

In the House of Representatives, U. S.,

July 25, 1994.

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 868) entitled “An Act to strengthen the authority of the Federal Trade Commission to protect consumers in connection with sales made with a telephone, and for other purposes”, with the following

AMENDMENT:

In lieu of the matter inserted by said amendment, insert:

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 activi-*
7 *ties 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.*

1 (3) Consumers and others are estimated to lose
2 \$40 billion a year in telemarketing fraud.

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

5 (5) Consequently, Congress should enact legisla-
6 tion that will offer consumers necessary protection
7 from telemarketing deception and abuse.

8 **SEC. 3. TELEMARKETING RULES.**

9 (a) *IN GENERAL.*—

10 (1) The Commission shall prescribe rules prohib-
11 iting deceptive telemarketing acts or practices and
12 other abusive telemarketing acts or practices.

13 (2) The Commission shall include in such rules
14 respecting deceptive telemarketing acts or practices a
15 definition of deceptive telemarketing acts or practices
16 which may include acts or practices of entities or in-
17 dividuals that assist or facilitate deceptive
18 telemarketing, including credit card laundering.

19 (3) The Commission shall include in such rules
20 respecting other abusive telemarketing acts or prac-
21 tices—

22 (A) a requirement that telemarketers may
23 not undertake a pattern of unsolicited telephone
24 calls which the reasonable consumer would con-

1 *sider coercive or abusive of such consumer's right*
2 *to privacy,*

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

6 *(C) a requirement that any person engaged*
7 *in telemarketing for the sale of goods or services*
8 *shall promptly and clearly disclose to the person*
9 *receiving the call that the purpose of the call is*
10 *to sell goods or services and make such other dis-*
11 *closures as the Commission deems appropriate,*
12 *including the nature and price of the goods and*
13 *services.*

14 *In prescribing the rules described in this paragraph,*
15 *the Commission shall also consider recordkeeping re-*
16 *quirements.*

17 *(b) RULEMAKING.—The Commission shall prescribe*
18 *the rules under subsection (a) within 365 days after the*
19 *date of enactment of this Act. Such rules shall be prescribed*
20 *in accordance with section 553 of title 5, United States*
21 *Code.*

22 *(c) ENFORCEMENT.—Any violation of any rule pre-*
23 *scribed under subsection (a) shall be treated as a violation*
24 *of a rule under section 18 of the Federal Trade Commission*

1 *Act (15 U.S.C. 57a) regarding unfair or deceptive acts or*
2 *practices.*

3 (d) *SECURITIES AND EXCHANGE COMMISSION*
4 *RULES.—*

5 (1) *PROMULGATION.—*

6 (A) *IN GENERAL.—Except as provided in*
7 *subparagraph (B), not later than 6 months after*
8 *the effective date of rules promulgated by the*
9 *Federal Trade Commission under subsection (a),*
10 *the Securities and Exchange Commission shall*
11 *promulgate, or require any national securities*
12 *exchange or registered securities association to*
13 *promulgate, rules substantially similar to such*
14 *rules to prohibit deceptive and other abusive*
15 *telemarketing acts or practices by persons de-*
16 *scribed in paragraph (2).*

17 (B) *EXCEPTION.—The Securities and Ex-*
18 *change Commission is not required to promul-*
19 *gate a rule under subparagraph (A) if it deter-*
20 *mines that—*

21 (i) *Federal securities laws or rules*
22 *adopted by the Securities and Exchange*
23 *Commission thereunder provide protection*
24 *from deceptive and other abusive*
25 *telemarketing by persons described in para-*

1 *graph (2) substantially similar to that pro-*
2 *vided by rules promulgated by the Federal*
3 *Trade Commission under subsection (a); or*
4 *(ii) such a rule promulgated by the Se-*
5 *curities and Exchange Commission is not*
6 *necessary or appropriate in the public in-*
7 *terest, or for the protection of investors, or*
8 *would be inconsistent with the maintenance*
9 *of fair and orderly markets.*

