

103^D CONGRESS
1ST SESSION

H. R. 868

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1993

Mr. SWIFT (for himself, Mr. OXLEY, Ms. LAMBERT, and Mr. GILLMOR) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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:

8 (1) Telemarketing differs from other sales ac-
9 tivities in that it can be carried out by sellers across

1 State lines without direct contact. Telemarketers can
2 also be very mobile, easily moving from State to
3 State.

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

8 (3) Consumers and others are estimated to lose
9 \$10 billion a year in telemarketing fraud.

10 (4) Consumers are victimized by other forms of
11 telemarketing deception and abuse.

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

16 **SEC. 3. TELEMARKETING RULES.**

17 (a) IN GENERAL.—

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

22 (2) The Commission shall include in such rules
23 respecting deceptive telemarketing activities—

24 (A) a definition of deceptive telemarketing
25 activities, and

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

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

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

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

22 (b) RULEMAKING.—

23 (1) The Commission shall prescribe the rules
24 under subsection (a) within 270 days after the date
25 of enactment of this Act. Such rules shall be pre-

1 scribed in accordance with section 553 of title 5,
2 United States Code.

3 (2) A rule issued under subsection (a) shall be
4 considered a rule issued under section 18(a)(1)(B)
5 of the Federal Trade Commission Act.

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

11 **SEC. 4. ACTIONS BY STATES.**

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

1 (b) NOTICE.—The State shall serve prior written no-
2 tice of any civil action under subsection (a) upon the Com-
3 mission and provide the Commission with a copy of its
4 complaint, except that if it is not feasible for the State
5 to provide such prior notice, the State shall serve such
6 notice immediately upon instituting such action. Upon re-
7 ceiving a notice respecting a civil action, the Commission
8 shall have the right (1) to intervene in such action, (2)
9 upon so intervening, to be heard on all matters arising
10 therein, and (3) to file petitions for appeal.

11 (c) CONSTRUCTION.—For purposes of bringing any
12 civil action under subsection (a), nothing in this Act shall
13 prevent an attorney general from exercising the powers
14 conferred on the attorney general by the laws of such
15 State to conduct investigations or to administer oaths or
16 affirmations or to compel the attendance of witnesses or
17 the production of documentary and other evidence.

18 (d) ACTIONS BY THE COMMISSION.—Whenever the
19 Commission has instituted a civil action for violation of
20 any rule prescribed under section 3, no State may, during
21 the pendency of such action instituted by the Commission,
22 institute a civil action under subsection (a) against any
23 defendant named in the Commission’s complaint for acts
24 or omissions alleged in the complaint for violation of any
25 rule as alleged in the Commission’s complaint.

1 (e) ACTIONS BY OTHER STATE OFFICIALS.—

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

6 (2) In addition to actions brought by an attor-
7 ney general of a State under subsection (a), such an
8 action may be brought by officers of such State who
9 are authorized by the State to bring actions in such
10 State for protection of consumers and who are des-
11 ignated by the Commission to bring an action under
12 subsection (a) against persons that the Commission
13 has determined have or are engaged in a pattern or
14 practice of telemarketing which violates a rule of the
15 Commission under section 3.

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

17 (a) IN GENERAL.—Any person adversely affected by
18 any pattern or practice of telemarketing which violates any
19 rule of the Commission under section 3 or an authorized
20 person acting on such person's behalf may, within 3 years
21 after discovery of the violation, bring a civil action in an
22 appropriate district court of the United States against a
23 person who has engaged or is engaging in such pattern
24 or practice of telemarketing if the amount in controversy
25 exceeds the sum or value of \$50,000 in actual damages

1 for each person adversely affected by such telemarketing.
2 Such an action may be brought to enjoin such
3 telemarketing, to enforce compliance with any rule of the
4 Commission under section 3, to obtain damages, or to ob-
5 tain such further and other relief as the court may deem
6 appropriate.

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

16 (c) ACTIONS BY THE COMMISSION.—Whenever the
17 Commission has instituted a civil action for violation of
18 any rule prescribed under section 3, no person may, dur-
19 ing the pendency of such action instituted by the Commis-
20 sion, subsequently institute a civil action against any de-
21 fendant named in the Commission's complaint for viola-
22 tion of any rule as alleged in the Commission's complaint.

23 (d) COSTS AND FEES.—The court, in issuing any
24 final order in any action brought under subsection (a),

1 may award costs of suit and reasonable fees for attorneys
2 and expert witnesses to the prevailing party.

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

6 **SEC. 6. CLEARINGHOUSE.**

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

16 (b) LIABILITY FOR PROVIDING INFORMATION.—No
17 person who provides information to the clearinghouse es-
18 tablished under subsection (a) shall be liable for damages
19 for the provision of such information unless such person
20 provided such information knowing it to be false.

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

22 (a) IN GENERAL.—Except as otherwise provided in
23 sections 4 and 5, this Act shall be enforced by the Com-
24 mission under the Federal Trade Commission Act (15
25 U.S.C. 41 et seq.). Consequently, no activity which is out-

1 side the jurisdiction of that Act shall be affected by this
2 Act.

3 (b) ACTIONS BY THE COMMISSION.—The Commis-
4 sion shall prevent any person from violating a rule of the
5 Commission under section 3 in the same manner, by the
6 same means, and with the same jurisdiction, powers, and
7 duties as though all applicable terms and provisions of the
8 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
9 were incorporated into and made a part of this Act. Any
10 person who violates such rule shall be subject to the pen-
11 alties and entitled to the privileges and immunities pro-
12 vided in the Federal Trade Commission Act in the same
13 manner, by the same means, and with the same jurisdic-
14 tion, power, and duties as though all applicable terms and
15 provisions of the Federal Trade Commission Act were in-
16 corporated into and made a part of this Act.

17 **SEC. 8. 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.

23 **SEC. 9. REVIEW.**

24 Upon the expiration of 5 years following the date of
25 the enactment of this Act, the Federal Trade Commission

- 1 shall review the implementation of this Act and its effect
- 2 on deceptive telemarketing activities and report the results
- 3 of the review to the Congress.

