).
- The specialist will also request a C.L.U.E Report, which shows whether the automobile has ever had any insurance claims against it.
- If it appears that the consumer's complaint is valid, the specialist will forward the paperwork to the dealer and wait for a response.
- The specialist will attempt to mediate between the consumer and the dealership for an agreeable outcome.
- If no agreement can be reached, the specialist will tell the consumer to consult an attorney.

N.C.G.S Chapter 75 – Monopolies, Trusts and Consumer Protection

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

- (a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.
- (b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.
- (c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.
- (d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim.

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

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

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

- (b) The violation of any provision of this section shall be considered an unfair trade practice, as prohibited by [G.S. 75-1.1](#).
- (c) This section shall not apply to the sales of farm products, fertilizers, insecticides, pesticides or petroleum.

§ 75-32. Representation of winning a prize

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

(1) The recipient of the prize must have been selected by a method in which no more than ten percent (10%) of the names considered are selected as winners of any prize;

(2) The recipient of the prize must be given the prize without any obligation; and

(3) The prize must be delivered to the recipient at no expense to him, within 10 days of the representation.

The use of any language that has a tendency to lead a reasonable person to believe he has won a contest or anything of value, including but not limited to "congratulations," and "you are entitled to receive," shall be considered a representation of the type governed by this section.

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

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

(1) The actual retail value of each item or prize (the price at which substantial sales of the item were made in the area within the last 90 days, or if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf the contest or promotion is conducted);

(2) The actual number of each item or prize to be awarded;

(3) The odds of receiving each item or prize.

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

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

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

(d) Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

§ 75-34. Representation of being specially selected

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

(1) The selection process is designed to reach a particular type or particular types of person, firm or corporation;

(2) The selection process uses a source other than telephone directories, city directories, tax listings, voter registration records, purchased mailing lists, or similar common sources of names;

(3) No more than ten percent (10%) of those considered are selected.

The use of any language that has a tendency to lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected" and "you have been chosen," shall be considered a representation of the type governed by this selection [section].

§ 75-35. Simulation of checks and invoices

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

N.C.G.S Chapter 20 – Motor Vehicle Laws

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor

(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

(1) Transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year. Failure to disclose any of the information required under subsection (a) of this section that is within the knowledge of the transferor will also result in civil liability under [G.S. 20-348](#). The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker that is affixed to the doorjamb of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker to the doorjamb of the rebuilt vehicle. Violation of this subsection shall constitute a Class I felony, punishable by a fine of not less than five thousand dollars (\$ 5,000) for each offense.

(d) Violation of subsections (a) and (b) of this section shall constitute a Class 2 misdemeanor.

(e) The provisions of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

§ 20-75.1. Conditional delivery of motor vehicles

Notwithstanding [G.S. 20-52.1](#), [20-72](#), and [20-75](#), nothing contained in those sections prohibits a dealer from entering into a contract with any purchaser for the sale of a vehicle and delivering the vehicle to the purchaser under terms by which the dealer's obligation to execute the manufacturer's certificate of origin or the certificate of title is conditioned on the purchaser obtaining financing for the purchase of the vehicle. Liability, collision, and comprehensive insurance on a vehicle sold and delivered conditioned on the purchaser obtaining financing for the purchase of the vehicle shall be covered by the dealer's insurance policy until such financing is finally approved and execution of the manufacturer's certificate of origin or execution of the certificate of title. Upon final approval and execution of the manufacturer's certificate of origin or the certificate of title, and upon the purchaser having liability insurance on another vehicle, the delivered vehicle shall be covered by the purchaser's insurance policy beginning at the time of final financial approval and execution of the manufacturer's certificate of origin or the certificate of title. The dealer shall notify the insurance agency servicing the purchaser's insurance policy or the purchaser's insurer of the purchase on the day of, or if the insurance agency or insurer is not open for business, on the next business day following approval of the purchaser's financing and execution of the manufacturer's certificate of origin or the certificate of title. This subsection is in addition to any other provisions of law or insurance policies and does not repeal or supersede those provisions.

§ 20-348. Private civil action

(a) Any person who, with intent to defraud, violates any requirement imposed under this Article shall be liable in an amount equal to the sum of:

(1) Three times the amount of actual damages sustained or one thousand five hundred dollars (\$ 1,500), whichever is the greater; and

(2) In the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section may be brought in any court of the trial division of the General Court of Justice of the State of North Carolina within four years from the date on which the liability arises.

§ 20-351. Purpose

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

§ 20-351.1. Definitions

As used in this Article:

(1) "Consumer" means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.

(3) "Motor vehicle" includes a motor vehicle as defined in [G.S. 20-4.01](#) that is sold or leased in this State, but does not include "house trailer" as defined in [G.S. 20-4.01](#) or any motor vehicle that weighs more than 10,000 pounds.

(4) "New motor vehicle" means a motor vehicle for which a certificate of origin, as required by [G.S. 20-52.1](#) or a similar requirement in another state, has never been supplied to a consumer, or which a manufacturer, its agent, or its authorized dealer states in writing is being sold as a new motor vehicle.

§ 20-351.2. Require repairs; when mileage warranty begins to accrue

(a) Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period.

(b) Any express warranty for a new motor vehicle expressed in terms of a certain number of miles shall begin to accrue from the mileage on the odometer at the date of original delivery to the consumer.

§ 20-351.3. Replacement or refund; disclosure requirement

(a) When the consumer is the purchaser or a person entitled by the terms of the express warranty to enforce the obligations of the warranty, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following:

(1) The full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and service contracts;

(2) All collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

(3) All finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and

(4) Any incidental damages and monetary consequential damages.

(b) When consumer is a lessee, if the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund the following:

(1) To the consumer:

a. All sums previously paid by the consumer under the terms of the lease;

b. All sums previously paid by the consumer in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and

c. Any incidental and monetary consequential damages.

(2) To the lessor, a full refund of the lease price, plus an additional amount equal to five percent (5%) of the lease price, less eighty-five percent (85%) of the amount actually paid by the consumer to the lessor pursuant to the lease. The lease price means the actual purchase cost of the vehicle to the lessor.

In the case of a refund, the leased vehicle shall be returned to the manufacturer and the consumer's written lease shall be terminated by the lessor without any penalty to the consumer. The lessor shall transfer title of the motor vehicle to the manufacturer as necessary to effectuate the consumer's rights pursuant to this Article, whether the consumer chooses vehicle replacement or refund.

(c) Refunds shall be made to the consumer, lessor, and any lienholders as their interests may appear. The refund to the consumer shall be reduced by a reasonable allowance for the consumer's use of the vehicle. A reasonable allowance for use is calculated from the number of miles used by the consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the consumer is multiplied by the purchase price of the vehicle or the lessor's actual lease price, and divided by 120,000.

