

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1317 Session of  
1995

INTRODUCED BY FISHER, BELL, ANDREZESKI, HELFRICK, JUBELIRER,  
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KASUNIC AND RHOADES, NOVEMBER 21, 1995

AS AMENDED ON THIRD CONSIDERATION, JUNE 19, 1996

## 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  
17 receive an item and, at the time of the offer or purported

1 offer, the telemarketer does not identify the specific item that  
2 the person will receive.

3 "Prize promotion."

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

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

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

15 (1) A person or business soliciting sales through a  
16 catalog which:

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

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

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

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

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

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

28 (2) A person or business soliciting without the intent  
29 to complete and who does not complete the sales presentation  
30 during the telephone solicitation, but completes the sales

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

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

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

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

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

26 (4) A person or business conducting a business-to-  
27 business sale where: the selling business has been operating  
28 continuously for at least three years under the same business  
29 name and has at least 50 percent of its dollar volume  
30 consisting of a repeat sales to existing businesses.

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

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

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

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

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

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

28               (v) Bona fide parent/teacher associations or  
29                parent/teacher organizations as recognized in a notarized  
30                letter from the school district in which they are

1 located.

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

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

10 (7) A person or business soliciting business from  
11 prospective purchasers who have previously purchased from the  
12 business enterprise for which the person is calling where the  
13 business enterprise has been operating continuously for at  
14 least three years under the same business name.

15 (8) A person or business primarily soliciting the sale  
16 of a newspaper, magazine or other periodical of general  
17 circulation where the business which publishes the newspaper,  
18 magazine or other periodical of general circulation has been  
19 operating continuously for at least two years under the same  
20 business name ~~and where~~; the person soliciting is an employee <—  
21 of the publisher or an employee of an agent of the publisher  
22 AND THE PERSON SOLICITING DISCLOSES THE FOLLOWING DURING THE <—  
23 INITIAL CONTACT: THE TOTAL COSTS TO PURCHASE, RECEIVE OR USE  
24 AND THE QUANTITY OF THE NEWSPAPERS, MAGAZINES OR OTHER  
25 PERIODICALS OF GENERAL CIRCULATION THAT ARE THE SUBJECT OF  
26 THE SALES OFFER. For the purposes of this paragraph, the term  
27 "agent" means a person or business which has entered into a  
28 written agreement directly with the publisher.

29 (9) A person or business, or an agent of such person or  
30 business, which has been operating for at least two years a

1 retail business establishment in this Commonwealth under the  
2 same name as that used in connection with telemarketing, and  
3 both of the 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.~~ FOR THE PURPOSES OF THIS PARAGRAPH, THE <—

13 TERM "AGENT" MEANS A PERSON OR BUSINESS WHICH HAS ENTERED  
14 INTO A WRITTEN AGREEMENT DIRECTLY WITH THE RETAIL  
15 BUSINESS ESTABLISHMENT.

16 (10) Any person or business which has been providing  
17 telemarketing sales services continuously for at least five  
18 years under the same ownership and control and who derives  
19 75% of its gross telemarketing sales revenues from contracts  
20 with persons or businesses exempted in this section.

21 (11) A person or business soliciting the sale of food or  
22 produce if the solicitation is not intended to result and  
23 does not result in a sale which costs the purchaser in excess  
24 of \$500 where the person or business selling the food or  
25 produce has been operating continuously for at least two  
26 years under the same business name.

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

1 registration under paragraph A, B, C, E, F, G or H of  
2 subsection (g)(2) of that section.

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

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

17 Section 3. Registration requirement.

18 (a) General rule.--In addition to any other requirements  
19 imposed by law, a telemarketer or the telemarketing business  
20 which employs the telemarketer is required to register with the  
21 Office of Attorney General at least 60 days prior to offering  
22 for sale consumer goods or services through any medium. This  
23 section will not apply, however, to persons or businesses  
24 licensed by or registered with a Federal or Commonwealth agency.  
25 Notwithstanding any other provision of this act, any business  
26 which provides telemarketing services to other entities and has  
27 been under the same ownership and control for less than five  
28 years shall register under this section.

