

CHAPTER 227
FORMERLY
HOUSE BILL NO. 270
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE TELEMARKETING FRAUD ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2503A, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2503A. Registration of sellers, telemarketers and telemarketing businesses.

(a) Unless exempted under this section or § 2505A of this title, no person shall transact any business with any customer who is located in the State through telemarketing as a seller or a telemarketing business without having first ~~filed a registration statement with~~ obtained a certificate of registration from the Director of the Consumer Protection Unit of the Department of Justice (hereinafter "Director") in accordance with this section.

(b) Any person required by this section to ~~file a registration statement (hereinafter "registrant") shall file the statement at least 30 days prior to transacting any business with any customer who is located in the State. An original registration statement shall be renewed by the registrant on or before July 1 of each successive calendar year following the date of the original filing or within 30 calendar days of the registrant's discovery of any material change in any information required to be disclosed by this section. For this purpose, a registrant discovers a material change in information when the registrant or any person employed by the registrant as a manager or director of the registrant knows or should know of the material change in information.~~ obtain a certificate of registration (hereinafter "registrant") shall apply to renew the registration no less than 30 days before the end of the effective term as indicated on the certificate.

(c) ~~The registration statement or any renewal thereof shall include, but not be limited to, the following information~~ A registrant applying for a certificate of registration or renewal must include the following information in his or her application:

(11) A sworn and notarized statement that the information contained in the ~~registration statement~~ application is the product of a diligent and reasonable investigation and is true and accurate to the best of the registrant's information and belief.

(d) *Security requirements:* — Every registrant shall file with the Director a corporate surety bond in the principal sum of \$50,000 in a form satisfactory to the Director with surety provided by a corporation authorized to do business in this State. The bond shall run to the Director and shall be conditioned upon the registrant's compliance with the provisions of this chapter. The bond shall pay to customers all moneys that become due and owing for violations of this chapter. The aggregate liability of the surety on the bond shall in no event exceed the amount of such bond. In lieu of requiring the filing of a surety bond, the Director may, at the Director's discretion, accept from a registrant a letter of credit in the amount of \$50,000 running in favor of the Director for payments to customers of all moneys that become due and owing for violations of this chapter, with draws available by sight drafts thereunder in amounts determined by the Director, up to the aggregate amount of \$50,000, if the registrant shall fail to comply with this chapter. Any such letter of credit shall be issued by a financial institution and shall be in a form satisfactory to the Director.

(2) The ~~registration statement~~ certificate of registration of any person shall be deemed to be lapsed if, at any time, the surety bond or letter of credit expires or becomes ineffective for any reason.

(h) The following are deemed violations of this chapter and of § 2513 of this title:

- (1) Failing to satisfy the registration or security requirements of this ~~section;~~ section.
- (2) Submitting false or misleading information in a ~~registration statement;~~ and an application.
- (3) Failing to disclose any information required to be disclosed in a ~~registration statement~~ an application.

(i) Any person required by this chapter to ~~file an original or renewed registration statement~~ submit an application for a certificate of registration or renewal shall submit with each ~~filing application~~ an administrative fee of \$100 made payable to the "Consumer Protection Fund" to cover the costs of registration.

(j) Obligation to update information. A registrant shall notify the Director within 30 calendar days of the registrant's discovery of any material change in any information required to be disclosed by this section. For the purpose of this section, a registrant discovers a material change in information when the registrant or any person employed by the registrant as a manager or director of the registrant knows or should know of the material change in information.

Section 2. Amend Chapter 25A, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2510A. Certificate of registration – issuance, denial, renewal, or revocation.

(a) Upon receipt of the completed application for a certificate of registration or renewal, security requirement, and fee, and unless such certificate of registration or renewal has been denied as provided in subsection (b) of this section, the Director shall issue and deliver to the applicant a certificate of registration in such form and manner as the Director shall prescribe, but which must set forth the applicant's name, business address, and the effective term of the registration. A certificate of registration issued or renewed under the provisions of this section shall entitle a person to act as a registered telemarketer for a period of 1 year from the effective date of the registration.

(b) The Director may deny the application of any person for a certificate of registration or renewal, or revoke an already-issued certificate of registration or renewal, if the Director determines that such registrant, or any of its principals, meets any of the following criteria:

(1) Has made a material false statement or omitted a material fact in connection with an application under this section.

(2) Was the former holder of a certificate of registration issued under this chapter, which the Director revoked, suspended, or refused to renew.

(3) Has failed to furnish satisfactory evidence of good character, reputation, and fitness.

(4) With respect to the registrant, is not the true owner of the telemarketing business, except in the case of a franchise.

(5) Is in violation of or has violated any of the following statutes or regulations promulgated under these statutes:

a. This chapter.

b. The equivalent law of any other state applicable to sellers, telemarketers, and telemarketing businesses.

c. The Act of Congress entitled the "Telemarketing and Consumer Fraud and Abuse Prevention Act" (15 U.S.C. §§ 6101-6108).

(6) Has been convicted of or pled guilty to or is being prosecuted in any jurisdiction for racketeering, violation of state or federal securities laws, theft, fraud, forgery, or any other offense involving falsehood or deception.

(7) Has been subject to any pending or final cease and desist order, assurance of discontinuance, injunction, restraining order, or judgment under this chapter or Chapter 25 of this title or in any other civil or administrative action in any other jurisdiction involving telemarketing, consumer or securities fraud, deceptive trade practices, racketeering, or any other civil enforcement statute involving fraud or deception.

(8) Has had a license or registration to engage in any business, occupation, or profession suspended or revoked in any jurisdiction which may impact upon the registrant's fitness for registration under this section.

(9) Has committed or is committing deceptive, unfair, illegal, or unconscionable trade practices in violation of the laws of this State, any other state, or the United States.

(c) The Director or the Director's designee may not enter an order under subsection (b) of this section without first providing the parties with all of the following:

(1) Appropriate prior notice to the registrant.

(2) Opportunity for a hearing.

(3) Written findings of fact and conclusions of law.

(d) The Director or the Director's designee shall control the procedures and the conduct of the parties at a hearing under this section.

Approved May 11, 2016