(d) If a manufacturer, its agent, or its authorized dealer resells a motor vehicle that was returned pursuant to this Article or any other State's applicable law, regardless of whether there was any judicial determination that the motor vehicle had any defect or that it failed to conform to all express warranties, the manufacturer, its agent, or its authorized dealer shall disclose to the subsequent purchaser prior to the sale:

(1) That the motor vehicle was returned pursuant to this Article or pursuant to the applicable law of any

other State; and

(2) The defect or condition or series of defects or conditions which substantially impaired the value of the motor vehicle to the consumer.

Any subsequent purchaser who purchases the motor vehicle for resale with notice of the return, shall make the required disclosures to any person to whom he resells the motor vehicle.

§ 20-351.4. Affirmative defenses

It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle.

§ 20-351.5. Presumption

(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

(1) The same nonconformity has been presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or

(2) The vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the written notification may be sent. Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

(b) The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this section.

(c) The term of an express warranty, the one-year period, and the 20-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster.

§ 20-351.6. Civil action by the Attorney General

Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General.

§ 20-351.7. Civil action by the consumer

A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, [15 USC § 2301](#) et seq., and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer.

§ 20-351.8. Remedies

In any action brought under this Article, the court may grant as relief:

- (1) A permanent or temporary injunction or other equitable relief as the court deems just;
- (2) Monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with [G.S. 20-351.2](#) or [G.S. 20-351.3](#). The jury may consider as damages all items listed for refund under [G.S. 20-351.3](#);
- (3) A reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:
 - a. The manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or
 - b. The party instituting the action knew, or should have known, the action was frivolous and malicious.

§ 20-351.9. Dealership liability

No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially inconsistent with the manufacturers' instructions. This Article does not create any cause of action by a consumer against an authorized dealer.

§ 20-354. Short title

This act shall be known and may be cited as the "North Carolina Motor Vehicle Repair Act."

§ 20-354.1. Scope and application

This act shall apply to all motor vehicle repair shops in North Carolina, except:

- (1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.
- (2) Any person who engages solely in the repair of any of the following:
 - a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that

person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars (\$ 350.00).

(6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.

(7) When a third party has waived in writing the right to receive written estimates from the motor vehicle repair shop; the third party indicates to the motor vehicle repair shop that the repairs will be paid for by the third party under an insurance policy, service contract, mechanical breakdown contract, or manufacturer's warranty; and the third party further indicates that the customer's share of the cost of repairs, if any, will not exceed three hundred fifty dollars (\$ 350.00).

§ 20-354.2. Definitions

As used in this act:

(1) "Customer" means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) "Motor vehicle repair" means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, shop supply fees, hazardous material disposal fees incident to a repair, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.

b. Motor vehicle and recreational vehicle dealers.

c. Garages.

- d. Service stations.
- e. Self-employed individuals.
- f. Truck stops.
- g. Paint and body shops.
- h. Brake, muffler, or transmission shops.
- i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

§ 20-354.3. Written motor vehicle repair estimate and disclosure statement required

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$ 350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. In determining under this section whether the cost of the repair work exceeds three hundred fifty dollars (\$ 350.00), the cost of the repair work shall consist of the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, if any, and shall include any taxes, any other repair shop supplies or overhead, and any other extra services that are incidental to the repair work. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open, or if the motor vehicle repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after the diagnostic work has been completed, or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by [G.S. 20-354.5\(a\)](#).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

§ 20-354.4. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited

(a) Before proceeding with preparing an estimate, the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It is a violation of this Article for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article.

§ 20-354.5. Notification of charges in excess of repair estimate; prohibited charges; refusal to return vehicle prohibited; inspection of parts

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work, and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic work has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It is a violation of this Article for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It is a violation of this Article for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and

any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her. A motor vehicle repair shop may discard parts removed from a customer's vehicle or sell them and retain the proceeds for the shop's own account if the customer fails to take possession of the parts at the shop within two business days after taking delivery of the repaired vehicle.

§ 20-354.6. Invoice required of motor vehicle repair shop

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs of all labor, parts, and merchandise supplied. No itemized description is required to be provided to the customer for labor, parts, and merchandise supplied when a third party has indicated to the motor vehicle repair shop that the repairs will be paid for under a service contract, under a mechanical breakdown contract, or under a manufacturer's warranty, without charge to the customer.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

§ 20-354.7. Required disclosure; signs; notice to customers

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars (\$ 350.00).

(2) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.' 20-354.6.

§ 20-354.8. Prohibited acts and practices

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.

(6) Fraudulently misuse any customer's credit card.

(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.

(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.

(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.

(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.

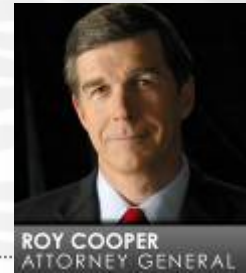
(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.

(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article.

§ 20-354.9. Remedies

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. A violation of this Article is not punishable as a crime; however, this Article does not limit the rights or remedies which are otherwise available to a consumer under any other law.



Identity Theft Protect Yourself

GET FREE SECURITY FREEZES

A security freeze stops credit reporting agencies from releasing any information about you to new creditors without your approval, which can stop identity thieves from getting new credit in your name.

- All North Carolinians can get security freezes for free online. For more details, visit www.ncdoj.gov.
- Identity theft victims and seniors can also freeze their credit for free by mail or phone.
- Provide your full name, past home addresses, SSN, birth date, and two proofs of residence.
- To get a security freeze by mail or phone, contact the three major credit bureaus:

Equifax Security Freeze

PO Box 105788
Atlanta, GA 30348
1-800-685-1111

Experian Security Freeze

PO Box 9554
Allen, TX 75013
1-866-997-0418

TransUnion Security Freeze

PO Box 6790
Fullerton, CA 92834
1-888-909-8872

GET FREE YEARLY CREDIT REPORTS

- You are entitled to one free credit report from each of the three nationwide credit bureaus every year. To get your free reports, go to www.annualcreditreport.com or call 1-877-322-8228.
- To monitor your credit year round, ask for a free report from a different credit bureau every four months.

PROTECT YOUR SOCIAL SECURITY NUMBER

- Don't carry your Social Security card in your wallet.
- Give your Social Security Number (SSN) only when absolutely necessary.
- Ask why a SSN is needed, who will have access to it, and how it will be kept confidential.
- Don't print your SSN or driver's license number on your checks.

DESTROY PRIVATE INFORMATION YOU DON'T NEED

- Shred outdated tax records, credit card applications, old financial statements, insurance forms, etc.
- Shred or clear hard drives from copiers, printers, and computers that might store private information.
- Clear the memory of old cell phones to ensure private information cannot be recovered.
- Learn about free shred-a-thons in your area. Email alerts@ncdoj.gov and provide your county or check the events calendar at www.ncdoj.gov.

