

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1317** Session of  
1995

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KASUNIC AND RHOADES, NOVEMBER 21, 1995

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SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
JUNE 10, 1996

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## AN ACT

1 Providing for registration requirements for telemarketers and  
2 for powers and duties of the Office of Attorney General.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Telemarketer  
7 Registration Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Consumer goods and services." Real or personal property or  
13 services used for personal, family or household purposes.

14 "Prize." Anything offered, or purportedly offered, and  
15 given, or purportedly given, to a person by chance. For purposes  
16 of this definition, chance exists if a person is guaranteed to

1 receive an item and, at the time of the offer or purported  
2 offer, the telemarketer does not identify the specific item that  
3 the person will receive.

4 "Prize promotion."

5 (1) A sweepstakes or other game of chance; or

6 (2) an oral or written express or implied representation  
7 that a person has won, has been selected to receive, or may  
8 be eligible to receive a prize or purported prize.

9 "Telemarketer." Any person ~~who~~ OR BUSINESS WHICH, in <—  
10 connection with telemarketing, initiates or receives telephone  
11 calls to or from a consumer in this Commonwealth, or when the  
12 person OR BUSINESS acting in connection with telemarketing is <—  
13 located within this Commonwealth when such calls are initiated  
14 or received. For purposes of registration under section 3(a) of  
15 this act, "telemarketer" does not include any of the following:

16 (1) A person OR BUSINESS soliciting sales through a <—  
17 catalog which:

18 (i) Contains a written description or illustration  
19 and price of each of the goods or services offered for  
20 sale.

21 (ii) Includes the business address of the seller.

22 (iii) Includes at least 24 pages of written material  
23 or illustration.

24 (iv) Is distributed in more than one state.

25 (v) Has been issued not less frequently than once a  
26 year.

27 (vi) Has an annual circulation of not less than  
28 250,000 consumers.

29 (2) A person OR BUSINESS soliciting without the intent <—  
30 to complete and who does not complete the sales presentation

1 during the telephone solicitation, but completes the sales  
2 presentation at a later face-to-face meeting between the  
3 solicitor and the prospective purchaser, or who offers to  
4 send the purchaser descriptive literature and does not  
5 require payment prior to the purchaser's review of the  
6 descriptive literature. However, if a seller, directly  
7 following a telephone solicitation, causes an individual  
8 whose primary purpose it is to go to the prospective  
9 purchaser to collect the payment, this exemption does not  
10 apply.

11 (3) A book, video or record club or contractual plan or  
12 agreement:

13 (i) under which the seller provides the consumer  
14 with a form which the consumer may use to instruct the  
15 seller not to ship the offered merchandise;

16 (ii) which is regulated by the Federal Trade  
17 Commission trade regulation concerning "use of negative  
18 option plans by sellers in commerce"; or

19 (iii) which provides for the sale of books, records,  
20 or videos which are not covered under subparagraph (i) or  
21 (ii), including continuity plans, subscription  
22 arrangements, standing order arrangements, supplements  
23 and series arrangements under which the seller  
24 periodically ships merchandise to a consumer who has  
25 consented in advance to receive such merchandise on a  
26 periodic basis.

27 (4) A person OR BUSINESS conducting a business-to- <—  
28 business sale where: the ~~commercial telephone seller~~ SELLING <—  
29 BUSINESS has been operating continuously for at least 3 THREE <—  
30 years under the same business name and has at least 50

1 percent of its dollar volume consisting of a repeat sales to  
2 existing businesses.

3 (5) A person OR BUSINESS engaged in a business or <—  
4 occupation which is licensed by or registered with a Federal  
5 or Commonwealth agency while acting within the scope of the  
6 business for which licensure or registration is required.

