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Brady, B. Ennis, West; Sens.
Blevins, Bunting, Henry, Marshall,
Sokola, Bair, Connor, Sorenson

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE PRACTICE OF
TELEMARKETING AND ESTABLISHING REGISTRATION AND STANDARDS OF CONDUCT FOR
PERSONS ENGAGING IN TELEMARKETING IN THIS STATE.

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

1 Section 1. Amend Title 6 of the Delaware Code by adding thereto a new chapter, designated as Chapter
2 25A, which new chapter shall read as follows:

3 "Chapter 25A. Telemarketing Registration and Fraud Prevention.

4 §2501A. Purpose; short title.

5 The purpose of this chapter shall be to set standards of conduct for organized commercial
6 telemarketing in or into the State of Delaware and to protect consumers from unfair, deceptive, or abusive
7 practices by telemarketers and companies using established telemarketing methods to promote and sell
8 products, services, and investments. This chapter may be cited as the 'Delaware Telemarketing Fraud Act.'

9 §2502A. Definitions.

10 As used in this chapter, unless the context requires otherwise:

11 (1) 'Advertisement' shall have the same meaning as defined in § 2511 of Chapter 25 of
12 this Title.

13 (2) 'Customer' means a person who is or may be required to pay for merchandise offered
14 through telemarketing by a seller, telemarketer, or telemarketing business.

15 (3) 'Investment' means any property, real or personal, tangible or intangible, that is
16 offered for sale, sold or traded based wholly or in part on representations, express or implied, that
17 the property may or will generate income or profit or appreciate in value.

18 (4) 'Merchandise' shall have the same meaning as defined in Section 2511 of Chapter 25
19 of this Title. Additionally, 'merchandise' includes loans, services related to a person's credit
20 worthiness, leases of personal property, prizes from prize promotions, long-distance telephone
21 services and investments.

22 (5) 'Person' shall have the same meaning as defined in Section 2511 of Chapter 25 of
23 this Title.

24 (6) 'Prize' means anything offered, or purportedly offered, and given, or purportedly
25 given, to a person by chance. In addition to its ordinary meaning, for this purpose, 'by chance'
26 includes circumstances whereby a person is guaranteed to receive merchandise or anything of
27 value, and at the time of the offer or purported offer the telemarketer does not identify the specific
28 item that the person will receive.

29 (7) 'Prize promotion' means a sweepstakes or other game of chance or an oral or written
30 representation, express or implied, that a person has won, or has been selected to receive or is
31 eligible to receive a prize or purported prize.

32 (8) 'Sale' shall have the same meaning as defined in Section 2511 of Chapter 25 of this
33 Title.

34 (9) 'Seller' means any person who or which utilizes telemarketing or engages the services
35 of a telemarketing business to promote, advertise, sell or distribute merchandise.

36 (10) 'Telemarketer' means a natural person who, from any location, in connection with
37 telemarketing, initiates or receives, or causes the initiation or receipt of telephone calls to or from
38 a customer who is located in the State of Delaware. A person 'causes the initiation or receipt' of
39 telephone calls if the person manages, directs or supervises the activities of persons engaged in
40 telemarketing.

41 (11) 'Telemarketing' is an organized activity, program or campaign by one or more
42 telemarketers that is conducted for solicitation of a sale of merchandise through the use of one or
43 more telephones to contact customers.

44 (12) 'Telemarketing business' means any person who or which engages in telemarketing
45 on behalf of any seller in exchange for any consideration or compensation.

46 (13) 'Solicitation' means a written or oral notification, advertisement or offer that
47 consists of any one or more of the following characteristics:

48 a. Transmitted to a customer by or on behalf of a seller by any printed, audio,
49 video, cinematic, telephonic or electronic means, including a computer; or

50 b. In the case of a transmission to a customer by any means other than by
51 telephone, any one of the following occurs:

52 (i) the original communication is followed by a telephone call from a
53 telemarketer or seller in connection with the notification, advertisement or offer;

54 (ii) the original communication invites a response by telephone and
55 through that response, a telemarketer attempts a sale of merchandise to the
56 customer; or

57 (iii) the original communication invites a customer to call a 900-line
58 service or similar telephone number for any reason.