MONITOR FINANCES

- Limit the number of credit cards you carry.
- Copy credit cards (front and back) and keep them in a safe place in case a card is lost or stolen.
- Watch billing cycles for missing bills and review monthly statements carefully. Contact creditors if you miss a bill or if there are charges you don't recognize.
- Use automatic deposit for payroll, social security, or other federal benefit checks. Sign up for automatic deposit of federal checks by calling *Go Direct* at 1-800-333-1795.
- Review your Social Security Earnings and Benefits Statement for errors in your yearly salary. To order a statement, call 1-800-772-1213.

Protect Your Information Online

SURFING AND SHOPPING

- Keep spyware and virus protection software up-to-date, and install a firewall.
- Secure your wireless router and use the built-in encryption mechanism.
- Only provide your SSN or financial account numbers online through a valid, secure website. Secure websites often have an icon in the shape of a lock in the lower right-hand corner. A secure website's address will change from http to https.
- Pay for online purchases by credit card when possible. Federal law limits your liability to \$50 maximum if your credit card number is lost or stolen. Paying by credit card can also give you a better chance of getting your money back if your order never arrives.
- When ordering goods online, ask about refund policies, print order confirmations and keep track of delivery dates. It is best to order from trusted businesses or businesses that you confirm are legitimate.
- When selling items online, watch out for real-looking fake checks and money orders. Be wary of overpayments and endorsed checks. Never agree to wire excess payments back to the buyer or to someone else.
- Read privacy policies and inquire how your personal information will be used.
- Use one low-limit credit card for all online purchases or request a one-time-use number from your credit card company each time you want to make a purchase online.

EMAIL

- Beware of emails that ask you to confirm your personal information or account number, or that ask you to transfer money, even if the email appears to come from a bank, Internet Service Provider, business, or charity. Forward the email to spam@uce.gov.
- Never send your SSN or financial account numbers by email unless using encryption software.
- Be careful when clicking on links provided inside an email, even from a trusted source.
- Emails that say you've won the lottery, promise you can make a lot of money, or plead for help transferring money are almost always scams.

PASSWORDS

- Avoid PINs or passwords such as your mother's maiden name, family members' birth dates, your SSN or phone number, or a series of consecutive numbers (i.e., 1, 2, 3, 4).
- Combinations of letters, numbers, and special characters make the strongest passwords.
- Don't carry your PINs in your wallet or purse.
- Don't share PINs or passwords, even with close friends or relatives.
- Choose a different PIN for each account.

Watch Over Your Mail

- Stop pre-approved credit card offers by calling 1-888-5-OPT-OUT or visiting www.optoutprescreen.com.
- Place outgoing mail into a locked mailbox such as a blue postal service box.
- Don't leave incoming mail sitting in an unlocked mailbox.
- Cut down on unwanted mail by contacting the Direct Marketing Association at www.dmachoice.org.

Beware of Scams and Frauds

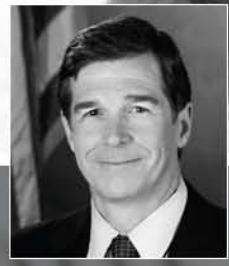
- Never give personal information to strangers who call you on the phone, even if they tell you they are a charity or government official.
- Sign up for the national Do Not Call registry at 1-888-382-1222 or www.donotcall.gov to cut down on unwanted calls from telemarketers.
- Check references for door-to-door sales, home repair offers and other unsolicited quotes or offers.
- Verify that charities, businesses and others who contact you are who they claim to be before you provide any personal information. If you think the request for information is legitimate, hang up and contact the company at a number you know is valid to verify the request.
- Sign up for alerts about new scams at alerts@ncdoj.gov or by visiting www.ncdoj.gov.

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SCAMS & FRAUD

ncdoj.gov PROTECT YOURSELF - DON'T BE A TARGET

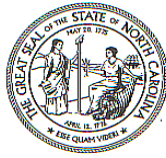


NC Attorney General Roy Cooper

STAY SMART AND STAY SAFE!

WORTH

ORIGINAL



ROY COOPER
ATTORNEY GENERAL

State of North Carolina
Department of Justice
9001 Mail Service Center
Raleigh, N.C. 27699-9001

Consumer Protection
(919) 716-6000
1-877-566-7226
Fax (919) 716-0048

SOME FRAUDS, SCAMS AND QUESTIONABLE BUSINESS PRACTICES CURRENTLY TARGETING OUR SENIORS

May 2010

North Carolina's senior citizens are a great resource for our state, and all of our lives have been enriched by their contributions. Our seniors have earned our respect and gratitude.

Unfortunately, criminals know that some seniors may be vulnerable to being conned or manipulated into surrendering their hard-earned cash. These scammers target our loved ones with a seemingly endless variety of tricks and questionable business practices. They try to take advantage of seniors' trusting nature, faltering memory, or financial status.

Some scams use seasonal or time-specific events, such as tax deadlines, the U.S. Census, or the holidays, to try to get confidential personal information and money from unsuspecting consumers. Natural disasters like the recent earthquakes also attract scammers, who heartlessly capitalize on the wave of sympathy that follows such an event by setting up bogus charities.

This document lists many of the scamming techniques being used against our seniors. Please use this information to educate yourself and your loved ones about these threats to financial security and peace of mind. And remember, there are some basic rules that can help protect any consumer, young or old:

- * **Protect your numbers...** never give out your Social Security number, credit card or bank account number to a person who contacts you by phone or email.
- * **Don't pay money up front** in order to get a loan, collect a prize, or for debt settlement, credit repair or foreclosure help. It's illegal to require such a payment. (And if someone says you've won a lottery or sweepstakes that you don't recall entering, they're trying to scam you!)
- * **Be wary of door-to-door contractors** and others offering home repair services.
- * **Avoid get-rich-quick schemes.** Beware of offers that sound too good to be true, or promise huge rewards with little or no risk.

To get more consumer tips and find out about the latest scams, visit our website at www.ncdoj.gov. You can also sign up online to get email alerts from us on fraud and other public safety issues.

Attorney General Roy Cooper

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I. TELEPHONE FRAUD

INTERNATIONAL LOTTERIES

Callers claim they will enroll you in the best overseas lottery opportunity each week. They say “For your convenience, the cost of this service will be charged to your credit card or checking account.” Although the scammer will pay out small sums in “winnings” from time to time to keep you interested, the typical victims is charged \$10 to \$100 a week for months. Occasionally, the scammers may offer a special opportunity on a “sure bet” lottery package for “only” \$5,000 – 10,000. These scammers are not enrolling you in any lotteries. (See also, “Counterfeit Checks from Phony Lottery and Sweepstakes Companies,” page 7.)

CALIFORNIA SWEEPSTAKES

Callers advise that you have won a sweepstakes in California. They request your bank account numbers to ensure payment of California taxes on the award after you receive it. Your bank account is debited \$200 to \$400 the following day. Unauthorized debits may occur several more times during the following weeks. This fraud is often used against lower income seniors.

“GRANDMA/GRANDPA, IT’S ME!”

