

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1317 Session of
1995

INTRODUCED BY FISHER, BELL, ANDREZESKI, HELFRICK, JUBELIRER,
STAPLETON, WENGER, BRIGHTBILL, O'PAKE, AFFLERBACH, STOUT,
PORTERFIELD AND TOMLINSON, NOVEMBER 21, 1995

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
NOVEMBER 21, 1995

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 "Telemarketer." Any person who in connection with
15 telemarketing initiates a telephone call to or receives a
16 telephone call from a consumer in connection with the purchase
17 of consumer goods or services.

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

4 Section 3. Registration requirement.

5 (a) General rule.--In addition to any other requirements
6 imposed by law, a telemarketer or the telemarketing business
7 which employs the telemarketer is required to register with the
8 Office of Attorney General at least 60 days prior to offering
9 for sale consumer goods or services through any medium.

10 (b) Unlawful conduct.--It shall be unlawful for any
11 telemarketer to initiate a telephone call to or receive a
12 telephone call from a consumer in connection with the purchase
13 of consumer goods or services, unless the telemarketer or the
14 telemarketing business which employs the telemarketer is
15 registered with, and has a certificate of registration from, the
16 Office of Attorney General.

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

19 Section 4. Registration and application process.

20 (a) Application form.--The Office of Attorney General shall
21 provide an application form for registration. The form shall
22 include, but not be limited to, the following information:

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

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

27 (3) A list of telemarketers currently employed by the
28 telemarketing business.

29 (b) Application fee.--The fee for applying for registration
30 is \$500. The fee must be submitted with the application.

1 Application fees shall be deposited in a separate restricted
2 account in the State Treasury. All moneys in this account are
3 hereby appropriated to the Office of Attorney General on a
4 continuing basis to administer and enforce the provisions of
5 this act.

6 (c) Determination by Office of Attorney General.--Within 60
7 days of receipt by the Office of Attorney General of the
8 application for registration, the Office of Attorney General
9 shall make a determination as to whether the applicant has
10 complied with the requirements for certification listed in
11 subsection (d).

12 (d) Requirements for certification.--The following shall
13 apply:

14 (1) No owner of the applicant telemarketing business or
15 telemarketer who has been convicted of a violation of any law
16 of this Commonwealth or any other jurisdiction involving
17 fraud, forgery or theft is eligible for certification.

18 (2) Certification shall be granted subject to the
19 applicant agreeing to the following:

20 (i) That the applicant shall be accountable for the
21 substance of each sales presentation and for each request
22 for charitable contribution made by an agent or
23 representative.

24 (ii) The applicant is personally liable for any
25 violations of this act.

26 Section 5. Revocation of certificate of registration.

27 (a) General rule.--The Office of Attorney General may revoke
28 the certificate of registration for, and subject to a civil fine
29 of up to \$500 per violation, any telemarketing business or
30 telemarketer for any of the following:

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

3 (2) Conveying information relating to the provisions or
4 availability of consumer goods or services to a consumer
5 through any medium where the consumer indicates that he is
6 not interested in receiving the information.

7 (3) Debiting any consumer's checking, savings or credit
8 account unless clear approval is obtained in a taped
9 telephone call or by the consumer's written permission.

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

12 (5) Failing to disclose to any consumer during the
13 initial telephone contact the purpose of the call, the name
14 of the telemarketer or telemarketing business and what the
15 telemarketer or telemarketing business is selling.

16 (6) In the case of prize promotions, failing to provide
17 the odds of winning, advising that no purchase or payment is
18 necessary to win and identifying restrictions or conditions
19 on obtaining a prize.

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

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

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

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

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

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

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

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

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

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

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

18 (3) The transaction is one for which the consumer may
19 receive a full refund upon the return of undamaged and unused
20 consumer goods within ten days of receipt of the consumer
21 goods or upon sending a cancellation of consumer service
22 notice to the telemarketer or telemarketing business before
23 the service is started, if the refund is processed within 30
24 days of receipt of the returned consumer goods or upon
25 receipt of the cancellation of the consumer.

26 (4) The transaction is a result of the consumer
27 examining an advertisement, sample, brochure or catalog of
28 the telemarketer or telemarketing business which contains the
29 name, address and telephone number of the telemarketer or
30 telemarketing business, a description of the goods or

1 services and any limitations or restrictions that apply to
2 the offer.

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

7 Section 6. Revocation of certificate of registration by Office
8 of Attorney General.

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

13 Section 7. Remedies available to consumers.

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

18 Section 8. Effective date.

19 This act shall take effect in 60 days.