59 § 2503A. Registration of Sellers, Telemarketers and Telemarketing Businesses.

60 (a) Unless exempted under this section or § 2505A of this Title, no person shall transact any
61 business with any customer who is located in the State of Delaware through telemarketing as a seller or a
62 telemarketing business without having first filed a Registration Statement with the Director of the
63 Consumer Protection Unit of the Department of Justice (hereinafter 'Director') in accordance with this
64 section.

65 (b) Any person required by this section to file a Registration Statement (hereinafter 'registrant')
66 shall file the statement at least 90 days prior to transacting any business with any customer who is located
67 in the State of Delaware. An original Registration Statement shall be renewed by the registrant on or
68 before July 1 of each successive calendar year following the date of the original filing, or within 30
69 calendar days of the registrant's discovery of any material change in any information required to be
70 disclosed by this section. For this purpose, a registrant discovers a material change in information when the
71 registrant or any person employed by the registrant as a manager or director of the registrant knows or
72 should know of the material change in information.

73 (c) The Registration Statement or any renewal thereof shall include, but not be limited to, the
74 following information:

75 (1) The registrant's true name, current address, telephone number, and principal place of
76 business, including each fictitious or business name under which the registrant intends to engage
77 in telemarketing;

78 (2) Each occupation or business that the registrant has engaged in for two years
79 immediately preceding the date of registration;

80 (3) With respect to the registrant, any person employed by the registrant as a
81 telemarketer, manager, or director and, if the registrant is not a natural person, the registrant's
82 owners; whether any person so designated has been convicted of, or pled guilty to, or is being
83 prosecuted in any jurisdiction for racketeering, violation of state or federal securities laws, theft,
84 fraud, forgery or any other offense involving falsehood or deception;

85 (4) With respect to the registrant, any person employed by the registrant as a
86 telemarketer, manager, or director and, if the registrant is not a natural person, the registrant's
87 owners; whether any person so designated is or has been subject to any pending or final cease and
88 desist order, assurance of discontinuance, injunction, restraining order or judgment under this
89 chapter or Chapter 25 of this Title or in any other civil or administrative action in any other
90 jurisdiction, involving telemarketing, consumer or securities fraud, deceptive trade practices,
91 racketeering or any other civil enforcement statute involving fraud or deception;

92 (5) With respect to the registrant, or if the registrant is not a natural person, the
93 registrant's owners or directors; whether at any time during the previous seven years any person so
94 designated has filed for bankruptcy, been adjudged bankrupt or been reorganized because of
95 insolvency;

96 (6) When disclosing matters under paragraph (3), (4) or (5) of subsection (c) of this
97 section, the registrant shall include the following information:

98 a. The name and address of the court having jurisdiction in the matter;

99 b. The name and address of any governmental agency, prosecutor's office,
100 probation office, or law enforcement agency involved in the matter;

101 c. The case, docket or identification numbers as used by the court having
102 jurisdiction over the matter; and

103 d. Where relevant, whether and to what extent the registrant is on probation or
104 owes any restitution, fines, penalties or assessments to any person or governmental
105 authority;

106 (7) If the registrant is a seller, the legal name, address, phone number, business name,
107 and state of incorporation (including name, address, and phone number of any registered agent) of
108 any telemarketing business hired by the registrant for telemarketing to customers located in the
109 State of Delaware; if the registrant is a telemarketing business, the legal name, address, phone
110 number, business name and state of incorporation (including name, address, and phone number of
111 any registered agent) of the seller that has hired the telemarketing business to engage in
112 telemarketing to customers located in the State of Delaware;

113 (8) Where pertinent, the names, including any fictitious names, current home addresses,
114 dates of birth, and social security numbers of the following persons employed by the registrant:

115 a. The owners and directors of any telemarketing business;

116 b. All telemarketers employed by the registrant; and

117 c. All persons participating in or responsible for the management of the
118 telemarketing business or telemarketing activities.

119 (9) The name and address of every financial institution where proceeds of telemarketing
120 sales are to be deposited;

121 (10) Representative copies of any scripts, outlines or presentation materials to be used by
122 the telemarketer when soliciting. Representative copies of all written materials to be provided by
123 the seller to a customer in connection with any solicitation; and

124 (11) A sworn and notarized statement that the information contained in the Registration
125 Statement is the product of a diligent and reasonable investigation and is true and accurate to the
126 best of the registrant's information and belief.