7 (6) Any of the following organizations unless a  
8 professional fundraising counsel or a professional solicitor  
9 is utilized:

10 (i) Educational institutions, the curricula of which  
11 in whole or in part are registered with or approved by  
12 the Department of Education, either directly or by  
13 acceptance of accreditation by an accrediting body  
14 recognized by the Department of Education, and any  
15 auxiliary associations, foundations and support groups  
16 which are directly responsible to educational  
17 institutions.

18 (ii) Hospitals which are subject to regulation by  
19 the Department of Health or the Department of Public  
20 Welfare and the hospital foundation, if any, which is an  
21 integral part thereof.

22 (iii) Public nonprofit library organizations which  
23 receive financial aid from State and municipal  
24 governments and file an annual fiscal report with the  
25 State Library System.

26 (iv) Senior citizen centers and nursing homes which  
27 are nonprofit and charitable and which have been granted  
28 tax-exempt status under the Internal Revenue Code of 1986  
29 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

30 (v) Bona fide parent/teacher associations or

parent/teacher organizations as recognized in a notarized letter from the school district in which they are located.

(vi) Any corporation established by an act of Congress of the United States that is required by Federal law to submit annual reports of its activities to Congress containing itemized accounts of all receipts and expenditures after being fully audited by the Department of Defense.

(vii) Any charitable organization which receives contributions of \$25,000 or less annually.

(7) A person OR BUSINESS soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling where the ~~commercial telephone seller~~ BUSINESS ENTERPRISE has been operating continuously for at least three years under the same business name.

(8) A person OR BUSINESS primarily soliciting the sale of a newspaper, magazine or other periodical of general circulation WHERE THE BUSINESS WHICH PUBLISHES THE NEWSPAPER, MAGAZINE OR OTHER PERIODICAL OF GENERAL CIRCULATION HAS BEEN OPERATING CONTINUOUSLY FOR AT LEAST TWO YEARS UNDER THE SAME BUSINESS NAME AND WHERE THE PERSON SOLICITING IS AN EMPLOYEE OF THE PUBLISHER OR AN EMPLOYEE OF AN AGENT OF THE PUBLISHER. FOR THE PURPOSES OF THIS PARAGRAPH, THE TERM "AGENT" MEANS A PERSON OR BUSINESS WHICH HAS ENTERED INTO A WRITTEN AGREEMENT DIRECTLY WITH THE PUBLISHER.

(9) A person OR BUSINESS, or an agent ~~or contractor of~~ ~~such person, who~~ OF SUCH PERSON OR BUSINESS, WHICH has been operating for at least two years a retail business

1 establishment in this Commonwealth under the same name as  
2 that used in connection with telemarketing, and both of the  
3 following occur on a continuing basis:

4 (i) Either products are displayed and offered for  
5 sale or services are offered for sale and provided at the  
6 business establishment.

7 (ii) A majority of the seller's business involves  
8 buyers' obtaining such products or services at the  
9 seller's location. FOR THE PURPOSES OF THIS PARAGRAPH, <—  
10 THE TERM "AGENT" MEANS A PERSON WHO HAS ENTERED INTO A  
11 WRITTEN AGREEMENT DIRECTLY WITH THE RETAIL BUSINESS  
12 ESTABLISHMENT.

13 (10) Any person ~~who~~ OR BUSINESS WHICH has been providing <—  
14 telemarketing sales services continuously for at least five  
15 years under the same ownership and control and who derives  
16 75% of its gross telemarketing sales revenues from contracts  
17 with persons OR BUSINESSES exempted in this section. <—

18 (11) A person OR BUSINESS soliciting the sale of food or <—  
19 produce if the solicitation is not intended to result AND <—  
20 DOES NOT RESULT in a sale which costs the purchaser in excess  
21 of \$500 WHERE THE PERSON OR BUSINESS SELLING THE FOOD OR <—  
22 PRODUCE HAS BEEN OPERATING CONTINUOUSLY FOR AT LEAST TWO  
23 YEARS UNDER THE SAME BUSINESS NAME.

