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1ST SESSION

H. R. 868

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1993

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To strengthen the authority of the Federal Trade Commission to protect consumers in connection with sales made with a telephone, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Protection
5 Telemarketing Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) Telemarketing differs from other sales ac-
2 tivities in that it can be carried out by sellers across
3 State lines without direct contact. Telemarketers can
4 also be very mobile, easily moving from State to
5 State.

6 (2) Interstate telemarketing fraud has become a
7 problem of such magnitude that the resources of the
8 Federal Trade Commission are not sufficient to in-
9 sure adequate consumer protection from such fraud.

10 (3) Consumers and others are estimated to lose
11 \$10,000,000,000 a year in telemarketing fraud.

12 (4) Consumers are victimized by other forms of
13 telemarketing deception and abuse.

14 (5) Consequently, Congress should enact legis-
15 lation that will offer consumers necessary protection
16 from telemarketing deception (including fraud) and
17 abuse.

18 **SEC. 3. TELEMARKETING RULES.**

19 (a) IN GENERAL.—

20 (1) The Commission shall prescribe rules pro-
21 hibiting deceptive (including fraudulent)
22 telemarketing activities and other abusive
23 telemarketing activities.

24 (2) The Commission shall include in such rules
25 respecting deceptive telemarketing activities—

1 (A) a definition of deceptive telemarketing
2 activities, and

3 (B) criteria that are symptomatic of decep-
4 tive telemarketing as distinguished from ordi-
5 nary telemarketing business practices.

6 (3) The Commission shall include in such rules
7 respecting other abusive telemarketing activities a
8 requirement that telemarketers may not undertake a
9 pattern of unsolicited telephone calls which the rea-
10 sonable consumer would consider coercive or abusive
11 of such consumer's right to privacy. In prescribing
12 the rules described in this paragraph, the Commis-
13 sion shall consider—

14 (A) including a requirement that goods or
15 services offered by telemarketing be shipped or
16 provided within a specified period and that if
17 the goods or services are not shipped or pro-
18 vided within such period, a refund be required,
19 and

20 (B) including, where practicable, authority
21 for a person who orders a good or service
22 through telemarketing to cancel the order with-
23 in a specified period.

24 (b) RULEMAKING.—

1 (1) The Commission shall prescribe the rules
2 under subsection (a) within 270 days after the date
3 of enactment of this Act. Such rules shall be pre-
4 scribed in accordance with section 553 of title 5,
5 United States Code.

6 (2) A rule issued under subsection (a) shall be
7 considered a rule issued under section 18(a)(1)(B)
8 of the Federal Trade Commission Act.

9 (c) ENFORCEMENT.—Any violation of any rule pre-
10 scribed under subsection (a) shall be treated as a violation
11 of a rule under section 5 of the Federal Trade Commission
12 Act (15 U.S.C. 45) regarding unfair or deceptive acts or
13 practices.

14 (d) SECURITIES AND EXCHANGE COMMISSION
15 RULES.—

16 (1) PROMULGATION.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), not later than 6 months
19 after the effective date of rules promulgated by
20 the Commission under subsection (a), the Secu-
21 rities and Exchange Commission shall promul-
22 gate, or require any national securities ex-
23 change or registered securities association to
24 promulgate, rules substantially similar to such
25 rules to prohibit deceptive and other abusive

1 telemarketing activities by persons described in
2 paragraph (2).

3 (B) EXCEPTION.—The Securities and Ex-
4 change Commission is not required to promul-
5 gate a rule under subparagraph (A) if it deter-
6 mines that—

7 (i) Federal securities laws or rules
8 adopted by the Securities and Exchange
9 Commission thereunder provide protection
10 from deceptive and other abusive
11 telemarketing by persons described in
12 paragraph (2) substantially similar to that
13 provided by rules promulgated by the Com-
14 mission under subsection (a); or

15 (ii) such a rule promulgated by the
16 Securities and Exchange Commission is
17 not necessary or appropriate in the public
18 interest, or for the protection of investors,
19 or would be inconsistent with the mainte-
20 nance of fair and orderly markets.

