

## **CHAPTER 87—TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION**

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### **§6101. Findings**

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose \$40 billion a year in telemarketing fraud.

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

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

(Pub. L. 103–297, §2, Aug. 16, 1994, 108 Stat. 1545.)

### **Short Title of 2001 Amendment**

Pub. L. 107–56, title X, §1011(a), Oct. 26, 2001, 115 Stat. 396, provided that: "This section [amending sections 6102 and 6106 of this title and sections 917 and 2325 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Crimes Against Charitable Americans Act of 2001'."

### **Short Title of 2000 Amendment**

Pub. L. 106–534, §1, Nov. 22, 2000, 114 Stat. 2555, provided that: "This Act [enacting provisions set out as notes under this section and section 3732 of Title 42, The Public Health and Welfare] may be cited as the 'Protecting Seniors From Fraud Act'."

### **Short Title**

Pub. L. 103–297, §1, Aug. 16, 1994, 108 Stat. 1545, provided that: "This Act [enacting this chapter and section 9b of Title 7, Agriculture, and amending section 52 of this title] may be cited as the 'Telemarketing and Consumer Fraud and Abuse Prevention Act'."

### **Congressional Findings**

Pub. L. 106–534, §2, Nov. 22, 2000, 114 Stat. 2555, provided that: "Congress makes the following findings:

"(1) Older Americans are among the most rapidly growing segments of our society.

"(2) Our Nation's elderly are too frequently the victims of violent crime, property crime, and consumer and telemarketing fraud.

"(3) The elderly are often targeted and retargeted in a range of fraudulent schemes.

"(4) The TRIAD program, originally sponsored by the National Sheriffs' Association, International Association of Chiefs of Police, and the American Association of Retired Persons unites sheriffs, police chiefs, senior volunteers, elder care providers, families, and seniors to reduce the criminal victimization of the elderly.

"(5) Congress should continue to support TRIAD and similar community partnerships that improve the safety and quality of life for millions of senior citizens.

"(6) There are few other community-based efforts that forge partnerships to coordinate criminal justice and social service resources to improve the safety and security of the elderly.

"(7) According to the National Consumers League, telemarketing fraud costs consumers nearly \$40,000,000,000 each year.

"(8) Senior citizens are often the target of telemarketing fraud.

"(9) Fraudulent telemarketers compile the names of consumers who are potentially vulnerable to telemarketing fraud into the so-called 'mooch lists'.

"(10) It is estimated that 56 percent of the names on such 'mooch lists' are individuals age 50 or older.

"(11) The Federal Bureau of Investigation and the Federal Trade Commission have provided resources to assist private-sector organizations to operate outreach programs to warn senior citizens whose names appear on confiscated 'mooch lists'.

"(12) The Administration on Aging was formed, in part, to provide senior citizens with the resources, information, and assistance their special circumstances require.

"(13) The Administration on Aging has a system in place to inform senior citizens of the dangers of telemarketing fraud.

"(14) Senior citizens need to be warned of the dangers of telemarketing fraud before they become victims of such fraud."

### **Senior Fraud Prevention Program**

Pub. L. 106–534, §3, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) Authorization of Appropriations.—There is authorized to be appropriated to the Attorney General \$1,000,000 for each of the fiscal years 2001 through 2005 for programs for the National Association of TRIAD.

"(b) Comptroller General.—The Comptroller General of the United States shall submit to Congress a report on the effectiveness of the TRIAD program 180 days prior to the expiration of the authorization under this Act [see Short Title of 2000 Amendment note above], including an analysis of TRIAD programs and activities; identification of impediments to the establishment of TRIADs across the Nation; and recommendations to improve the effectiveness of the TRIAD program."

### **Dissemination of Information**

Pub. L. 106–534, §4, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) In General.—The Secretary of Health and Human Services, acting through the Assistant Secretary of Health and Human Services for Aging, shall provide to the Attorney General of each State and publicly disseminate in each State, including dissemination to area agencies on aging, information designed to educate senior citizens and raise awareness about the dangers of fraud, including telemarketing and sweepstakes fraud.