10 *If the Securities and Exchange Commission de-*
11 *termines that an exception described in clause (i)*
12 *or (ii) applies, the Securities and Exchange*
13 *Commission shall publish in the Federal Register*
14 *its determination with the reasons for it.*

15 *(2) APPLICATION.—*

16 *(A) IN GENERAL.—The rules promulgated*
17 *by the Securities and Exchange Commission*
18 *under paragraph (1)(A) shall apply to a broker,*
19 *dealer, transfer agent, municipal securities deal-*
20 *er, municipal securities broker, government secu-*
21 *rities broker, government securities dealer, in-*
22 *vestment adviser or investment company, or any*
23 *individual associated with a broker, dealer,*
24 *transfer agent, municipal securities dealer, mu-*
25 *nicipal securities broker, government securities*

1 *broker, government securities dealer, investment*
2 *adviser or investment company. The rules pro-*
3 *mulgated by the Federal Trade Commission*
4 *under subsection (a) shall not apply to persons*
5 *described in the preceding sentence.*

6 (B) *DEFINITIONS.—For purposes of sub-*
7 *paragraph (A)—*

8 (i) *the terms “broker”, “dealer”,*
9 *“transfer agent”, “municipal securities*
10 *dealer”, “municipal securities broker”,*
11 *“government securities broker”, and “gov-*
12 *ernment securities dealer” have the mean-*
13 *ings given such terms by paragraphs (4),*
14 *(5), (25), (30), (31), (43), and (44) of sec-*
15 *tion 3(a) of the Securities and Exchange*
16 *Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25),*
17 *(30), (31), (43), and (44));*

18 (ii) *the term “investment adviser” has*
19 *the meaning given such term by section*
20 *202(a)(11) of the Investment Advisers Act of*
21 *1940 (15 U.S.C. 80b-2(a)(11)); and*

22 (iii) *the term “investment company”*
23 *has the meaning given such term by section*
24 *3(a) of the Investment Company Act of*
25 *1940 (15 U.S.C. 80a-3(a)).*

1 (e) *COMMODITY FUTURES TRADING COMMISSION*

2 *RULES.—*

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

8 (2) *PROMULGATION.—Section 6 of the Commod-*
9 *ity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is*
10 *amended by adding at the end the following new sub-*
11 *section:*

12 “*(f)(1) Except as provided in paragraph (2), not later*
13 *than six months after the effective date of rules promulgated*
14 *by the Federal Trade Commission under section 3(a) of the*
15 *Telemarketing and Consumer Fraud and Abuse Prevention*
16 *Act, the Commission shall promulgate, or require each reg-*
17 *istered futures association to promulgate, rules substan-*
18 *tially similar to such rules to prohibit deceptive and other*
19 *abusive telemarketing acts or practices by any person reg-*
20 *istered or exempt from registration under this Act in con-*
21 *nection with such person’s business as a futures commission*
22 *merchant, introducing broker, commodity trading advisor,*
23 *commodity pool operator, leverage transaction merchant,*
24 *floor broker, or floor trader, or a person associated with any*
25 *such person.*”

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

3 “(A) rules adopted by the Commission under this
4 Act provide protection from deceptive and abusive
5 telemarketing by persons described under paragraph
6 (1) substantially similar to that provided by rules
7 promulgated by the Federal Trade Commission under
8 section 3(a) of the Telemarketing and Consumer
9 Fraud and Abuse Prevention Act; or

10 “(B) such a rule promulgated by the Commission
11 is not necessary or appropriate in the public interest,
12 or for the protection of customers in the futures and
13 options markets, or would be inconsistent with the
14 maintenance of fair and orderly markets.

15 If the Commission determines that an exception described
16 in subparagraph (A) or (B) applies, the Commission shall
17 publish in the Federal Register its determination with the
18 reasons for it.”.