Very elderly citizens are being targeted by young callers claiming to be relatives. The young scammer begins the conversation with the exclamation, “Grandmother, it’s me! Don’t you know who this is?” If the targeted senior volunteers the name of a grandchild, the caller adopts that name and then pretends to be having an emergency (car trouble, arrested, etc.) and in need of assistance. The caller begs “please don’t tell my parents” because the predicament is embarrassing. He or she will send a friend to the elderly person’s home to pick up cash or a check to resolve the predicament. Losses in this scam can range from \$200 to \$2,000.

Sometimes the caller claims to have gotten into the predicament while traveling, and asks that money be wired to him or her overseas or in another state. Losses in this variation of the “Grandma/Grandpa, It’s me” scam can exceed \$5,000.

CREDIT CARD OR IDENTITY THEFT INSURANCE

Callers claim they can protect consumers from identity theft and from thieves who might steal credit card numbers using the Internet. They warn that thieves will run up hundreds of thousands of dollars in debts in your name, and you’ll be liable unless you purchase this “protection” for \$200-\$600. In fact, federal law already protects consumers from liability for such theft and for misuse of their credit card numbers.

GUARANTEED GOVERNMENT GRANTS

Callers tell consumers they appear to be qualified for a free, guaranteed government grant because of their age, their employment status or the area in which they live. The caller asks a few questions, such as, "Have you ever been delinquent on your taxes or been convicted of a felony?" When the consumer says "no" the caller tells the consumer he or she definitely will receive the grant. The caller then requests the consumer's bank account information "so that the grant money can be deposited." Instead of putting money in, the scammer withdraws money from the consumer's account for "processing fees." [Florida-based scammers often mail brochures about government grant programs. However, the consumer must still apply for the programs and there is no guarantee he or she will be awarded a grant. Scammers based overseas send nothing.]

RECOVERED ASSETS

Scammers mail postcards informing recipients that money or property in their names has been located. Recipients are urged to call a toll-free number for further details. In many instances the number connects callers to an overseas call center used by scammers. Those who call are told that they need to provide financial information, including checking account number, social security number and mother's maiden name in order to have the money or property released. Consumers who provide the information have their checking accounts electronically debited, sometimes repeatedly. Even worse, their financial information is used to commit identity theft.

MEDICARE DISCOUNT DRUG CARDS

Seniors are called and offered Medicare drug discount cards with tremendous benefits. Then they are asked to give their banking account numbers so their accounts can be debited to pay for the discounted card. Consumers who provide the information receive a card that is not honored by pharmacies in their community, or they receive nothing at all. Meanwhile, the scammers withdraw funds from their victims' checking account for items or services that have not been ordered.

PUBLIC HEALTH DEPARTMENT – HEALTH CARE VOUCHER CALLS

Callers identify themselves as state or local public health officials. These callers, who are often persistent and aggressive, contact low income citizens claiming that they can provide special health care vouchers. They request Social Security numbers and personal financial information, including bank account numbers. They debit the bank accounts of those who comply. Note: Those who refuse to give their information are often subjected to abusive comments and repeated calls.

PHONY BANK SECURITY OFFICER

As a follow-up to the two preceding scams, the fraud artists call back. They claim to be with the consumers' bank, and mention the fraudulent charges made against the consumers' bank accounts during the earlier scams (which they or their associates perpetrated). After discussing the charges for a few minutes, the fraud artists request the consumers' bank account numbers "in order to return the improperly debited funds." They tape record the consumers' recitations of these numbers, and then use the recordings to make additional electronic debits to the consumers' bank accounts. Debits are usually in the \$200 to \$400 range.

COUNTERFEIT CHECKS FROM PHONY LOTTERY & SWEEPSTAKES COMPANIES

International Lottery scammers (see page 5) mail checks to consumers in amounts ranging from \$2,000 to \$5,000 dollars. Then they call from overseas to say that the consumers have won a million dollar lottery or sweepstakes prize in Canada, Australia or some other country: the check was sent "to help you cover certain administrative fees, taxes or insurance on the award, since U.S. law prohibits requiring contest winners to pay anything to collect a prize." The consumer is instructed to deposit the check, and then send the same amount of money to cover the fees, insurance and taxes on the award. Ultimately the consumer's bank determines that the check is counterfeit, but the consumer has already wired the requested funds to the overseas scammers.

A common variation of this scam involves a counterfeit check and a cover letter announcing that the recipient has won an award. The letter provides a toll-free number and invites the recipient to call for further instructions. When the recipient calls, the scam proceeds as indicated above: the "winner" is instructed to deposit the check they have received and then send funds in that same amount to cover fees, insurance and taxes on their "award." But the check that the consumer received is counterfeit and the money that is sent by the consumer is lost.

"COLLECT CALL FROM THE PRIZE PATROL!" –LOUIS WHITEHEAD, SWEEPSTAKES OFFICIAL

A well-spoken fraud artist calls consumers, claiming to represent the company whose sweepstakes commercials are currently airing on TV. He announces that you are the winner but he says that the "prize patrol" will drive past your house and award the prize to someone else if you do not wire him funds (usually \$600 to \$6,000) to cover taxes on the prize. The caller uses the name Louis Whitehead, and calls are made from pay phones in or near the Atlanta Airport. Calls from Mr. Whitehead often begin, "Collect Call from the Prize Patrol."

PHONY OFFICIAL FROM A GOVERNMENT AGENCY

Scammers call claiming to be with a federal agency. Callers claiming to be with the Federal Trade Commission state that you have won millions of dollars in a major international sweepstakes. The fraud artists then tell you that you must wire \$2,000 or more to a Lloyd's of London office overseas in order to insure the award as it is being delivered.

Callers may also claim to be with the Social Security Administration. These scammers report that there is a problem with your Social Security records, or claim that you are entitled to an additional Medicare or Social Security benefit. In either case they will ask for the consumer's personal banking information, with the goal of withdrawing funds from the account.

Other callers claim to be voter registration officials. These phony officials warn that your voter registration records are not in order and need to be corrected prior to the next election. Using this pretext, they ask for personal information including Social Security numbers.

TERRORISM AND MONEY LAUNDERING FEES

A follow-up caller tries to steal more money from people who've just been scammed. Victims of scams who have sent money overseas often receive follow-up calls from the scammers. The second time around, the scammers pretend to be FBI, IRS or Department of Homeland Security agents. They claim that the entire prize award has been impounded and will be forfeited to the US Treasury unless the funds are traced and audited to ensure that they do not involve organized crime or terrorism. The consumer is told that they must pay for the trace and audit by wiring several thousand dollars.

BRITISH BOND SCAM

The scammer calls to say that you have won a life-interest in a bond issued by a British bank. Monthly income generated by the bond will come to \$2,000 to \$3,000, and the bond will be registered in Canada so that it cannot be taxed in the US. You must wire \$2,500 to have it registered in your name.

