

SENATE No. 1611

The Commonwealth of Massachusetts

SENATE, May 6, 1993.

The committee on Commerce and Labor, to whom was referred the petition (accompanied by bill, Senate, No. 111) of L. Scott Harshbarger, Attorney General, and Lois G. Pines for legislation to protect consumers from telemarketing fraud reports the accompanying bill (Senate, No. 1611).

For the committee,

LOIS G. PINES.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT PROTECTING CONSUMERS FROM TELEMARKETING FRAUD.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 93 of the General Laws as appearing in the 1990
2 Official Edition is hereby amended by inserting after section 105,
3 the following new section: —

4 Section 106. (a) For the purposes of this section the following
5 words shall have the following meanings:

6 “Active solicitation”, a telephone call or telephone solicitation
7 relating to covered products or services made (i) by the seller on
8 an unsolicited basis, (ii) by the seller in response to a consumer-
9 submitted entry form or inquiry arising out of a non-excluded
10 advertisement, or (iii) by the consumer as a result of receiving
11 a qualified mailing or a previous related telephone solicitation
12 from the seller. Solicitations or contracts made as result of the
13 buyer responding to a particular television, radio, billboard,
14 yellow pages, magazine, or newspaper advertisement except for
15 advertisements in the classified section of a magazine or
16 newspaper, shall not constitute active solicitations even if a
17 transaction is subsequently entered into by telephone. These
18 exceptions shall not apply where use of such advertisements are
19 designed to circumvent the cancellation rights provided by this
20 section.

21 “Business day”, Monday through Friday, excluding national,
22 state or local holidays.

23 “Buyer” a consumer, whether a prospective or actual purchaser.

24 “Covered products or service”, any product or service, tangible
25 or intangible, including the provision of information. To be
26 covered, the following must apply: (1) there is an active
27 solicitation; (2) the transaction is with a seller with whom the
28 buyer does not have a pre-existing relationship; (3) the
29 transaction is made primarily by telephone; and (4) the telephone
30 call results in the buyer incurring a financial obligation to the seller

31 directly or indirectly, as when the buyer accepts the seller's offer,
32 places an order, or pays or agrees to pay the seller. Without
33 limiting the scope of covered products and services, solicitations
34 which include the offering of a gift, prize, award, premium or other
35 incentive, whether such bonus is being offered alone or in
36 conjunction with the purchase of other products or services, are
37 explicitly covered if the aforementioned conditions are met.
38 Covered products and services shall not include the following:
39 food orders to be delivered the same day, airline reservation
40 payments made directly to the air carrier for non-refundable fares,
41 fundraising solicitations if chance plays no part in any
42 accompanying promotional offer, telephone sales from mail order
43 catalogs where the call was initiated by the buyer, purchases made
44 by computer through a modem from the buyer's home, newspaper
45 subscriptions for home delivery, any pay-per-call services whose
46 primary service is a chat line, sex line, product technical support
47 line, stock quotations, horoscopes, weather, medical advice,
48 polling or voting line, or other category of products or services
49 specified in regulations of the Attorney General.

50 "Pay-per-call service", shall be defined as such term is used in 47
51 Code of Federal Regulations 64.709, as it may from time to time
52 be amended.

53 "Pre-established relationship", a relationship where prior non-
54 cancelled transactions have been made by the buyer with the same
55 seller, but not including transactions made with a related seller.

56 "Qualified mailing", any solicitation delivered by mail except
57 solicitations to join book or record clubs, to order identified
58 magazines where the price is disclosed, for computer software and
59 hardware, and any other category specified by the Attorney
60 General.

61 "Seller", shall not include private party sellers offering covered
62 goods or services only on an occasional basis.

63 "Transaction date", the date the buyer makes a transaction for
64 covered products or services

65 (b) Any transaction made primarily by telephone for covered
66 products or services for personal, family or household use, may
67 be cancelled by the buyer without obligation or cost within three
68 business days after receipt of the confirmation and cancellation
69 rights notice required herein. Notice of cancellation by the buyer

70 may be made by telephone or by regular or certified mail. The
71 seller shall clearly and conspicuously disclose to the buyer the
72 three business day right to cancel before the consummation of the
73 transaction either in (i) each oral solicitation or telephone call
74 where business is solicited, or in (ii) the initial written solicitation
75 of the buyer. In addition, the right to cancel shall be disclosed
76 in writing as part of the confirmation and cancellation rights
77 notice mailed which the seller shall mail to the buyer within one
78 week after the transaction date. The cancellation disclosure shall
79 be made in the following words, with the blanks to be filled in
80 with the appropriate information, and provided further that any
81 cancellation telephone number not be a pay-per-call service:

82 “Massachusetts law allows you to cancel this transaction no
83 later than 3 business days not including Saturday and Sunday
84 after you receive a confirmation and cancellation rights notice
85 from us. To cancel, call [telephone number] or send a letter by
86 regular or certified mail to: [address].”

87 Oral disclosures shall be stated with equal speed and clarity
88 compared to the rest of the call. Oral disclosures may not be made
89 during the portion of any pay-per-call message to which charges
90 apply, nor at a place in the oral solicitation which has a substantial
91 likelihood not to be heard by the buyer, or at a time when the
92 disclosure will not be meaningful or relevant to the buyer.

93 Disclosures made in writing before the transaction, shall be
94 made clearly and conspicuously in bold capitalized type no smaller
95 than one third the type of the largest type in the solicitation, but
96 not less than twelve point bold type, on the principal page of the
97 solicitation.

98 The confirmation and cancellation rights notice provided after
99 the transaction date shall be made on a separate sheet of paper
100 with no other information other than that necessary to identify
101 the seller, a detailed description of the product or service which
102 is the subject of the transaction, the date of the transaction, the
103 price, the buyer’s name and address, and the required cancellation
104 statement in at least twelve point bold capitalized type.

105 Compliance with the cancellation deadline will be determined
106 based on the date the consumer notified the seller by telephone
107 or the date of mailing of the cancellation. Upon cancellation, the
108 seller shall issue a full refund to the fund to the buyer within

109 fourteen days or receipt of said cancellation, and cancel any obli-
110 gations associated with the transaction. Services or products if
111 provided during the cancellation period are done so at the risk
112 of the seller. Buyers may be required to return any tangible
113 products as a prerequisite to receipt of a refund.

114 Failure to provide the cancellation notice as required above
115 shall entitle the consumer to cancel the transaction without
116 penalty until the appropriate cancellation notice is provided.
117 Failure to comply with the cancellation notification provisions of
118 this section or to provide the refund as required therein, shall be
119 sufficient cause for the buyer's credit card issuer to charge back
120 the payment amount to the seller, if the transaction was
121 consummated by means of a credit card or by electronic means.
122 The three business day right to cancel shall be extended to three
123 business days after the day of receipt of any covered product or
124 service in cases where the price charged the customer is higher
125 than that which was represented, or the transaction was entered
126 into by the buyer based on a material misrepresentation of facts
127 by the seller.

128 (c) The cancellation rights provided by this section may not be
129 waived by agreement or otherwise. The Attorney General may
130 issue guidelines or promulgate rules and regulations for the
131 implementation and interpretation of this section. Any violation
132 of this section shall constitute an unfair or deceptive act or practice
133 under the provisions of Chapter ninety-three A.