24 (12) ~~A person who solicits contracts for the maintenance <—~~  
25 ~~or repair of goods previously purchased from the person~~  
26 ~~making the solicitation or on whose behalf the solicitation~~  
27 ~~is made.~~

28 ~~(13)~~ An issuer or subsidiary of an issuer that has a  
29 class of securities which is subject to section 12 of the  
30 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §

781) and which is either registered or exempt from  
registration under paragraph A, B, C, E, F, G or H of  
subsection (g)(2) of that section.

"Telemarketing." A plan, program or campaign which is  
conducted to induce the purchase of goods or services or to  
solicit contributions for any charitable purpose, charitable  
promotion or for or on behalf of any charitable organization, by  
use of one or more telephones and which involves more than one  
telephone call. For purposes of this act, the terms "charitable  
purpose," "charitable promotion," "charitable organization,"  
"professional fundraising counsel," "professional solicitor" and  
"solicitation" have the meanings as defined in the act of  
December 19, 1990 (P.L.1200, No.202), known as the Solicitation  
of Funds for Charitable Purposes Act.

"Telemarketing business." A business entity that is or has  
engaged in the business of telephone solicitations and employs  
at least one telemarketer.

### Section 3. Registration requirement.

(a) General rule.--In addition to any other requirements  
imposed by law, a telemarketer or the telemarketing business  
which employs the telemarketer is required to register with the  
Office of Attorney General at least 60 days prior to offering  
for sale consumer goods or services through any medium. This  
section will not apply, however, to PERSONS OR businesses <—  
licensed by or registered with a Federal or Commonwealth agency.  
NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, ANY BUSINESS <—  
WHICH PROVIDES TELEMARKETING SERVICES TO OTHER ENTITIES AND HAS  
BEEN UNDER THE SAME OWNERSHIP AND CONTROL FOR LESS THAN FIVE  
YEARS SHALL REGISTER UNDER THIS SECTION.

(b) Unlawful conduct.--It shall be unlawful for any

1 telemarketer to initiate a telephone call to or receive a  
2 telephone call from a consumer in connection with the purchase  
3 of consumer goods or services, unless the telemarketer or the  
4 telemarketing business which employs the telemarketer is  
5 registered with the Office of Attorney General.

6 (c) Penalty.--Failure to register as required by this act  
7 constitutes a misdemeanor of the second degree.

8 Section 4. Registration and application process.

9 (a) Application form.--The Office of Attorney General shall  
10 provide an application form for biannual registration except for  
11 those PERSONS OR businesses covered by subsection (c). The form <—  
12 shall include, but not be limited to, the following information:

13 (1) Name and current address, telephone number and  
14 location of the telemarketer or telemarketing business.

15 (2) Name and current address and telephone number of  
16 each principal owner of the telemarketing business.

17 (3) A list of telemarketers currently employed by the  
18 telemarketing business.

19 (b) Security.--The application for registration completed by  
20 PERSONS OR businesses pursuant to subsection (a) shall be <—  
21 accompanied by a surety bond in the sum of \$50,000 with  
22 conditions and in a form prescribed by the Office of Attorney  
23 General. The bond shall provide for the indemnification of any  
24 person suffering a loss as the result of any fraud,  
25 misrepresentation, violation of section 5 or violation of the  
26 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
27 Trade Practices and Consumer Protection Law, by the principal.  
28 The term of the bond shall be continuous, but, it shall be  
29 subject to cancellation by the surety in the manner described in  
30 this section. The surety may terminate the bond upon giving a



