

Union Calendar No. 9

103D CONGRESS
1ST SESSION

H. R. 868

[Report No. 103-20]

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.

FEBRUARY 24, 1993

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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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

FEBRUARY 24, 1993

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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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Consumer Protection
3 Telemarketing Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) Telemarketing differs from other sales ac-
7 tivities in that it can be carried out by sellers across
8 State lines without direct contact. Telemarketers can
9 also be very mobile, easily moving from State to
10 State.

11 (2) Interstate telemarketing fraud has become a
12 problem of such magnitude that the resources of the
13 Federal Trade Commission are not sufficient to in-
14 sure adequate consumer protection from such fraud.

15 (3) Consumers and others are estimated to lose
16 \$10 billion a year in telemarketing fraud.

17 (4) Consumers are victimized by other forms of
18 telemarketing deception and abuse.

19 (5) Consequently, Congress should enact legis-
20 lation that will offer consumers necessary protection
21 from telemarketing deception (including fraud) and
22 abuse.

23 **SEC. 3. TELEMARKETING RULES.**

24 (a) IN GENERAL.—

25 (1) The Commission shall prescribe rules pro-
26 hibiting deceptive (including fraudulent)

1 telemarketing activities and other abusive
2 telemarketing activities.

3 (2) The Commission shall include in such rules
4 respecting deceptive telemarketing activities—

5 (A) a definition of deceptive telemarketing
6 activities, and

7 (B) criteria that are symptomatic of decep-
8 tive telemarketing as distinguished from ordi-
9 nary telemarketing business practices.

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

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

24 (B) including, where practicable, authority
25 for a person who orders a good or service

1 through telemarketing to cancel the order with-
2 in a specified period.

3 (b) RULEMAKING.—

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

9 (2) A rule issued under subsection (a) shall be
10 considered a rule issued under section 18(a)(1)(B)
11 of the Federal Trade Commission Act.

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

17 **SEC. 4. ACTIONS BY STATES.**

18 (a) IN GENERAL.—Whenever an attorney general of
19 any State has reason to believe that the interests of the
20 residents of that State have been or are being threatened
21 or adversely affected because any person has engaged or
22 is engaging in a pattern or practice of telemarketing which
23 violates any rule of the Commission under section 3, the
24 State may bring a civil action on behalf of its residents
25 in an appropriate district court of the United States to

1 enjoin such telemarketing, to enforce compliance with such
2 rule of the Commission, to obtain damages, restitution, or
3 other compensation on behalf of residents of such State,
4 or to obtain such further and other relief as the court may
5 deem appropriate.

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

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

23 (d) ACTIONS BY THE COMMISSION.—Whenever the
24 Commission has instituted a civil action for violation of
25 any rule prescribed under section 3, no State may, during

1 the pendency of such action instituted by the Commission,
2 institute a civil action under subsection (a) against any
3 defendant named in the Commission's complaint for acts
4 or omissions alleged in the complaint for violation of any
5 rule as alleged in the Commission's complaint.

6 (e) ACTIONS BY OTHER STATE OFFICIALS.—

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

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

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

22 (a) IN GENERAL.—Any person adversely affected by
23 any pattern or practice of telemarketing which violates any
24 rule of the Commission under section 3 or an authorized
25 person acting on such person's behalf may, within 3 years

1 after discovery of the violation, bring a civil action in an
2 appropriate district court of the United States against a
3 person who has engaged or is engaging in such pattern
4 or practice of telemarketing if the amount in controversy
5 exceeds the sum or value of \$50,000 in actual damages
6 for each person adversely affected by such telemarketing.
7 Such an action may be brought to enjoin such
8 telemarketing, to enforce compliance with any rule of the
9 Commission under section 3, to obtain damages, or to ob-
10 tain such further and other relief as the court may deem
11 appropriate.

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

21 (c) ACTIONS BY THE COMMISSION.—Whenever the
22 Commission has instituted a civil action for violation of
23 any rule prescribed under section 3, no person may, dur-
24 ing the pendency of such action instituted by the Commis-
25 sion, subsequently institute a civil action against any de-

1 fendant named in the Commission's complaint for viola-
2 tion of any rule as alleged in the Commission's complaint.

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

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

10 **SEC. 6. CLEARINGHOUSE.**

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

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

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

2 (a) IN GENERAL.—Except as otherwise provided in
3 sections 4 and 5, this Act shall be enforced by the Com-
4 mission under the Federal Trade Commission Act (15
5 U.S.C. 41 et seq.). Consequently, no activity which is out-
6 side the jurisdiction of that Act shall be affected by this
7 Act.

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

22 **SEC. 8. DEFINITIONS.**

23 For purposes of this Act:

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

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

3 (3) The term “State” means any State of the
4 United States, the District of Columbia, Puerto
5 Rico, the Northern Mariana Islands, and any terri-
6 tory or possession of the United States.

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

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

16 (B) includes the business address of the
17 seller,

18 (C) includes multiple pages of written ma-
19 terial or illustrations, and

20 (D) has been issued not less frequently
21 than once a year,

22 where the person making the solicitation does not
23 solicit customers by telephone but only receives calls
24 initiated by customers in response to the catalog and

1 during those calls takes orders only without further
2 solicitation.

3 **SEC. 9. REVIEW.**

4 Upon the expiration of 5 years following the date of
5 the enactment of this Act, the Federal Trade Commission
6 shall review the implementation of this Act and its effect
7 on deceptive telemarketing activities and report the results
8 of the review to the Congress.