MONTREAL BARRISTER/CANADIAN LOTTERY SCAM

The caller claims to be an official with the Canadian Lottery, or a barrister (attorney) representing the lottery. He says you have won second place prize in a large sweepstakes, \$300,000 to \$500,000, and must forward \$30,000 to cover Canadian taxes before the prize can be released from the company's escrow or attorney trust account. If you pay, you will receive a second call informing you that you have actually won first place and need to send even more money.

PHONY CUSTOMS OFFICER

The caller claims your sweepstakes prize is in his customs warehouse. You must wire \$10,000 to \$30,000 to a “bonded customs agent” to cover customs duties before the prize can be released. [An example of such a call can be heard by dialing the Attorney General’s Automated Information Line, 919-716-6001, and selecting option #3.]

PHONY IRS AGENT

The same people who run the Phony Customs Officer scam will call again after receiving your payment. This time they’ll identify themselves as IRS agents in a nearby city, and they’ll claim that U.S. income taxes are owed on your prize. They will have to send it back if the taxes aren’t paid. Caller ID information on your telephone may indicate that they are calling from the IRS. But the scammers are manipulating Voice Over Internet Protocol (VOIP) calling technologies to generate the Caller ID number. Actually, they are criminals calling from overseas. They ask you to wire them several thousand dollars to pay the taxes.

“YOUR PHONE/POWER/GAS SERVICE WILL BE DISCONNECTED”

Scammers posing as representatives of utility companies call you. They claim that your payments are past-due and that service will be disconnected if you do not pay immediately. They request and obtain your bank account number or your credit card number, then make withdrawals from your account. In some variations of this scam, they ask you to wire money to a distant city in order to avoid interruption of service.

SURPRISE PRIZE CHECK SCAM

Unannounced and via overnight courier, you receive a check for \$500,000. It is drawn on the account of a major corporation and it comes with a cover letter stating you have won a major prize in an overseas contest. The letter instructs you to deposit the check with your bank immediately. Your bank may indicate that the check appears to be drawn on a valid account. Later that day, you receive a call informing you that a mistake has been made. “Taxes were not deducted from the check, and a stop payment order will have to be placed if you do not wire funds (usually \$10,000 to \$30,000) immediately.” Days after you wire the money out of the country, your bank informs you that the \$500,000 check was counterfeit.

GO BACK TO WESTERN UNION/MONEYGRAM

As a follow-up to many of the scams listed previously, the caller will claim that your money was never received: “Send another payment. The company will issue a refund for the first attempt when you show them the letter I am sending to you.” Another variation involves a follow-up call in which the scammer, who picked up your money the day before, claims, “The prize you paid taxes on yesterday was a second place prize, but we now realize that you came in first place! Please send us a second wire payment in the same amount as yesterday to cover the taxes on the much larger first place award.”

FUNDS RECOVERY SCAM

Another follow-up scam: the caller says your earlier payments and your winnings have been seized from a crooked sweepstakes company pursuant to a court order. He claims to be an attorney or court appointed receiver, and says you can still receive your winnings if you pay taxes again, and/or his retainer fee, usually \$10,000 to \$30,000.

WAL-MART STORE VOUCHER SCAM

Scammers are now claiming that they represent Wal-Mart or some other major retailer. "You have been selected to receive special store vouchers worth \$495 as part of a nationwide promotion." The scammers request your bank account number so they can withdraw \$4.95 from your checking account to cover the costs of delivering the voucher. If you provide the number, your checking account will be electronically debited in the amount of \$495, sometimes more than once. No voucher is ever delivered.

ABUSIVE BILL COLLECTOR

Phony bill collectors try to wear down your resistance. Persons posing as bill collectors call on the telephone, pretending that you owe a large debt. They threaten to file embarrassing lawsuits against you, or to prosecute you criminally. They may threaten to come to your home or place of employment, or even threaten physical harm. Their goal is to harass you until you relent and pay the amount demanded.

PHONY TIMESHARE RESELLER

Callers claim to have a buyer for your timeshare. Scammers often target people who own an interest in a time share resort property, telling the owners that they have located someone who wants to "buy them out." The scammers may even guarantee that the sale will go through. After obtaining authorization to debit the owner's credit card or bank account for hundreds or perhaps thousands of dollars, they send a contract. But the fine print says the time share will merely be advertised for sale, and the owner's interest in the timeshare is not sold.

DEATH THREATS

A follow-up caller threatens victims who have already been scammed. If an elderly victim refuses to send any more money, the scammers threaten to kill the victim, or harm them or one of their loved ones. Typically the callers are based overseas and have no intention or ability to physically harm the victim.

II. HOME REPAIR FRAUD TARGETING THE VERY ELDERLY

FALLING CHIMNEY

A contractor knocks on your door and says your chimney is separating from your house. He claims it might fall on the neighbor's house or yard, and he says he can secure it. He and his crew simply place a useless metal strap around your perfectly sound chimney. They charge \$800 to \$2,000.

“MY LEG WENT THROUGH YOUR ROOF, SIR!”

A man offers to clean your gutters for a small fee. Afterwards, he shows you pieces of rotten wood and claims your roof is rotting: “my leg went completely through it.” He says your entire roof needs replacing and he can have a crew there in minutes to do the work. The crew comes and lays new shingles over your perfectly good roof. They demand \$7,000 to \$8,000.

MEALY WORM SCAM

Adding a scam on top of a scam, the same roof repair crew may show you a bag full of worms. They claim that the worms are consuming the wood in your attic, and offer to kill the pests by spraying your attic. In fact the worms are “mealy worms” commonly used to feed small pets. They spray your attic with a mixture of water, kerosene and other smelly substances. Usual charge: \$1,000 to \$3,000.

ATTIC BRACING SCAM

In a different follow-up scam, the crew says repairs to the roof have weakened the rafters in the attic. They offer to brace them up so the roof will not collapse. They hammer two-by-four studs between the rafters and the floor of the attic, and then charge \$100 for each of these “braces.” The braces, often called “stiff knees,” are unnecessary and can actually cause damage to the ceilings of rooms below during periods of high wind or heavy snow.

TOILET BOWL SCAM

A member of a work crew asks permission to use your bathroom. He pours water on the floor around the base of the toilet, and then says your toilet has been leaking and might have rotted the wooden sub-floor. After inspecting the crawl space he informs you that the bathroom floor is rotten and dangerous, and must be replaced. After hanging out in the crawl space and pretending to fix the floor, they charge you several thousand dollars.

FLOOR JACK SCAM

The home repair crew chief points out that your living room floor vibrates when his largest crewman walks across it. He asks to inspect the floor from below, and emerges to announce that the floor may collapse unless it is braced with heavy jacks. The crew installs several inexpensive and unnecessary metal “screw jacks” from a hardware store, and charges you \$500 for each jack installed.

