

103^D CONGRESS
2^D SESSION

H. RES. 488

Providing for the concurrence by the House, with an amendment, in the amendment by the Senate to the bill H.R. 868.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1994

Mr. SWIFT submitted the following resolution; which was considered under suspension of the rules and agreed to

RESOLUTION

Providing for the concurrence by the House, with an amendment, in the amendment by the Senate to the bill H.R. 868.

1 *Resolved*, That, upon adoption of this resolution, the
2 bill (H.R. 868) to strengthen the authority of the Federal
3 Trade Commission to protect consumers in connection
4 with sales made with a telephone, and for other purposes,
5 with the Senate amendment thereto, shall be considered
6 to have been taken from the Speaker's table, and the same
7 are hereby agreed to with an amendment as follows:

8 In lieu of the matter proposed to be inserted by the
9 Senate, insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Telemarketing and
3 Consumer Fraud and Abuse Prevention 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 with the consumer.
9 Telemarketers also can be very mobile, easily moving
10 from State to 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 en-
14 sure adequate consumer protection from such fraud.

15 (3) Consumers and others are estimated to lose
16 \$40 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 and abuse.

22 **SEC. 3. TELEMARKETING RULES.**

23 (a) IN GENERAL.—

24 (1) The Commission shall prescribe rules pro-
25 hibiting deceptive telemarketing acts or practices
26 and other abusive telemarketing acts or practices.

1 (2) The Commission shall include in such rules
2 respecting deceptive telemarketing acts or practices
3 a definition of deceptive telemarketing acts or prac-
4 tices which may include acts or practices of entities
5 or individuals that assist or facilitate deceptive
6 telemarketing, including credit card laundering.

7 (3) The Commission shall include in such rules
8 respecting other abusive telemarketing acts or prac-
9 tices—

10 (A) a requirement that telemarketers may
11 not undertake a pattern of unsolicited telephone
12 calls which the reasonable consumer would con-
13 sider coercive or abusive of such consumer's
14 right to privacy,

15 (B) restrictions on the hours of the day
16 and night when unsolicited telephone calls can
17 be made to consumers, and

18 (C) a requirement that any person engaged
19 in telemarketing for the sale of goods or serv-
20 ices shall promptly and clearly disclose to the
21 person receiving the call that the purpose of the
22 call is to sell goods or services and make such
23 other disclosures as the Commission deems ap-
24 propriate, including the nature and price of the
25 goods and services.

1 In prescribing the rules described in this paragraph,
2 the Commission shall also consider recordkeeping re-
3 quirements.

4 (b) RULEMAKING.—The Commission shall prescribe
5 the rules under subsection (a) within 365 days after the
6 date of enactment of this Act. Such rules shall be pre-
7 scribed in accordance with section 553 of title 5, United
8 States Code.

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 18 of the Federal Trade Commis-
12 sion Act (15 U.S.C. 57a) regarding unfair or deceptive
13 acts or 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 Federal Trade Commission under sub-
21 section (a), the Securities and Exchange Com-
22 mission shall promulgate, or require any na-
23 tional securities exchange or registered securi-
24 ties association to promulgate, rules substan-
25 tially similar to such rules to prohibit deceptive

1 and other abusive telemarketing acts or prac-
2 tices by persons described in 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 Fed-
14 eral Trade Commission under subsection
15 (a); or

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

22 If the Securities and Exchange Commission de-
23 termines that an exception described in clause
24 (i) or (ii) applies, the Securities and Exchange

1 Commission shall publish in the Federal Reg-
2 ister its determination with the reasons for it.

3 (2) APPLICATION.—

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

19 (B) DEFINITIONS.—For purposes of sub-
20 paragraph (A)—

21 (i) the terms “broker”, “dealer”,
22 “transfer agent”, “municipal securities
23 dealer”, “municipal securities broker”,
24 “government securities broker”, and “gov-
25 ernment securities dealer” have the mean-

1 ings given such terms by paragraphs (4),
2 (5), (25), (30), (31), (43), and (44) of sec-
3 tion 3(a) of the Securities and Exchange
4 Act of 1934 (15 U.S.C. 78c(a)(4), (5),
5 (25), (30), (31), (43), and (44));

6 (ii) the term “investment adviser” has
7 the meaning given such term by section
8 202(a)(11) of the Investment Advisers Act
9 of 1940 (15 U.S.C. 80b-2(a)(11)); and

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

14 (e) COMMODITY FUTURES TRADING COMMISSION
15 RULES.—

16 (1) APPLICATION.—The rules promulgated by
17 the Federal Trade Commission under subsection (a)
18 shall not apply to persons described in subsection
19 (f)(1) of section 6 of the Commodity Exchange Act
20 (7 U.S.C. 8, 9, 15, 13b, 9a).

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

1 “(f)(1) Except as provided in paragraph (2), not later
2 than six months after the effective date of rules promul-
3 gated by the Federal Trade Commission under section
4 3(a) of the Telemarketing and Consumer Fraud and
5 Abuse Prevention Act, the Commission shall promulgate,
6 or require each registered futures association to promul-
7 gate, rules substantially similar to such rules to prohibit
8 deceptive and other abusive telemarketing acts or prac-
9 tices by any person registered or exempt from registration
10 under this Act in connection with such person’s business
11 as a futures commission merchant, introducing broker,
12 commodity trading advisor, commodity pool operator, le-
13 verage transaction merchant, floor broker, or floor trader,
14 or a person associated with any such person.

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

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

24 “(B) such a rule promulgated by the Commis-
25 sion is not necessary or appropriate in the public in-

1 interest, or for the protection of customers in the fu-
2 tures and options markets, or would be inconsistent
3 with the maintenance of fair and orderly markets.