21 If the Securities and Exchange Commission de-
22 termines that an exception described in clause
23 (i) or (ii) applies, the Securities and Exchange
24 Commission shall publish in the Federal Reg-
25 ister its determination with the reasons for it.

1 (2) APPLICATION.—

2 (A) IN GENERAL.—The rules promulgated
3 by the Securities and Exchange Commission
4 under paragraph (1)(A) shall apply to a broker,
5 dealer, transfer agent, municipal securities deal-
6 er, municipal securities broker, government se-
7 curities broker, government securities dealer,
8 investment adviser or investment company, or
9 any individual associated with a broker, dealer,
10 transfer agent, municipal securities dealer, mu-
11 nicipal securities broker, government securities
12 broker, government securities dealer, invest-
13 ment adviser or investment company. The rules
14 promulgated by the Commission under sub-
15 section (a) shall not apply to persons described
16 in the preceding sentence.

17 (B) DEFINITIONS.—For purposes of sub-
18 paragraph (A)—

19 (i) the terms “broker”, “dealer”,
20 “transfer agent”, “municipal securities
21 dealer”, “municipal securities broker”,
22 “government securities broker”, and “gov-
23 ernment securities dealer” have the mean-
24 ings given such terms by paragraphs (4),
25 (5), (25), (30), (31), (43), and (44) of sec-

1 tion 3(a) of the Securities and Exchange
2 Act of 1934 (15 U.S.C. 78c(a) (4), (5),
3 (25), (30), (31), (43), and (44));

4 (ii) the term “investment adviser” has
5 the meaning given such term by section
6 202(a)(11) of the Investment Advisers Act
7 of 1940 (15 U.S.C. 80b-2(a)(11)); and

8 (iii) the term “investment company”
9 has the meaning given such term by sec-
10 tion 3(a) of the Investment Company Act
11 of 1940 (15 U.S.C. 80a-3(a)).

12 (e) COMMODITY FUTURES TRADING COMMISSION
13 RULES.—

14 (1) APPLICATION.—The rules promulgated by
15 the Commission under subsection (a) shall not apply
16 to persons described in subsection (f)(1) of section
17 6 of the Commodity Exchange Act (7 U.S.C. 8, 9,
18 15, 13b, 9a).

19 (2) PROMULGATION.—Section 6 of the Com-
20 modity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a)
21 is amended by adding at the end the following new
22 subsection:

23 “(f)(1) Except as provided in paragraph (2), not later
24 than 6 months after the effective date of rules promul-
25 gated by the Federal Trade Commission under section

1 3(a) of the Consumer Protection Telemarketing Act, the
2 Commission shall promulgate, or require each registered
3 futures association to promulgate, rules substantially simi-
4 lar to such rules to prohibit deceptive and other abusive
5 telemarketing activities by any person registered or ex-
6 empt from registration under this Act in connection with
7 such person's business as a futures commission merchant,
8 introducing broker, commodity trading advisory, commod-
9 ity pool operator, leverage transaction merchant, floor
10 broker, or floor trader, or a person associated with any
11 such person.

12 “(2) The Commission is not required to promulgate
13 rules under paragraph (1) if it determines that—

14 “(A) rules adopted by the Commission under
15 this Act provide protection from deceptive and abu-
16 sive telemarketing by persons described under para-
17 graph (1) substantially similar to that provided by
18 rules promulgated by the Federal Trade Commission
19 under section 3(a) of the Consumer Protection
20 Telemarketing Act; or

21 “(B) such a rule promulgated by the Commis-
22 sion is not necessary or appropriate in the public in-
23 terest, or for the protection of customers in the fu-
24 tures and options markets, or would be inconsistent
25 with the maintenance of fair and orderly markets.

1 If the Commission determines that an exception described
2 in subparagraph (A) or (B) applies, the Commission shall
3 publish in the Federal Register its determination with the
4 reasons for it.”.