INSPECTOR SCAM

After you've been scammed one or more times, the scammers may send someone to your home pretending to be the quality control inspector. The inspector claims all of the previous repairs were performed incorrectly. He says they need to be re-done before the local building inspector finds out and condemns the home. The "inspector" promises to help you sue the scammers and recoup your money later. He secures permission and funds to do the above "repairs" again.

DRIVEWAY PAVING SCAM

This scam is perpetrated by roving contractors who strike a victim once and move on quickly. They approach an elderly homeowner and say that they have been paving another driveway in the neighborhood. They claim to have some leftover paving material and offer an excellent deal on paving the elderly homeowner's driveway. The driveway is then coated with an oily substance or a very thin layer of asphalt. The new surface of the driveway crumbles or washes away after a few days or weeks. The payment typically demanded ranges from \$3,000 to \$6,000.

YOU HAVEN'T PAID US!"

Some of the same fraud artists who use the driveway paving scam will also sometimes confront very elderly homeowners and angrily demand several thousand dollars for work they supposedly performed several months earlier. They may threaten these vulnerable seniors with lawsuits, property liens or worse. Money is obtained for work that never was performed. If the fraud artist perceives that the elderly home owner may have short-term memory problems, they might use a softer approach: "Sir, don't you remember telling me to come back today to get paid?"

"YOUR HOUSE DOES NOT MEET CODE"

Home repair con men often tell seniors living in older homes that features of their homes do not meet current building codes. They recommend expensive remodeling so the house will not "fail." In fact, older homes are not required to meet contemporary construction codes and construction code officials do not make unsolicited visits to inspect existing, owner-occupied homes to determine whether they meet current construction code standards.

FROZEN PIPES SCAM

During winter months, fraud artists sometimes approach elderly homeowners and falsely report that the pipes under their homes appear to be frozen. The fraud artists claim there will be flooding and structural damage to the home if the pipes are not repaired before they thaw. They pretend to repair the pipes under the house and then collect \$1,000 or more.

III. PREDATORY MORTGAGE LENDING PRACTICES

Mortgage lenders offer loans to elderly home owners whose original mortgage loans have been paid off. These loans may be touted as a way to consolidate other debts, help grandchildren go to college, or to pay for home improvements, etc. However, unscrupulous lenders may take advantage of elderly homeowners by arranging a loan with high interest rates. They may also include expensive fees for things like credit life insurance or disability insurance, brokerage commissions, “points” and origination costs. These are financed as part of the loan so the costs may not be readily apparent to the homeowner.

Loan terms may also include a “balloon payment” so that after just a few years, the entire amount of the mortgage loan is due. Then the lender may offer to refinance the mortgage loan claiming this will make payments easier for the elderly homeowners, but the excessive fees will be charged and financed again. This cycle may take place several times, and fees for insurance on the earlier 30-year loans may not be refunded or rebated.

The end result is that homeowners can quickly lose most of the equity in their homes (a process known as “equity stripping”) while continuing to face high payments for what might have originally been a modest mortgage loan.

IV. OTHER FRAUDS AND SCAMS

IDENTITY THEFT

Identity theft is the fastest growing scam in the U.S. and has been the leading consumer complaint category of the Federal Trade Commission for the past several years. Identity thieves target seniors heavily, because many seniors have substantial savings, little debt, or have real estate holdings that are no longer subject to a mortgage.

Many of the scams and frauds listed in this document are tricks that are used to acquire credit and checking account numbers so that those accounts can be drained. Sometimes identity thieves take over a victim’s financial identity completely, opening new lines of credit or taking steps to sell off a senior’s holdings while pocketing the cash. In some cases seniors have learned of attempts to sell their homes, farms and automobiles out from under them. Some have found that mortgages have been placed on their homes and money disbursed to scammers who used their names.

To protect against identity theft, always check bills and account statements carefully for unusual charges and activities. Contact the bank or creditor immediately if you notice something suspicious. Check your credit report annually. Each of the three national credit reporting services must provide you with a free copy of your credit report once per year upon request.

If you have been victimized by this crime, contact the North Carolina Attorney General's Office (919-716-6000 or toll-free in NC: 1-877-566-7226) or the Federal Trade Commission (1-877-ID THEFT) for an Identity Theft Victim Kit. Be sure to file a police report with your local law enforcement agency if you are a victim, as this will help when you contact the credit reporting services and try to clean up your credit file. For more information about identity theft, visit www.noscamnc.gov.

SWEEPSTAKES MAILINGS

Sweepstakes companies have earned a reputation for misleading the public. Many have been accused of creating the false impression that participants must purchase their products in order to qualify for a prize. Some also have been accused of creating the impression that making more purchases will increase a participant's chances of winning. And some have been accused of targeting individual seniors, giving them the impression that the contest is down to them and only a few other contestants.

These false impressions have been reinforced by skillfully worded mailings and expensive TV ad campaigns showing happy winners. As a result, many elderly participants have spent thousands of dollars, repeatedly purchasing the same products or magazine subscriptions in hopes of increasing their chances of winning the multi-million dollar prize. But by law, sweepstakes cannot require you to make a purchase in order to enter, and making a purchase cannot increase your chances of winning.

HEALTH-RELATED FRAUDS AND SCAMS

Seniors have been targeted with countless misrepresentations about miracle cures and treatments for age spots, arthritis, hearing loss, obesity, vision problems and other physical maladies. The scammers offer money-back guarantees to get consumers to suspend their skepticism. But the guarantees usually require the customer try the product or service for at least four months, and the companies often disappear during this period. Consumers who pay by credit card can sometimes get a refund from the credit card company if they are dissatisfied with a purchase, but most companies will not grant such a refund after 4 months.

OVERSEAS MONEY TRANSFERS ("NIGERIAN SCAMS")

Via fax, email, or regular mail, you receive an impassioned plea from an individual purporting to be living in Nigeria, or another third world country. They may claim to be a former high government official, or perhaps a relative of a former dictator. In any case, they are seeking to transfer several million dollars into the U.S., and they offer you a 25% commission to use your U.S. bank account to make the transfer. This is a ploy to acquire the number of your bank account and drain it of funds. They request absolute secrecy, and suggest the funds may not have been obtained legitimately. The fraud artists may also ask you for several thousand dollars, supposedly to bribe a foreign government official who is blocking transfer of the millions into your account. In recent variations of this old scam, the fax, email or letter will claim that the smuggled money is intended for orphans or a religious ministry.

“YOUR DISTANT RELATIVE HAS DIED IN OUR COUNTRY”

You receive a message that a distant relative of yours died in a foreign country years ago leaving an estate worth millions of dollars. In this variation of the overseas money transfer scam, the scammers claim that you are the sole heir and that the estate needs to be wrapped up quickly or it will be forfeited to the government. You are asked to wire funds to help pay for some aspect of the transaction (taxes, insurance, estate administration costs, money to bribe crooked officials, etc.). After each payment the scammers come up with another reason for you to send more money.