127 (d) Security Requirements: Every registrant shall file with the Director a corporate surety bond in
128 the principal sum of \$50,000 in a form satisfactory to the Director with surety provided by a corporation
129 authorized to do business in this State. The bond shall run to the Director and shall be conditioned upon the

130 registrant's compliance with the provisions of this chapter. The bond shall pay to customers all monies that
131 become due and owing for violations of this chapter. The aggregate liability of the surety on the bond shall
132 in no event exceed the amount of such bond. In lieu of requiring the filing of a surety bond, the Director
133 may, at the Director's discretion, accept from a registrant a letter of credit in the amount of \$50,000 running
134 in favor of the Director for payments to customers of all monies that become due and owing for violations
135 of this chapter, with draws available by sight drafts thereunder in amounts determined by the Director, up
136 to the aggregate amount of \$50,000, if the registrant shall fail to comply with this chapter. Any such letter
137 of credit shall be issued by a financial institution, and shall be in a form satisfactory to the Director.

138 (1) The surety bond or letter of credit shall remain in effect for three (3) years from the
139 period the person ceases to operate in this State. A registrant who or which has ceased operating in
140 this State may apply to the Director, in writing, for a waiver of this residual security requirement.
141 In deciding whether to grant a waiver, the Director shall consider the length of time said registrant
142 has operated in this State, the record of said registrant's compliance with this chapter and the
143 nature and frequency of complaints concerning the registrant's operations within or outside of this
144 State.

145 (2) The Registration Statement of any person shall be deemed to be lapsed if, at any
146 time, the surety bond or letter of credit expires or becomes ineffective for any reason.

147 (3) A customer's claim against a bond or letter of credit shall be deemed payable as 'due
148 and owing' upon entry of a final judgment of civil liability in favor of the customer or the issuance
149 of a criminal sentencing order awarding restitution to the customer pursuant to Chapter 41 of Title
150 11. A customer may make claims against such bond or letter of credit for the amounts awarded as
151 compensatory damages in any civil action under this chapter or as restitution pursuant to § 4106 of
152 Title 11.

153 (e) This section shall not apply to any corporation having shares of stock that are traded on any
154 public exchange or to any not-for-profit corporation within the exemption of § 501(c)(3) or (6) of the
155 United States Internal Revenue Code, provided that one of the following two conditions are and remain
156 satisfied;

157 (1) the corporation is organized and existing under the laws of the State of Delaware; or

158 (2) the corporation is a foreign corporation authorized to do business in this State and has
159 complied with all of the requirements of §§ 371, 372, and 374, of Title 8 of the Delaware Code,
160 irrespective of any available exceptions under § 373 of Title 8.

161 (f) This section shall not apply to any telemarketing business engaging in telemarketing for or on
162 behalf of a corporation exempted from this section under the provisions of subsection (e) of this section,
163 provided the telemarketing business is engaging in telemarketing under and in accordance with a written
164 contract or agreement whereby the telemarketing business expressly agrees and is obligated under its terms
165 to engage in telemarketing only in conformance with all prevailing laws, rules and regulations of this State
166 or of the United States pertaining to telemarketing. A telemarketing business shall not be entitled to this
167 exemption if twenty-five percent or more of its gross revenue from telemarketing services in any twelve-
168 month period beginning on January 1 of each year is derived from sellers required to be registered and
169 bonded under this section.

170 (g) This section shall not apply to:

171 (1) A seller or telemarketing business that solicits contracts for the maintenance or
172 repair of merchandise previously purchased from the seller authorizing the solicitation.

173 (2) A seller or telemarketing business operating within the jurisdiction of the Public
174 Service Commission.

175 (3) A seller who has been operating for at least one year a retail business establishment
176 situated in this State under the same trade name as that used in telemarketing, and both of the
177 following conditions are satisfied:

178 a. Merchandise is displayed and offered for sale at the business
179 establishment; and,

180 b. Greater than fifty percent of the seller's annual sales of
181 merchandise in any calendar year is derived from the sale and delivery of
182 merchandise at the seller's business location.