29 (b) Unlawful conduct.--It shall be unlawful for any  
30 telemarketer to initiate a telephone call to or receive a

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

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

7 Section 4. Registration and application process.

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

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

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

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

18 (b) Security.--The application for registration completed by  
19 persons or businesses pursuant to subsection (a) shall be  
20 accompanied by a surety bond in the sum of \$50,000 with  
21 conditions and in a form prescribed by the Office of Attorney  
22 General. The bond shall provide for the indemnification of any  
23 person suffering a loss as the result of any fraud,  
24 misrepresentation, violation of section 5 or violation of the  
25 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
26 Trade Practices and Consumer Protection Law, by the principal.  
27 The term of the bond shall be continuous, but, it shall be  
28 subject to cancellation by the surety in the manner described in  
29 this section. The surety may terminate the bond upon giving a  
30 60-day written notice to the principal and to the Office of



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

28 (c) Registration procedure for other businesses.--  
29 Registration procedures for persons or businesses licensed by or  
30 registered with a Federal or Commonwealth agency, to the extent

1 the telemarketing activities of those persons or businesses go  
2 beyond the activities for which the person or business is  
3 licensed or registered, AND ARE OUTSIDE THE EXCEPTION TO <—  
4 REGISTRATION PROVIDED FOR IN PARAGRAPH (5) OF THE DEFINITION OF  
5 "TELEMARKETER," shall be promulgated by the Office of Attorney  
6 General. The information to be obtained by the Office of  
7 Attorney General in such cases shall include the information  
8 outlined in subsection (a) of this section.

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

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

19 Section 5. Unlawful acts and penalties.

20 (A) ACTS ENUMERATED.--The following acts are prohibited: <—

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

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

27 (2) INITIATING AN OUTBOUND TELEPHONE CALL TO A PERSON <—  
28 WHEN THAT PERSON PREVIOUSLY HAS STATED THAT HE OR SHE DOES  
29 NOT WISH TO RECEIVE AN OUTBOUND TELEPHONE CALL MADE BY OR ON  
30 BEHALF OF THE SELLER WHOSE GOODS OR SERVICES ARE BEING

1 OFFERED.

2 (3) Obtaining or submitting for payment a check, draft  
3 or other form of negotiable paper drawn on a person's  
4 checking, savings, share or similar account, without the  
5 person's express verifiable authorization. Such authorization  
6 shall be deemed verifiable only when the express  
7 authorization is written and includes the customer's  
8 signature. For the purposes of this paragraph, a customer may  
9 authorize future withdrawals of the same amount if the  
10 instrument clearly and conspicuously indicates this  
11 information.

12 ~~(4) Promising for a fee to recover money any consumer~~ <—  
13 ~~has lost to fraudulent telemarketers.~~

14 (4) REQUESTING OR RECEIVING PAYMENT OF ANY FEE OR <—  
15 CONSIDERATION FROM A PERSON, FOR GOODS OR SERVICES  
16 REPRESENTED TO RECOVER OR OTHERWISE ASSIST IN THE RETURN OF  
17 MONEY OR ANY OTHER ITEM OF VALUE PAID FOR BY, OR PROMISED TO,  
18 THAT PERSON IN A PREVIOUS TELEMARKETING TRANSACTION, UNTIL  
19 SEVEN BUSINESS DAYS AFTER SUCH MONEY OR OTHER ITEM IS  
20 DELIVERED TO THAT PERSON. THIS PROVISION SHALL NOT APPLY TO  
21 GOODS OR SERVICES PROVIDED TO A PERSON BY A LICENSED  
22 ATTORNEY.

23 (5) Failing to disclose promptly to any consumer during  
24 the initial telephone contact the purpose of the call, the  
25 name of the telemarketer or telemarketing business and what  
26 the telemarketer or telemarketing business is selling.

27 (6) In the case of prize promotions, failing to provide  
28 the odds of winning, advising that no purchase or payment is  
29 necessary to win and identifying restrictions or conditions  
30 on obtaining a prize. In any prize promotion, if the odds are

1 not calculable in advance, the factors used in calculating  
2 the odds must be disclosed. The no purchase/no payment method  
3 of participating in the prize promotion with either  
4 instructions on how to participate or an address or local or  
5 toll-free telephone number to which customers may write or  
6 call for information on how to participate shall be provided.  
7 All material costs or conditions to receive or redeem a prize  
8 that is the subject of the prize promotion must also be  
9 provided. Disclosure under this paragraph must be made prior  
10 to the customer's payment for the goods or services offered.