CHECK PROCESSING & CHECK OVERPAYMENT SCAMS

Scammers write, call, or email you claiming that they have received a check for several thousand dollars that they cannot cash in their own country. In this variation of the overseas money transfer scam and the sweepstakes scams, they ask for your help in cashing the check. They endorse it and send it to you, asking you to deposit it and keep 20 percent while sending them the other 80 percent. The check appears to be from a U.S. car dealership, computer company or some other legitimate business, and it will bear a valid account number for that business. Days after you wire the 80 percent overseas, your bank reports that the check is counterfeit and will not be honored.

SECRET SHOPPER SCAM

You are invited to become a “secret shopper,” someone who receives compensation for doing business with a company and evaluating its performance. Fraud artists then mail you detailed instructions on how to test the Western Union or MoneyGram wire transfer system, along with a check for several thousand dollars. You are told to deposit the check into your account, wire 90 percent of the funds to a person located overseas, and then immediately fill out an on-line questionnaire about your experience. Days after you deposited the check and wired the funds overseas, your bank informs you that the check was counterfeit and that your account has been debited in the amount of the check

DISTRACTION THEFTS

Thieves pretend to be government officials or utility company employees who will help seniors with low cost home renovation or energy savings projects. They ask to enter seniors' homes to take measurements. While measuring rooms and windows they pocket valuable items or look around for larger valuables such as antique furniture that can be stolen while the homeowner is away. Sometimes the thieves work in pairs. One will occupy the homeowner in a room while their partner steals items in other rooms.

PHONY POLICE DETECTIVES

In a variation on the distraction theft technique, scammers posing as police detectives knock on seniors' doors. They claim to be on the hunt for criminals or escaped prisoners and that the suspects had mentioned the senior's name and address to others who are now in custody. They ask permission to look around the house or apartment. While one "detective" distracts the senior, the other steals valuables.

WOMAN IN DISTRESS AT THE FRONT DOOR

Two women knock on the door of an elderly North Carolina homeowner. One says that the other is about to have a child or needs assistance of some kind. They ask to come inside and use the telephone. The women are female members of a roving home repair fraud group. While one is on the telephone pretending to call for help, the other, who pretends to be in distress, asks to use the bathroom. Instead of using the bathroom, she steals money, credit cards, jewelry and other small valuables. Then a male member of the group shows up at the curb and drives them away.

SWEETHEART SCAMS

Elderly widows and widowers are sometimes targeted because they may be emotionally vulnerable. Members of traveling fraud groups or other opportunistic individuals befriend the senior and eventually pretend to be in love with them. The short-term goal is to secure gifts and loans, but the ultimate goal is to secure control of the senior's estate or financial affairs and divert assets to themselves. The "sweetheart" may accomplish this by convincing the elderly target to grant them general power of attorney, or make them the primary beneficiaries of their will.

CLERGYMAN SCAMS AND OTHER SCAMS OF OPPORTUNITY

Authority figures sometimes capitalize on their status to victimize seniors. Some clergy members have been accused of exploiting the affections and religious sentiments of very elderly people in order to gain control over their finances. Some law enforcement officers have also been accused of misusing their positions of trust. Often these scams are designed to get the victim to grant the con artist a general power of attorney. Con artists look for signs of vulnerability, and then prey on it. A tree service man with no financial training recently obtained a northeastern North Carolina woman's property by convincing her he could manage it profitably.

PROMISSORY NOTE SCAMS

At seminars in local restaurants or hotels, promissory notes are marketed as investments. The notes are issued by obscure companies and purportedly offer interest rates much higher than the returns on bonds or other investments. The notes and the interest payments are said to be secured by an insurance policy. But the notes may be for a failing company, and the insurance policy may be worthless to investors.

UTILITY COMPANY CUT-OFF AGENT SCAM

North Carolina seniors have received visits from individuals who present themselves as utility company employees. The phony utility company agent claims that the water, gas or electric bill is past due and that they have been sent to disconnect service. Seniors are told they can prevent disconnection by paying their bill and late charges. The scammers will accept cash or a check. Seniors can also pay by providing their checking account or credit card number.

MEDICAL INSURANCE “GAP” POLICIES

Seniors whose medical bills are well covered are being signed up for unnecessary health insurance policies. Seniors who are already served by a combination of Medicare, Medicaid, retirement health plans or other insurance are sold policies that supposedly cover only items and charges not covered by the other policies. This “gap” insurance comes with several limitations, deductible and exclusions which make them of little value to the consumer. However, they result in large debits to the consumer’s bank accounts each month.

“FREE PRESCRIPTION MEDS”

Consumers receive letters and other messages telling them they can obtain “all their prescription medicines for free, guaranteed!” After paying a fee, they receive application forms for pharmaceutical companies’ free prescription drug assistance programs which they could have obtained at no cost. Admission into drug assistance programs is not automatic and consumers’ applications often are rejected.

WORK-AT-HOME SCAMS

Seniors and others struggling to make ends meet may fall prey to road signs, classified ads or mailings about working at home. Lured by promises of large earnings, they are encouraged to pay several hundred dollars to obtain necessary materials so they can get started. The “work” may be stuffing envelopes with mailings inviting others to make money at home. Or it might involve painting or assembling simple items and then returning them for approval and payment. Approval and payment are seldom granted.

TIMBER HARVESTING SCAMS

Older property owners in rural areas are being targeted by loggers who claim they will pay top dollar to harvest timber. They promise to leave the land cleared of debris and brush, but after cutting and removing the best timber they disappear without paying. Debris and brush from the operation is left behind and the ground is rutted and damaged by timber harvesting equipment. In a variation on this scam, the unscrupulous loggers deduct the supposed costs of clearing debris and re-grading the soil, leaving the property owner with a check for only a few hundred dollars.

“PHISHING” & “VISHING” SCAMS

A consumer receives an email that appears to be from their bank. Because of a problem with the bank’s computer or security system, the email says, the consumer needs to provide important account information immediately so that their checks can be processed and other personal banking business can be transacted. The e-mail may contain a link to a phony web page where the account information can be entered. If entered, it is then stolen and used by the scammers. This kind of scam is called “Phishing.”

An e-mail that appears to be from the consumer’s bank asks them to provide their account information via a toll-free number. This variation on the Phishing scam is called “Vishing.” The e-mail invites the consumer to call a toll-free number to provide their account information. The scammers set up automated “caller menus” where consumers can enter their personal bank account numbers and other financial information using their own telephones.

Whether a scam employs Phishing or Vishing, the results are the same: identity theft and unauthorized debits against the consumer’s bank accounts.

V. OTHER TROUBLESOME OR DECEPTIVE BUSINESS PRACTICES

UNAUTHORIZED CREDIT CARD CHARGES AND “ADD-ON’S”

Seniors and others discover unordered merchandise or services charged to their credit card accounts. This discovery comes after a face-to-face credit card transaction or a telephone purchase. The merchant or an affiliate charges the account separately for a “credit card protection” plan, a discount buying service, or a travel program. Often these purchases have been charged to the account with absolutely no authorization. In some instances the merchant or telemarketer will casually mention the extra service or product to the consumer while processing the transaction. However, charges for the additional product or service are added without getting the customer’s clear consent. Consumers should always dispute these charges promptly with their credit card company and the merchant.