183 (4) A seller of books, videotapes, or audio recordings under a contractual
184 plan or multimedia club otherwise regulated by the Federal Trade Commission's
185 regulation concerning "use of negative option plans by sellers in commerce".

186 (5) A seller of food products where the actual or intended cost of the food
187 product sold to a single address does not exceed one hundred dollars (\$100).

188 (6) A person subject to and licensed by the Delaware Real Estate
189 Commission acting within the scope of his, her or its active and valid license.

190 (h) The following are deemed violations of this chapter and of § 2513 of Chapter 25 of this Title:

191 (1) Failing to satisfy the registration or security requirements of this section;

192 (2) Submitting false or misleading information in a registration statement; and

193 (3) Failing to disclose any information required to be disclosed in a registration
194 statement.

195 (i) Any person required by this chapter to file an original or renewed Registration Statement shall
196 submit with each filing an administrative fee of \$100 made payable to the 'Consumer Protection Fund' to
197 cover the costs of registration.

198 (j) Subject to §§ 281 through 284 of Title 11 of the Delaware Code, and in addition to any other
199 civil or criminal liabilities provided by law, any natural person, corporation, partner, or high managerial
200 agent of an unincorporated association required to be registered under this section, who engages in or
201 authorizes telemarketing with customers who are located in the State of Delaware and who intentionally
202 violates this section shall be guilty of a class G felony.

203 § 2504A. Record-keeping Requirements.

204 (a) Any seller or telemarketing business shall preserve its individual records of all financial
205 transactions, written notices, disclosures, and acknowledgments for a period of 24 months from the date the
206 records are produced. A record, to the extent the seller or telemarketing business, or both, created in the
207 ordinary course of business, shall be kept in the form, manner, format, or place as such record is maintained
208 in the ordinary course of its business. Records to be preserved shall include, but not be limited to:

209 (1) All substantially different advertising, brochures, telemarketing scripts, and
210 promotional materials;

211 (2) The name and last known address of each prize recipient and the description of the
212 prize awarded;

213 (3) The name and last known address of each customer, the merchandise purchased, the
214 date such merchandise was ordered and shipped or provided, and amount of merchandise ordered
215 and shipped or provided, and the amount paid by the customer;

216 (4) The name, any fictitious name used, the last known home address and telephone
217 number and the job title for each current and former employee directly involved in the
218 telemarketing activities; and

219 (5) All written or recorded authorizations required to be provided or received under this
220 chapter; including, but not limited to any express verifiable authorization as defined in § 2507A.

221 (b) The seller and any telemarketing business calling on behalf of the seller may, by written
222 agreement, allocate responsibility between themselves for the record-keeping required by this chapter.
223 When a seller and a telemarketing business have entered into such an agreement, the written terms of that
224 agreement shall determine and govern each party's respective obligations under this chapter. If no
225 agreement exists, or such written agreement is unclear as to which party must create and maintain a record,
226 the seller shall be deemed the responsible party under this chapter.

227 (c) In the event of any dissolution or termination of the operations of any business employing
228 telemarketers or the telemarketing business, the principal owners or directors of the entity shall maintain all
229 records as required under this chapter. In the event of any sale, assignment, or other change in ownership
230 of the seller or telemarketing business, the buyer or successor shall maintain all records required under this
231 chapter.

232 § 2505A. Exempt Practices.

233 This chapter shall not apply to the following business practices by a seller, telemarketer or a telemarketing
234 business, except as otherwise provided in this section:

235 (1) Solicitations in which the sale of merchandise is not completed and payment or authorization
236 for payment is not required until after a face-to-face sales presentation to the customer by the telemarketer,
237 seller, telemarketing business or its representatives.

238 (2) Communications by telephone or other forms of media initiated by a customer that are not the
239 result of any solicitation by the telemarketer, seller or telemarketing business.

240 (3) Solicitations, telemarketing or the use of telephone equipment in connection with any sale of
241 goods or services by a business supplier to a business or between businesses.

242 (4) Use of telephones or telemarketing by or on behalf of a charitable/fraternal organization in
243 connection with charitable/fraternal solicitations as those terms are defined in § 2593 of Title 6; provided,
244 however, that a corporation claiming exemption pursuant to § 2593(1)(iii) of Title 6 must also satisfy the
245 requirements of § 2503A(e) of this chapter.