"(b) Information.—In carrying out subsection (a), the Secretary shall—

"(1) inform senior citizens of the prevalence of telemarketing and sweepstakes fraud targeted against them;

"(2) inform senior citizens how telemarketing and sweepstakes fraud work;

"(3) inform senior citizens how to identify telemarketing and sweepstakes fraud;

"(4) inform senior citizens how to protect themselves against telemarketing and sweepstakes fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

"(5) inform senior citizens how to report suspected attempts at or acts of fraud;

"(6) inform senior citizens of their consumer protection rights under Federal law; and

"(7) provide such other information as the Secretary considers necessary to protect senior citizens against fraudulent telemarketing and sweepstakes promotions.

"(c) Means of Dissemination.—The Secretary shall determine the means to disseminate information under this section. In making such determination, the Secretary shall consider—

"(1) public service announcements;

"(2) a printed manual or pamphlet;

"(3) an Internet website;

"(4) direct mailings; and

"(5) telephone outreach to individuals whose names appear on so-called 'mooch lists' confiscated from fraudulent marketers.

"(d) Priority.—In disseminating information under this section, the Secretary shall give priority to areas with high incidents of fraud against senior citizens."

## **§6102. Telemarketing rules**

### **(a) In general**

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which shall include fraudulent charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,

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

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services; <sup>1</sup> and

(D) a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.

In prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements.

### **(b) Rulemaking authority**

The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

**(c) Violations**

Any violation of any rule prescribed under subsection (a)—

(1) shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices; and

(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act [12 U.S.C. 5531] regarding unfair, deceptive, or abusive acts or practices.

**(d) Securities and Exchange Commission rules**

**(1) Promulgation**

**(A) In general**

Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

**(B) Exception**

The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

**(2) Application**

**(A) In general**

The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal

securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

## **(B) Definitions**

For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 78c(a) of this title;

(ii) the term "investment adviser" has the meaning given such term by section 80b-2(a)(11) of this title; and

(iii) the term "investment company" has the meaning given such term by section 80a-3(a) of this title.

## **(e) Commodity Futures Trading Commission rules**

### **(1) Application**

The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in section 9b(1) of title 7.

### **(2) Omitted**

(Pub. L. 103-297, §3, Aug. 16, 1994, 108 Stat. 1545; Pub. L. 107-56, title X, §1011(b)(1), (2), Oct. 26, 2001, 115 Stat. 396; Pub. L. 111-203, title X, §1100C(a), July 21, 2010, 124 Stat. 2110.)

## **References in Text**

The Consumer Financial Protection Act of 2010, referred to in subsecs. (b) and (c)(2), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

## **Codification**

Section is comprised of section 3 of Pub. L. 103-297. Subsec. (e)(2) of section 3 of Pub. L. 103-297 enacted section 9b of Title 7, Agriculture.

## **Amendments**

**2010**—Subsecs. (b), (c). Pub. L. 111-203 added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which read as follows:

"(b) Rulemaking.—The Commission shall prescribe the rules under subsection (a) of this section within 365 days after August 16, 1994. Such rules shall be prescribed in accordance with section 553 of title 5.

"(c) Enforcement.—Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices."

**2001**—Subsec. (a)(2). Pub. L. 107–56, §1011(b)(1), inserted "which shall include fraudulent charitable solicitations, and" before "which may include".

Subsec. (a)(3)(D). Pub. L. 107–56, §1011(b)(2), added subpar. (D).

### **Effective Date of 2010 Amendment**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

<sup>1</sup> So in original. The semicolon probably should be a comma.

## **§6103. Actions by States**

### **(a) In general**

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

### **(b) Notice**

The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

### **(c) Construction**

For purposes of bringing any civil action under subsection (a), nothing in this chapter shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

### **(d) Actions by Commission or the Bureau of Consumer Financial Protection**

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no State may, during the pendency of such action instituted by or on behalf of the

Commission or the Bureau of Consumer Financial Protection, institute a civil action under subsection (a) or (f)(2) against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

**(e) Venue; service of process**

Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

**(f) Actions by other State officials**

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

(Pub. L. 103–297, §4, Aug. 16, 1994, 108 Stat. 1548; Pub. L. 111–203, title X, §1100C(b), July 21, 2010, 124 Stat. 2111.)