“CERTIFIED SENIOR FINANCIAL ADVISOR” AND OTHER IMPRESSIVE TITLES

Some salespeople have official-sounding titles, to give the impression that they have been approved by a governing body or organization. Sellers of annuities, estate planning services and other products and services often adopt impressive titles such as “Licensed Senior Financial Consultant” or “Certified Estate Planning Advisor” in order to come across as more legitimate. The supposed licensing or certifying agencies often do not exist or are controlled by the marketers themselves.

ANNUITY SALES AND ESTATE PLANNING SEMINARS

While many estate planning seminars touted in newspaper ads and mailings are legitimate, others are not. Deceitful seminars often hide behind names that make them sound like non-profit organizations for seniors. In reality, the persons conducting the seminars may be insurance salesmen seeking to sell unneeded insurance policies, annuities or “trust” programs. Or they may work in the securities industry, pushing a certain kind of investment. However, their plan for your estate may result in huge commissions for them and expensive problems for you or your heirs in the future. Many seniors are told to liquidate their holdings and invest all of their money in long-term deferred annuities. These recommendations are made by salesmen who employ scare tactics about stock market uncertainties or lengthy probate proceedings. In most cases these annuities are inappropriate investments for people over 75 years of age.

PROFESSIONAL CHARITABLE SOLICITORS

Professional fundraisers can keep a significant percentage of the funds collected. Many legitimate charities and fraternal groups utilize professional fundraisers to raise money for their operations. The U.S. Supreme Court has declared that these professional solicitors do not have to tell you how much of your money they will keep unless you ask. Some telephone solicitors keep up to 90 percent of what they raise, so feel free to ask. If you are still unsure, ask them to send information about the charity and their fundraising operation.

SOUND-ALIKE CHARITIES AND LAW ENFORCEMENT GROUPS

Some questionable charities choose names that are similar to the names of well-known charities. They may adopt a name that sounds like an official law enforcement agency. Telephone solicitors like to use police-sounding names because they know people support law enforcement and may be intimidated by a call from someone who appears to be representing a police organization. Always check out such groups (and ask how much of your money will go to a professional solicitor) before contributing to them.

TIME-SHARE AND CAMPGROUND MEMBERSHIP SALES, LAND DEVELOPMENT SCHEMES

Marketers often try to convince seniors that purchasing their product will be a good investment to leave to their children and grandchildren. However, purchasers of time-shares, campground memberships and resort property shares may leave their children with something they do not want and cannot sell easily. The purchase may not appreciate in value and it could lead to years of expensive maintenance, and homeowner and membership dues. Consumers should always resist high-pressure sales tactics. Don't make a purchase immediately. Ask to take written material home for further review. If you intend to leave the property to your adult children, carefully review the materials with them.

EXPIRING AUTO WARRANTIES

Scammers want to sell you an extension of the warranty on your car, but their product can be very expensive and may not deliver what is promised. Four or five years after a vehicle is purchased, the buyer is contacted and informed that their existing warranty is about to expire and should be extended. This communication, which may come in the mail or by phone, is not from the car's manufacturer. The extended warranty service can be exceedingly expensive. The consumer's car dealer may refuse to submit claims under the extended warranty, and even if they do the consumer may receive little reimbursement for repairs.

The North Carolina Attorney General's Office can provide presentations about identity theft and consumer scams to groups of consumers. For more information contact the Victims and Citizens Services Section of the North Carolina Attorney General's Office at 919-716-6783 or email us at outreach@ncdoj.gov



STANDING UP. FIGHTING BACK.

Tips to Help Protect You from Frauds and Scams

Telemarketing Scams

- 1 Hang up on pushy telemarketers and join the **Do Not Call Registry** for free online at www.ncdoj.gov or call 1-888-382-1222 to keep most of them from bothering you again.
- 2 Never give out important numbers like your bank account, credit card or Social Security number to telemarketers who call you. Report those telemarketers to our office.
- 3 If a caller says they are with your bank, church or another organization and asks for financial information, get their number and call back to make sure they are who they say they are.

Sweepstakes Scams

- 1 Throw away unsolicited lottery or sweepstakes mailings that say that you're a winner. Foreign lotteries are illegal, and the checks they send you are fake, no matter how good they look.
- 2 Never send money for a free prize, loan or credit card. It's against the law to charge money in advance for a loan, and you shouldn't have to pay to get a credit card or to collect a legitimate prize.
- 3 Don't be pressured to buy something to enter a sweepstakes. You don't have to buy something to enter, and buying doesn't increase your chance to win.
- 4 Don't put bank account numbers or a Social Security Number on an entry form for a sweepstakes or any other type of contest.

Living Trust and Annuity Fraud

- 1 Never buy anything you don't understand.
- 2 Don't make a quick decision about investment offers or changing insurance policies. Ask an independent professional and read all forms completely.
- 3 When a loved one dies, don't be pressured into making major financial decisions or purchases right away.
- 4 Be wary if a salesperson says "it's a special opportunity but you have to keep it secret," or urges you to "act now" while using phrases like "limited offer," "risk free" or "tax-free offshore investments."
- 5 Before committing to a financial opportunity, consult with a trusted professional adviser, such as a lawyer or an accountant.
- 6 Remember, you can't get something for nothing.

Health Care Scams

- 1 Avoid products marketed as miracle cures, scientific breakthroughs or as having a secret ingredient.
- 2 Know that promotions that offer a free meal or lodging usually include a high-pressure sales pitch.
- 3 Don't sign up for any discount health or drug plan before checking with your doctor, pharmacist or the Attorney General's Office.
- 4 Be wary of health promotions that use personal testimonials by consumers or doctors claiming "amazing results." Avoid products that offer a "no-risk money-back guarantee."

Protect Yourself

Scammers try to scare or excite you to get what they want. Don't lower your guard, and don't fall for their tricks!

Never give out personal or account information to people you don't know and trust.

Home Construction and Repair Scams

- 1 When you need work done on your home, ask friends or co-workers for advice. Check references and compare written estimates before making a decision
- 2 Before hiring a contractor, get a written agreement that states clearly the exact costs, work to be performed and completion dates.
- 3 Make payments as work is completed. Don't pay for the entire job before work begins, and never make a final payment until work is complete.
- 4 Be wary of a contractor that contacts you looking for work, or who tries to rush you into agreeing to a job *he* claims needs to be done.
- 5 After a disaster of any kind, beware of scammers who come to your home posing as government officials or insurance adjusters. Contact your insurance company before you have any work done to your home.

For more information:

1-877-5-NO-SCAM (toll free) | www.ncdoj.gov