246 (5) Use of telephones or telemarketing for fund-raising and other non-commercial purposes, by
247 religious, charitable, political, educational, labor, and social organizations or entities not otherwise
248 regulated by §§ 2591 through 2597 of Title 6.

249 (6) Use of telephones or telemarketing by or on behalf of a licensed insurance broker, agent,
250 customer representative or solicitor when making solicitations is within the scope of the person's license.
251 For this purpose, a 'licensed' person is one who or that is authorized by the Insurance Commissioner to
252 conduct business within the State pursuant to Title 18 of the Delaware Code.

253 (7) Use of telephones or telemarketing by or on behalf of a person lawfully registered with the
254 Delaware Securities Commissioner pursuant to § 7313 of this Title and acting within the scope of the
255 person's registration as a broker-dealer, investment advisor or agent.

256 (8) Use of telephones or telemarketing by or on behalf of a supervised financial institution or
257 parent, subsidiary or affiliate thereof. For purposes of this exemption, 'supervised financial institution' shall
258 mean any bank, trust company, savings bank, credit card institution, building and loan association, building
259 and industrial development corporation, licensed mortgage loan broker, licensed lender, licensed check
260 seller or money transmitter, licensed cashier of checks, licensed motor vehicle sales finance company,
261 licensed transporter of money and valuables, licensed pre-need burial contractor, credit union, industrial
262 loan company, or other institution engaged in a business similar to any of the foregoing; provided,
263 however, that such institution is subject to supervision and regulation by the Delaware State Banking
264 Commission, or any official or agency of any state, or of the United States. For purposes of this exemption,
265 'subsidiary' and 'affiliate' shall have the meanings specified in § 101 of Title 5 of the Delaware Code.

266 (9) Soliciting sales through the distribution of a catalog which:

- 267 a. contains a written description, picture or illustration and price of each item of
268 merchandise offered for sale;
- 269 b. includes the business address of the company;
- 270 c. is distributed in more than one state;

271 d. includes at least 10 pages of written material or illustration;
272 e. is issued not less frequently than once a year;
273 f. has an annual circulation of not less than 100,000 consumers; and
274 g. the company's use of telephones is solely for the receipt of calls initiated by customers
275 in response to the catalog and during those calls the person representing the company takes orders
276 for merchandise only without further solicitation. For this purpose, 'further solicitation' does not
277 include providing the customer with information about, or attempting to sell, any other item
278 included in the same catalog which prompted the customer's call or in a substantially similar
279 catalog.

280 § 2506A. Disclosure and Contract Requirements.

281 (a) A telemarketer shall provide all of the following information when contacting a consumer:

282 (1) At the beginning of the call and prior to any sales pitch, the telemarketer shall
283 disclose to the customer:

284 (a) that the purpose of the telephone call is to sell specific merchandise;

285 (b) the telemarketer's name and the name of the seller on whose behalf the
286 solicitation is being made; and

287 (c) accurate information concerning the nature and description of the
288 merchandise being offered for sale.

289 (2) The total amount of money to be paid by the customer for the merchandise that is the
290 subject of the telemarketing sales call;

291 (3) Any restrictions, limitations, or conditions applicable to the purchase of the
292 merchandise that is the subject of the telemarketing sales call;

293 (4) Any material aspect of the performance, quality, efficacy, nature or basic
294 characteristics of the merchandise that is the subject of the telemarketing sales call;

295 (5) Any material aspect of the nature or terms of the refund, cancellation, exchange, or
296 repurchase policies;

297 (6) Any material aspect of any investment being offered, including benefits, the price of
298 the investment, the location of the investment, and the reasonable likelihood of success of the
299 investment opportunity;

300 (7) Any material element of a prize promotion, including:
301 a. an accurate description of the prize;
302 b. its market value;
303 c. all material conditions to receive or redeem the prize;
304 d. the actual number of prizes to be awarded;
305 e. the odds of being able to receive the prize and, if the odds are not calculable
306 in advance, the factors and methods used in calculating the odds;
307 f. the fact that no purchase or payment of any kind is required to win a prize or
308 to participate in a prize promotion; and
309 g. instructions on how to participate or an address or local or toll-free telephone
310 number to which customers may write or call for information on how to participate in the
311 prize promotion.