1 60-day written notice to the principal and to the Office of  
2 Attorney General, but the liability of the surety for acts of  
3 the principal and its agents shall continue during the 60 days'  
4 notice of cancellation. The notice does not absolve the surety  
5 from liability which accrues before the cancellation becomes  
6 final but which is discovered after that date and which may have  
7 arisen at any time during the term of the bond. Unless the bond  
8 is replaced by that of another surety before the expiration of  
9 the 60 days' notice of cancellation, the registration of the  
10 principal under this act will be treated as lapsed. Any PERSON <—  
11 OR business required under this section to file a bond with a  
12 registration application may file, in lieu thereof, cash, a  
13 certificate of deposit or government bonds in the amount of  
14 \$50,000. Such deposit is subject to the same terms and  
15 conditions as are provided for in the surety bond required in  
16 this subsection. The Office of Attorney General shall hold such  
17 cash, certificate of deposit or government bonds for a  
18 reasonable period from the date the TELEMARKETER OR <—  
19 telemarketing business ceases to operate or registration lapses  
20 in order to pay claims made against the TELEMARKETER OR <—  
21 telemarketing business during its operation. Any interest or  
22 earnings on such deposits are payable to the depositor. If,  
23 after registered, the amount of bond, cash, certificate of  
24 deposit or government bonds fall below the amount required by  
25 this subsection, the registration of the TELEMARKETER OR <—  
26 telemarketing business will be treated as lapsed. The Office of  
27 Attorney General shall prescribe the methods and procedures for  
28 handling claims under this subsection.

29 (c) Registration procedure for other businesses.--  
30 Registration procedures for PERSONS OR businesses licensed by or <—

1 registered with a Federal or Commonwealth agency, to the extent  
2 the telemarketing activities of those PERSONS OR businesses go <—  
3 beyond the activities for which the PERSON OR business is <—  
4 licensed or registered, shall be promulgated by the Office of  
5 Attorney General. The information to be obtained by the Office  
6 of Attorney General in such cases shall include the information  
7 outlined in subsection (a) of this section.

8 (d) Application fee.--The biannual fee for those PERSONS OR <—  
9 businesses registering under subsection (a) shall be \$500. The  
10 fee must be submitted with the application. Application fees  
11 shall be deposited in a separate restricted account in the State  
12 Treasury. All moneys in this account are hereby appropriated to  
13 the Office of Attorney General on a continuing basis to  
14 administer and enforce the provisions of this act.

15 (e) Rules and regulations.--The Office of Attorney General  
16 may adopt rules and regulations necessary to enforce and  
17 administer this act.

18 Section 5. Unlawful acts and penalties.

19 The following acts are prohibited:

20 (1) Conducting telemarketing after 9 p.m. or before 8  
21 a.m.

22 (2) Conveying information relating to the provisions or  
23 availability of consumer goods or services to a consumer  
24 through any medium where the consumer indicates that he is  
25 not interested in receiving the information.

26 (3) Obtaining or submitting for payment a check, draft  
27 or other form of negotiable paper drawn on a person's  
28 checking, savings, share or similar account, without the  
29 person's express verifiable authorization. Such authorization  
30 shall be deemed verifiable only when the express

1 authorization is written and includes the customer's  
2 signature. For the purposes of this paragraph, a customer may  
3 authorize future withdrawals of the same amount if the  
4 instrument clearly and conspicuously indicates this  
5 information.

6 (4) Promising for a fee to recover money any consumer  
7 has lost to fraudulent telemarketers.

8 (5) Failing to disclose promptly to any consumer during  
9 the initial telephone contact the purpose of the call, the  
10 name of the telemarketer or telemarketing business and what  
11 the telemarketer or telemarketing business is selling.

12 (6) In the case of prize promotions, failing to provide  
13 the odds of winning, advising that no purchase or payment is  
14 necessary to win and identifying restrictions or conditions  
15 on obtaining a prize. In any prize promotion, if the odds are  
16 not calculable in advance, the factors used in calculating  
17 the odds must be disclosed. The no purchase/no payment method  
18 of participating in the prize promotion with either  
19 instructions on how to participate or an address or local or  
20 toll-free telephone number to which customers may write or  
21 call for information on how to participate shall be provided.  
22 All material costs or conditions to receive or redeem a prize  
23 that is the subject of the prize promotion must also be  
24 provided. DISCLOSURE UNDER THIS PARAGRAPH MUST BE MADE PRIOR <—  
25 TO THE CUSTOMER'S PAYMENT FOR THE GOODS OR SERVICES OFFERED.

