



SPONSOR: Rep. Spence  
& Rep. Price & Sen. Sharp; Reps.  
Valihura, Boulden; Reps.  
Buckworth, Capano, Cathcart,  
Cloutier, Miro, Stone, Gilligan,  
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:

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

"Chapter 25A. Telemarketing Registration and Fraud Prevention.

§2501A. Purpose; short title.

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

§2502A. Definitions.

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

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

(2) 'Customer' means a person who is or may be required to pay for merchandise offered  
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;

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

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

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

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

a. The owners and directors of any telemarketing business;

b. All telemarketers employed by the registrant; and

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

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

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

(11) A sworn and notarized statement that the information contained in the Registration Statement 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 monies 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 monies 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.

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

(2) The Registration Statement 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.

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

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

(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".

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

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

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

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

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

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

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

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

#### § 2504A. Record-keeping Requirements.

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

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

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



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

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

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

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

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

§ 2505A. Exempt Practices.

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

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

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

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

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

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

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

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

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

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

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

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

§ 2506A. Disclosure and Contract Requirements.

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

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

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

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

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

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

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

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

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

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

(7) Any material element of a prize promotion, including:

- a. an accurate description of the prize;
- b. its market value;
- c. all material conditions to receive or redeem the prize;
- d. the actual number of prizes to be awarded;
- e. the odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds;
- f. the fact that no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and
- g. instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate in the prize promotion.

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

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

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

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

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

**If you do make the merchandise available to the seller and the seller does not pick 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;

b. the customer's signature on the negotiable instrument;

c. an oral authorization by the customer which is tape recorded and made available upon request to the customer's bank which evidences both the customer's authorization of a payment for the specific merchandise sold and the customer's receipt of the following information:

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

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

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

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

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

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

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

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

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

§ 2508A. Customers' Remedies.

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

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

§ 2509A. Enforcement.

All enforcement actions under this chapter by the Attorney General shall be undertaken in accordance with 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.