312 (b) The following requirements shall apply to each sale of merchandise by a telemarketer:

313 (1) The telemarketer's sales transaction shall only be considered final seven business
314 days after the customer has received a written notice as required by this subsection.

315 (2) The telemarketer shall furnish the customer, in the same language as that principally
316 used in the sales presentation, said written notice, which shall contain in not less than twelve-point
317 boldface type, a statement in substantially the following form:

318 **'You, the purchaser, may cancel this transaction without any penalty or obligation**
319 **at any time prior to midnight of the seventh business day after receipt of this notice. If you**
320 **cancel, any payments made by you under the sale will be returned within ten business days**
321 **following receipt by the seller of your written notice of cancellation and any security interest**
322 **arising out of the transaction will be canceled.**

323 **If you cancel, you must make available to the seller at your residence, in**
324 **substantially as good condition as when received, any merchandise delivered to you under**
325 **this contract of sale; or you may, if you wish, comply with the instructions of the seller**
326 **regarding the return shipment of the goods at the seller's expense and risk.**

327 **If you do make the merchandise available to the seller and the seller does not pick**
328 **the merchandise up within twenty days of the date of your notice of cancellation, or agree to**

329 **pay the expense for its return, you may retain or dispose of the merchandise without any**
330 **further obligation. If you fail to make the merchandise available to the seller, or if you agree**
331 **to return the merchandise to the seller and fail to do so, then you remain liable for**
332 **performance of all obligations under the contract.**

333 **To cancel this transaction, mail or deliver a written notice of cancellation or send a**
334 **telegram to (name of seller) at the following address (address of seller). The effective time of**
335 **any cancellation is deemed to be the postmarked date upon which the notice was mailed to**
336 **the seller, the date upon which the notice was delivered to any commercial document or**
337 **parcel service for delivery to the seller or the date upon which any telegram was sent to the**
338 **seller.'**

339 (3) The telemarketer or telemarketing business shall notify the customer of the seller's
340 name, address and phone number and the name, address and phone number of the person to whom
341 any notice of cancellation is to be given if different from the seller. The seller is additionally
342 required to furnish the customer with the date of the telephone solicitation and a description of the
343 telephone solicitation.

344 (c) It is a violation of this chapter and of § 2513 of Chapter 25 of this Title for a seller,
345 telemarketer or telemarketing business to fail to comply with or to misrepresent the requirements of this
346 section.

347 (d) It is a violation of this chapter and of § 2532 of Chapter 25 of this Title for any seller,
348 telemarketer or telemarketing business to engage in any unfair or deceptive conduct which would create a
349 likelihood of confusion or misunderstanding to any reasonable consumer in connection with this section.
350 § 2507A. Prohibited Acts and Practices.

351 (a) It is a prohibited telemarketing act or practice and a violation of this Chapter and § 2513 of
352 Chapter 25 of this Title for any person to:

353 (1) Obtain or submit for payment a check, draft, or other form of negotiable paper drawn
354 on a person's checking, savings, share, or similar account, without that person's express verifiable
355 authorization. For this purpose, 'express verifiable authorization' means:

356 a. a written statement signed by the customer expressly authorizing the
357 payment;

358 b. the customer's signature on the negotiable instrument;
359 c. an oral authorization by the customer which is tape recorded and made
360 available upon request to the customer's bank which evidences both the customer's
361 authorization of a payment for the specific merchandise sold and the customer's receipt of
362 the following information:

- 363 (i) the date of the draft;
- 364 (ii) the amount of the draft;
- 365 (iii) the payor's name;
- 366 (iv) the number of draft payments if more than one;
- 367 (v) a telephone number for customer inquiry that is answered during
368 normal business hours; and
- 369 (vi) the date of the customer's oral authorization; or

370 d. Written confirmation of the transaction, sent to the customer prior to
371 submission for payment of the customer's check, draft, or other form of negotiable paper,
372 that includes all of the information required to be given under any oral tape-recorded
373 authorization described in this section.

374 e. Any otherwise valid 'express verifiable authorization' shall be deemed invalid
375 if said authorization was induced by fraud, false pretenses, misrepresentation, false
376 promises, or failure to disclose material information.