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

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

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

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

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

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

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

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

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

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

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

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

17           (4) The transaction is a result of the consumer  
18 examining an advertisement, sample, brochure or catalog of  
19 the telemarketer or telemarketing business which contains the  
20 name, address and telephone number of the telemarketer or  
21 telemarketing business, a description of the goods or  
22 services and any limitations or restrictions that apply to  
23 the offer.

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

28 Section 6. Violations.

29           (a) Other law.--A violation of this act is also a violation  
30 of the act of December 17, 1968 (P.L.1224, No.387), known as the

1 Unfair Trade Practices and Consumer Protection Law.

2 (b) Second or subsequent offense.--Upon a second or  
3 subsequent violation of this act, the Office of Attorney General  
4 may seek revocation of registration or the right to conduct  
5 telemarketing in this Commonwealth.

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

11 Section 7. Remedies available to consumers.

12 Nothing in this act shall be construed to limit the remedies  
13 available to consumers, the Attorney General or any district  
14 attorney under the act of December 17, 1968 (P.L.1224, No.387),  
15 known as the Unfair Trade Practices and Consumer Protection Law,  
16 or any other State or Federal law.

17 Section 8. Burden of proof.

18 (a) Proceeding under this act.--In any civil proceeding  
19 alleging a violation of this act, the burden of proving an  
20 exemption or an exception from a definition is upon the person  
21 claiming it; and in any criminal proceeding alleging a violation  
22 of this act, the burden of producing evidence to support a  
23 defense based upon an exemption or an exception from a  
24 definition is upon the person claiming it.

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

28 SECTION 9. INVESTIGATION.

<—

29 (A) AUTHORITY.--IF THE ATTORNEY GENERAL HAS REASON TO  
30 BELIEVE THAT A VIOLATION OF THIS ACT HAS OCCURRED, THE ATTORNEY

1 GENERAL SHALL HAVE AUTHORITY TO INVESTIGATE ON BEHALF OF THE  
2 COMMONWEALTH, ITS CITIZENS OR A POLITICAL SUBDIVISION.

3 (B) PROCEDURE.--PRIOR TO THE INSTITUTION OF A CIVIL ACTION,  
4 THE ATTORNEY GENERAL IS AUTHORIZED TO REQUIRE THE ATTENDANCE AND  
5 TESTIMONY OF WITNESSES AND THE PRODUCTION OF DOCUMENTS. FOR THIS  
6 PURPOSE, THE ATTORNEY GENERAL MAY ISSUE SUBPOENAS, EXAMINE  
7 WITNESSES AND RECEIVE EVIDENCE. IF A PERSON OBJECTS TO OR  
8 OTHERWISE FAILS TO COMPLY WITH A SUBPOENA OR REQUEST FOR  
9 TESTIMONY, THE ATTORNEY GENERAL MAY FILE IN COMMONWEALTH COURT  
10 AN ACTION TO ENFORCE THE SUBPOENA OR REQUEST. NOTICE OF HEARING  
11 THE ACTION AND A COPY OF ALL PLEADINGS SHALL BE SERVED UPON THE  
12 PERSON, WHO MAY APPEAR IN OPPOSITION.

13 (C) CONFIDENTIALITY.--ANY TESTIMONY TAKEN OR MATERIAL  
14 PRODUCED SHALL BE KEPT CONFIDENTIAL BY THE ATTORNEY GENERAL  
15 EXCEPT TO THE EXTENT HE MAY USE INFORMATION IN A JUDICIAL  
16 PROCEEDING OR IF THE DISCLOSURE IS AUTHORIZED BY THE COURT FOR  
17 GOOD CAUSE SHOWN OR CONFIDENTIALITY IS WAIVED BY THE PERSON  
18 BEING INVESTIGATED AND BY THE PERSON WHO HAS TESTIFIED, ANSWERED  
19 INTERROGATORIES OR PRODUCED MATERIALS.

20 Section 9 10. Effective date.

21 This act shall take effect in 90 days.

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