5 **SEC. 4. ACTIONS BY STATES.**

6 (a) IN GENERAL.—Whenever an attorney general of
7 any State has reason to believe that the interests of the
8 residents of that State have been or are being threatened
9 or adversely affected because any person has engaged or
10 is engaging in a pattern or practice of telemarketing which
11 violates any rule of the Commission under section 3, the
12 State may bring a civil action on behalf of its residents
13 in an appropriate district court of the United States to
14 enjoin such telemarketing, to enforce compliance with such
15 rule of the Commission, to obtain damages, restitution, or
16 other compensation on behalf of residents of such State,
17 or to obtain such further and other relief as the court may
18 deem appropriate.

19 (b) NOTICE.—The State shall serve prior written no-
20 tice of any civil action under subsection (a) upon the Com-
21 mission and provide the Commission with a copy of its
22 complaint, except that if it is not feasible for the State
23 to provide such prior notice, the State shall serve such
24 notice immediately upon instituting such action. Upon re-
25 ceiving a notice respecting a civil action, the Commission

1 shall have the right (1) to intervene in such action, (2)
2 upon so intervening, to be heard on all matters arising
3 therein, and (3) to file petitions for appeal.

4 (c) CONSTRUCTION.—For purposes of bringing any
5 civil action under subsection (a), nothing in this Act shall
6 prevent an attorney general from exercising the powers
7 conferred on the attorney general by the laws of such
8 State to conduct investigations or to administer oaths or
9 affirmations or to compel the attendance of witnesses or
10 the production of documentary and other evidence.

11 (d) ACTIONS BY THE COMMISSION.—Whenever the
12 Commission has instituted a civil action for violation of
13 any rule prescribed under section 3, no State may, during
14 the pendency of such action instituted by the Commission,
15 institute a civil action under subsection (a) against any
16 defendant named in the Commission’s complaint for acts
17 or omissions alleged in the complaint for violation of any
18 rule as alleged in the Commission’s complaint.

19 (e) ACTIONS BY OTHER STATE OFFICIALS.—

20 (1) Nothing contained in this section shall pro-
21 hibit an authorized State official from proceeding in
22 State court on the basis of an alleged violation of
23 any civil or criminal statute of such State.

24 (2) In addition to actions brought by an attor-
25 ney general of a State under subsection (a), such an

1 action may be brought by officers of such State who
2 are authorized by the State to bring actions in such
3 State for protection of consumers and who are des-
4 ignated by the Commission to bring an action under
5 subsection (a) against persons that the Commission
6 has determined have or are engaged in a pattern or
7 practice of telemarketing which violates a rule of the
8 Commission under section 3.

9 **SEC. 5. ACTIONS BY PRIVATE PERSONS.**

10 (a) IN GENERAL.—Any person adversely affected by
11 any pattern or practice of telemarketing which violates any
12 rule of the Commission under section 3 or an authorized
13 person acting on such person’s behalf may, within 3 years
14 after discovery of the violation, bring a civil action in an
15 appropriate district court of the United States against a
16 person who has engaged or is engaging in such pattern
17 or practice of telemarketing if the amount in controversy
18 exceeds the sum or value of \$50,000 in actual damages
19 for each person adversely affected by such telemarketing.
20 Such an action may be brought to enjoin such
21 telemarketing, to enforce compliance with any rule of the
22 Commission under section 3, to obtain damages, or to ob-
23 tain such further and other relief as the court may deem
24 appropriate.

1 (b) NOTICE.—The plaintiff shall serve prior written
2 notice of the action upon the Commission and provide the
3 Commission with a copy of its complaint, except in any
4 case where such prior notice is not feasible, in which case
5 the person shall serve such notice immediately upon insti-
6 tuting such action. The Commission shall have the right
7 (A) to intervene in the action, (B) upon so intervening,
8 to be heard on all matters arising therein, and (C) to file
9 petitions for appeal.