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

8 **SEC. 4. ACTIONS BY STATES.**

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

22 (b) NOTICE.—The State shall serve prior written no-
23 tice of any civil action under subsection (a) or (f)(2) upon
24 the Commission and provide the Commission with a copy
25 of its complaint, except that if it is not feasible for the

1 State to provide such prior notice, the State shall serve
2 such notice immediately upon instituting such action.
3 Upon receiving a notice respecting a civil action, the Com-
4 mission shall have the right (1) to intervene in such action,
5 (2) upon so intervening, to be heard on all matters arising
6 therein, and (3) to file petitions for appeal.

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

14 (d) ACTIONS BY THE COMMISSION.—Whenever a civil
15 action has been instituted by or on behalf of the Commis-
16 sion for violation of any rule prescribed under section 3,
17 no State may, during the pendency of such action insti-
18 tuted by or on behalf of the Commission, institute a civil
19 action under subsection (a) or (f)(2) against any defend-
20 ant named in the complaint in such action for violation
21 of any rule as alleged in such complaint.

22 (e) VENUE; SERVICE OF PROCESS.—Any civil action
23 brought under subsection (a) in a district court of the
24 United States may be brought in the district in which the
25 defendant is found, is an inhabitant, or transacts business

1 or wherever venue is proper under section 1391 of title
2 28, United States Code. Process in such an action may
3 be served in any district in which the defendant is an in-
4 habitant or in which the defendant may be found.

5 (f) ACTIONS BY OTHER STATE OFFICIALS.—

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

10 (2) In addition to actions brought by an attor-
11 ney general of a State under subsection (a), such an
12 action may be brought by officers of such State who
13 are authorized by the State to bring actions in such
14 State on behalf of its residents.

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

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

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

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

15 (c) ACTION BY THE COMMISSION.—Whenever a civil
16 action has been instituted by or on behalf of the Commis-
17 sion for violation of any rule prescribed under section 3,
18 no person may, during the pendency of such action insti-
19 tuted by or on behalf of the Commission, institute a civil
20 action against any defendant named in the complaint in
21 such action for violation of any rule as alleged in such
22 complaint.

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

1 award costs of suit and reasonable fees for attorneys and
2 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 (f) VENUE; SERVICE OF PROCESS.—Any civil action
7 brought under subsection (a) in a district court of the
8 United States may be brought in the district in which the
9 defendant is found, is an inhabitant, or transacts business
10 or wherever venue is proper under section 1391 of title
11 28, United States Code. Process in such an action may
12 be served in any district in which the defendant is an in-
13 habitant or in which the defendant may be found.

14 **SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.**

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

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

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

10 (c) EFFECT ON OTHER LAWS.—Nothing contained in
11 this Act shall be construed to limit the authority of the
12 Commission under any other provision of law.

13 **SEC. 7. DEFINITIONS.**

14 For purposes of this Act:

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

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

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

23 (4) The term “telemarketing” means a plan,
24 program, or campaign which is conducted to induce
25 purchases of goods or services by use of one or more

1 telephones and which involves more than one inter-
2 state telephone call. The term does not include the
3 solicitation of sales through the mailing of a catalog
4 which—

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

7 (B) includes the business address of the
8 seller,

9 (C) includes multiple pages of written ma-
10 terial or illustrations, and

11 (D) has been issued not less frequently
12 than once a year,

13 where the person making the solicitation does not
14 solicit customers by telephone but only receives calls
15 initiated by customers in response to the catalog and
16 during those calls takes orders only without further
17 solicitation.

18 **SEC. 8. FALSE ADVERTISEMENTS CONCERNING SERVICES.**

19 Section 12(a) of the Federal Trade Commission Act
20 (15 U.S.C. 52(a)) is amended by inserting “services,” im-
21 mediately after “devices,” each place it appears.

22 **SEC. 9. ENFORCEMENT OF ORDERS.**

23 (a) GENERAL AUTHORITY.—Subject to subsections
24 (b) and (c), the Federal Trade Commission may bring a
25 criminal contempt action for violations of orders of the

1 Commission obtained in cases brought under section 13(b)
2 of the Federal Trade Commission Act (15 U.S.C. 53(b)).

3 (b) APPOINTMENT.—An action authorized by sub-
4 section (a) may be brought by the Federal Trade Commis-
5 sion only after, and pursuant to, the appointment by the
6 Attorney General of an attorney employed by the Commis-
7 sion, as a special assistant United States Attorney.

8 (c) REQUEST FOR APPOINTMENT.—

9 (1) APPOINTMENT UPON REQUEST OR MO-
10 TION.—A special assistant United States Attorney
11 may be appointed under subsection (b) upon the re-
12 quest of the Federal Trade Commission or the court
13 which has entered the order for which contempt is
14 sought or upon the Attorney General's own motion.

15 (2) TIMING.—The Attorney General shall act
16 upon any request made under paragraph (1) within
17 45 days of the receipt of the request.

18 (d) TERMINATION OF AUTHORITY.—The authority of
19 the Federal Trade Commission to bring a criminal con-
20 tempt action under subsection (a) expires 2 years after
21 the date of the first promulgation of rules under section
22 3. The expiration of such authority shall have no effect
23 on an action brought before the expiration date.

1 **SEC. 10. REVIEW.**

2 Upon the expiration of 5 years following the date of
3 the first promulgation of rules under section 3, the Com-
4 mission shall review the implementation of this Act and
5 its effect on deceptive telemarketing acts or practices and
6 report the results of the review to the Congress.

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