26 (7) Failing to reduce any sale of goods or services made  
27 during a telemarketing call to a written contract and  
28 obtaining the consumer's signature on the written contract.

29 (8) Failing to end a telemarketing solicitation call  
30 when the consumer indicates he wants to end the call.

(b) Contract provisions.--A contract under subsection (a)(7) shall contain the following information:

(1) The name, address and telephone number of the telemarketer or telemarketing business.

(2) The total price of the consumer goods or services purchased.

(3) A detailed description of the consumer goods and services purchased, which shall match the oral description given in the telemarketing solicitation.

(4) Any oral or written representations made during the telemarketing solicitation.

(5) A statement that reads "You are not obligated to pay any money unless you sign this contract and return it to the seller."

(c) Exception.--A signed, written contract is not needed if:

(1) The contractual sale is regulated under other laws of this Commonwealth.

(2) The transaction was made as a result of prior negotiations by the consumer and telemarketer or telemarketing business, where the consumer visited a merchant operating a retail business establishment in a permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(3) The transaction is one for which the consumer may receive a full refund upon the return of undamaged and unused consumer goods within ten days of receipt of the consumer goods or upon sending a cancellation of consumer service notice to the telemarketer or telemarketing business within five days of the transaction, if the refund is processed within 30 days of receipt of the returned consumer goods or

1 upon receipt of the cancellation of the consumer.

2 (4) The transaction is a result of the consumer  
3 examining an advertisement, sample, brochure or catalog of  
4 the telemarketer or telemarketing business which contains the  
5 name, address and telephone number of the telemarketer or  
6 telemarketing business, a description of the goods or  
7 services and any limitations or restrictions that apply to  
8 the offer.

9 (5) The transaction is a sale or solicitation made by or  
10 on behalf of a bona fide charitable organization which is tax  
11 exempt under section 501(c)(3) of the Internal Revenue Code  
12 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

13 Section 6. Violations.

14 (a) Other law.--A violation of this act is also a violation  
15 of the act of December 17, 1968 (P.L.1224, No.387), known as the  
16 Unfair Trade Practices and Consumer Protection Law.

17 (b) Second or subsequent offense.--Upon a second or  
18 subsequent violation of this act, the Office of Attorney General  
19 may seek revocation of registration or the right to conduct  
20 telemarketing in this Commonwealth.

21 (c) Procedure.--All actions of the Office of Attorney  
22 General under this act shall be taken subject to the right of  
23 notice, hearing and adjudication and the right of appeal  
24 therefrom in accordance with 2 Pa.C.S. (relating to  
25 administrative law and procedure).

26 Section 7. Remedies available to consumers.

27 Nothing in this act shall be construed to limit the remedies  
28 available to consumers, the Attorney General or any district  
29 attorney under the act of December 17, 1968 (P.L.1224, No.387),  
30 known as the Unfair Trade Practices and Consumer Protection Law,

1 or any other State or Federal law.

2 Section 8. Burden of proof.

3 (a) Proceeding under this act.--In any civil proceeding  
4 alleging a violation of this act, the burden of proving an  
5 exemption or an exception from a definition is upon the person  
6 claiming it; and in any criminal proceeding alleging a violation  
7 of this act, the burden of producing evidence to support a  
8 defense based upon an exemption or an exception from a  
9 definition is upon the person claiming it.

10 (b) Other proceedings.--Compliance with this act does not  
11 satisfy nor substitute for any requirements for license,  
12 registration or regulation mandated by other laws.

13 Section 9. Effective date.

14 This act shall take effect in 90 days.