10 (c) ACTIONS BY THE COMMISSION.—Whenever the
11 Commission has instituted a civil action for violation of
12 any rule prescribed under section 3, no person may, dur-
13 ing the pendency of such action instituted by the Commis-
14 sion, subsequently institute a civil action against any de-
15 fendant named in the Commission’s complaint for viola-
16 tion of any rule as alleged in the Commission’s complaint.

17 (d) COSTS AND FEES.—The court, in issuing any
18 final order in any action brought under subsection (a),
19 may award costs of suit and reasonable fees for attorneys
20 and expert witnesses to the prevailing party.

21 (e) CONSTRUCTION.—Nothing in this section shall re-
22 strict any right which any person may have under any
23 statute or common law.

1 **SEC. 6. CLEARINGHOUSE.**

2 (a) IN GENERAL.—The Commission shall establish a
3 clearinghouse for inquiries made to Federal agencies con-
4 cerning telemarketing. The clearinghouse will provide in-
5 formation (other than information which may not be dis-
6 closed under section 552(b) of title 5, United States Code,
7 or under regulations prescribed by the Commission to im-
8 plement such section) to anyone making inquiries respect-
9 ing persons engaged in telemarketing or direct such
10 inquiries to the appropriate Federal or State agency.

11 (b) LIABILITY FOR PROVIDING INFORMATION.—No
12 person who provides information to the clearinghouse es-
13 tablished under subsection (a) shall be liable for damages
14 for the provision of such information unless such person
15 provided such information knowing it to be false.

16 **SEC. 7. ADMINISTRATION AND APPLICABILITY OF ACT.**

17 (a) IN GENERAL.—Except as otherwise provided in
18 sections 3(d), 3(e), 4, and 5, this Act shall be enforced
19 by the Commission under the Federal Trade Commission
20 Act (15 U.S.C. 41 et seq.). Consequently, no activity
21 which is outside the jurisdiction of that Act shall be
22 affected by this Act.

23 (b) ACTIONS BY THE COMMISSION.—The Commis-
24 sion shall prevent any person from violating a rule of the
25 Commission under section 3 in the same manner, by the
26 same means, and with the same jurisdiction, powers, and

1 duties as though all applicable terms and provisions of the
2 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
3 were incorporated into and made a part of this Act. Any
4 person who violates such rule shall be subject to the pen-
5 alties and entitled to the privileges and immunities pro-
6 vided in the Federal Trade Commission Act in the same
7 manner, by the same means, and with the same jurisdic-
8 tion, power, and duties as though all applicable terms and
9 provisions of the Federal Trade Commission Act were
10 incorporated into and made a part of this Act.

11 **SEC. 8. REVIEW.**

12 Upon the expiration of 5 years following the date of
13 the enactment of this Act, the Commission shall review
14 its implementation of this Act and its effect on deceptive
15 telemarketing activities and report the results of the
16 review to the Congress.

17 **SEC. 9. DEFINITIONS.**

18 For purposes of this Act:

19 (1) The term “attorney general” means the
20 chief legal officer of a State.

21 (2) The term “Commission” means the Federal
22 Trade Commission.

23 (3) The term “State” means any State of the
24 United States, the District of Columbia, Puerto

1 Rico, the Northern Mariana Islands, and any terri-
2 tory or possession of the United States.

3 (4) The term “telemarketing” means a plan,
4 program, or campaign which is conducted to induce
5 purchases of goods or services by significant use of
6 one or more telephones and which involves more
7 than one interstate telephone call. The term does not
8 include the solicitation of sales through the mailing
9 of a catalog which—

10 (A) contains a written description or illus-
11 tration of the goods or services offered for sale,

12 (B) includes the business address of the
13 seller,

14 (C) includes multiple pages of written ma-
15 terial or illustrations, and

16 (D) has been issued not less frequently
17 than once a year,

18 where the person making the solicitation does not
19 solicit customers by telephone but only receives calls
20 initiated by customers in response to the catalog and
21 during those calls takes orders only without further
22 solicitation.

Passed the House of Representatives March 2,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.