377 (2) Advertise or represent that registration as a telemarketer equals an endorsement or
378 approval by any government or governmental agency of any state;

379 (3) Willfully call or contact any customer by telephone for any purpose connected with
380 or related to the sale or advertising of merchandise after having been directed, orally or in writing,
381 by the customer or any person acting on behalf of the customer with said customer's authorization,
382 to cease and desist from said calls or contacts. For purpose of this section, a call or contact is
383 'willful' if the person making or initiating the call or contact knows or should know of the
384 customer's instruction to not call or contact;

385 (4) Assist, support, or provide substantial assistance to any seller, telemarketer or
386 telemarketing business when the person knew or should have known that the seller, telemarketer
387 or telemarketing business was engaged in any act or practice in violation of this chapter;

388 (5) Request or receive payment in advance from a person, to recover or otherwise aid in
389 the return of money or any other item lost by the customer in a prior telemarketing transaction; or

390 (6) Use the services of any professional delivery, courier or other pick-up service to
391 obtain receipt or possession of a customer's payment, unless the merchandise is delivered with the
392 opportunity to inspect it before any payment is collected.

393 (b) Nothing in this chapter shall prevent the Attorney General from seeking any other civil
394 remedy or criminal sanction for any violation of this chapter as otherwise provided by law. Any person
395 who violates § 1401 or § 1402 of Title 11 in connection with telemarketing shall, in addition, be guilty of a
396 class F felony.

397 § 2508A. Customers' Remedies.

398 (a) The sale of any merchandise by an unregistered, non-exempt seller or an unregistered, non-
399 exempt telemarketing business shall be voidable.

400 (b) Any customer who suffers a loss or harm as a result of a violation or prohibited act or practice
401 under this chapter, in addition to any other rights of action allowed by law, may recover actual and punitive
402 damages, attorney's fees, court costs, and any other remedies provided by law, including equitable relief.

403 § 2509A. Enforcement.

404 All enforcement actions under this chapter by the Attorney General shall be undertaken in accordance with
405 Chapter 25 of Title 29."

SYNOPSIS

Recent advances in communications and computer technology have enabled consumer product companies and other marketers and solicitors to reach customers at home at all hours. While the vast majority of telemarketers are legitimate and ethical in their practices, a growing segment of telemarketers abuse the technology and access by committing fraud or engaging in unfair or abusive tactics.

The federal government has responded to this threat by passing the Telemarketing and Consumer Fraud Abuse Act of 1994 which sets standards of conduct. This Act complements the federal law by setting standards, providing for registration and bonding and establishing criminal and civil sanctions for violators.

§ 2502A defines terms and the affected persons and companies: "sellers", "telemarketers" and "telemarketing businesses". It defines what constitutes and distinguishes a telemarketing "solicitation".

§ 2503A establishes registration and bonding requirements for affected persons and companies. It identifies the required disclosures and sets forth specifications for security. It also provides for exemption for certain corporations. Additionally, the section provides that violations of the registration and bonding requirements are deemed consumer fraud violations under § 2513 of Title 6. Under this section an intentional violation by an affected party is a felony.

§ 2504A requires affected persons and companies to create and maintain certain records.

§ 2505A defines certain business practices as exempt; face-to-selling, incidental use of telephones not resulting from telemarketing solicitations, business-to-business telemarketing, use of telephones for charitable/fraternal fundraising, telemarketing by non-commercial organizations for fundraising and non-commercial purposes, telemarketing in connection with insurance, telemarketing by contractors and agents of exempted persons, telemarketing by lawfully registered securities brokers, advisers and agents, and catalog sales.

§ 2506A sets standards of conduct for affected persons and mandatory disclosures to consumers. The section further requires cancellation notices in contracts. It provides that violations of the section are deemed consumer fraud violations under § 2513 of Title 6 and deceptive trade practices under § 2532 of Title 6.

§ 2507A establishes that certain practices are specifically forbidden and that the available civil remedies and criminal sanctions are not exclusive.

§ 2508A creates a private right of action and declares that transactions by unregistered, non-exempt persons and companies are voidable.

§ 2509A identifies the Attorney General's power to enforce this statute under

§ 2517 of Title 29.