**References in Text**

This chapter, referred to in subsec. (c), was in the original "this Act", meaning [Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545](#), which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

**Amendments**

**2010**—Subsec. (d). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

**Effective Date of 2010 Amendment**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

## **§6104. Actions by private persons**

**(a) In general**

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of \$50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any



rule of the Commission under section 6102 of this title, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

**(b) Notice**

The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

**(c) Action by Commission or the Bureau of Consumer Financial Protection**

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no person may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

**(d) Cost and fees**

The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

**(e) Construction**

Nothing in this section shall restrict any right which any person may have under any statute or common law.

**(f) Venue; service of process**

Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(Pub. L. 103–297, §5, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(c), July 21, 2010, 124 Stat. 2111.)

**Amendments**

**2010**—Subsec. (c). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

**Effective Date of 2010 Amendment**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

**§6105. Administration and applicability of chapter**

**(a) In general**

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter.

**(b) Actions by Commission**

The Commission shall prevent any person from violating a rule of the Commission under section 6102 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

**(c) Effect on other laws**

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

**(d) Enforcement by Bureau of Consumer Financial Protection**

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this chapter shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], with respect to the offering or provision of a consumer financial product or service subject to that Act.

(Pub. L. 103–297, §6, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(d), July 21, 2010, 124 Stat. 2111.)

**References in Text**

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act [Sept. 26, 1914, ch. 311, 38 Stat. 717](#), as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This chapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning [Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545](#), which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (d), is title X of [Pub. L. 111–203, July 21, 2010, 124 Stat. 1955](#). Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

**Amendments**

**2010**—Subsec. (d). Pub. L. 111–203 added subsec. (d).

#### **Effective Date of 2010 Amendment**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

### **§6106. Definitions**

For purposes of this chapter:

- (1) The term "attorney general" means the chief legal officer of a State.
- (2) The term "Commission" means the Federal Trade Commission.
- (3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.
- (4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—
  - (A) contains a written description, or illustration of the goods or services offered for sale,
  - (B) includes the business address of the seller,
  - (C) includes multiple pages of written material or illustrations, and
  - (D) has been issued not less frequently than once a year,

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

(Pub. L. 103–297, §7, Aug. 16, 1994, 108 Stat. 1550; Pub. L. 107–56, title X, §1011(b)(3), Oct. 26, 2001, 115 Stat. 396.)

#### **Amendments**

**2001**—Par. (4). Pub. L. 107–56 inserted ", or a charitable contribution, donation, or gift of money or any other thing of value," after "services" in introductory provisions.

### **§6107. Enforcement of orders**

#### **(a) General authority**

Subject to subsections (b) and (c), the Federal Trade Commission may bring a criminal contempt action for violations of orders of the Commission obtained in cases brought under section 53(b) of this title.

#### **(b) Appointment**

An action authorized by subsection (a) may be brought by the Federal Trade Commission only after, and pursuant to, the appointment by the Attorney General of an attorney employed by the Commission, as a special assistant United States Attorney.

**(c) Request for appointment**

**(1) Appointment upon request or motion**

A special assistant United States Attorney may be appointed under subsection (b) upon the request of the Federal Trade Commission or the court which has entered the order for which contempt is sought or upon the Attorney General's own motion.

**(2) Timing**

The Attorney General shall act upon any request made under paragraph (1) within 45 days of the receipt of the request.

**(d) Termination of authority**

The authority of the Federal Trade Commission to bring a criminal contempt action under subsection (a) expires 2 years after the date of the first promulgation of rules under section 6102 of this title. The expiration of such authority shall have no effect on an action brought before the expiration date.

(Pub. L. 103–297, §9, Aug. 16, 1994, 108 Stat. 1550.)