19 **SEC. 4. ACTIONS BY STATES.**

20 (a) *IN GENERAL.*—Whenever an attorney general of
21 any State has reason to believe that the interests of the resi-
22 dents of that State have been or are being threatened or
23 adversely affected because any person has engaged or is en-
24 gaging in a pattern or practice of telemarketing which vio-
25 lates any rule of the Commission under section 3, the State,

1 *as parens patriae, may bring a civil action on behalf of*
2 *its residents in an appropriate district court of the United*
3 *States to enjoin such telemarketing, to enforce compliance*
4 *with such rule of the Commission, to obtain damages, res-*
5 *titution, or other compensation on behalf of residents of such*
6 *State, or to obtain such further and other relief as the court*
7 *may deem appropriate.*

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

18 **(c) CONSTRUCTION.**—*For purposes of bringing any*
19 *civil action under subsection (a), nothing in this Act shall*
20 *prevent an attorney general from exercising the powers con-*
21 *ferred on the attorney general by the laws of such State*
22 *to conduct investigations or to administer oaths or affirma-*
23 *tions or to compel the attendance of witnesses or the produc-*
24 *tion of documentary and other evidence.*

1 (d) *ACTIONS BY THE COMMISSION.*—Whenever a civil
2 action has been instituted by or on behalf of the Commission
3 for violation of any rule prescribed under section 3, no
4 State may, during the pendency of such action instituted
5 by or on behalf of the Commission, institute a civil action
6 under subsection (a) or (f)(2) against any defendant named
7 in the complaint in such action for violation of any rule
8 as alleged in such complaint.

9 (e) *VENUE; SERVICE OF PROCESS.*—Any civil action
10 brought under subsection (a) in a district court of the Unit-
11 ed States may be brought in the district in which the de-
12 fendant is found, is an inhabitant, or transacts business
13 or wherever venue is proper under section 1391 of title 28,
14 United States Code. Process in such an action may be
15 served in any district in which the defendant is an inhab-
16 itant or in which the defendant may be found.

17 (f) *ACTIONS BY OTHER STATE OFFICIALS.*—

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

22 (2) In addition to actions brought by an attor-
23 ney general of a State under subsection (a), such an
24 action may be brought by officers of such State who

1 *are authorized by the State to bring actions in such*
2 *State on behalf of its residents.*

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

4 *(a) IN GENERAL.—Any person adversely affected by*
5 *any pattern or practice of telemarketing which violates any*
6 *rule of the Commission under section 3, or an authorized*
7 *person acting on such person's behalf, may, within 3 years*
8 *after discovery of the violation, bring a civil action in an*
9 *appropriate district court of the United States against a*
10 *person who has engaged or is engaging in such pattern or*
11 *practice of telemarketing if the amount in controversy ex-*
12 *ceeds the sum or value of \$50,000 in actual damages for*
13 *each person adversely affected by such telemarketing. Such*
14 *an action may be brought to enjoin such telemarketing, to*
15 *enforce compliance with any rule of the Commission under*
16 *section 3, to obtain damages, or to obtain such further and*
17 *other relief as the court may deem appropriate.*

18 *(b) NOTICE.—The plaintiff shall serve prior written*
19 *notice of the action upon the Commission and provide the*
20 *Commission with a copy of its complaint, except in any*
21 *case where such prior notice is not feasible, in which case*
22 *the person shall serve such notice immediately upon insti-*
23 *tuting such action. The Commission shall have the right*
24 *(A) to intervene in the action, (B) upon so intervening, to*

1 *be heard on all matters arising therein, and (C) to file peti-*
2 *tions for appeal.*

3 (c) *ACTION BY THE COMMISSION.*—Whenever a civil
4 *action has been instituted by or on behalf of the Commission*
5 *for violation of any rule prescribed under section 3, no per-*
6 *son may, during the pendency of such action instituted by*
7 *or on behalf of the Commission, institute a civil action*
8 *against any defendant named in the complaint in such ac-*
9 *tion for violation of any rule as alleged in such complaint.*

10 (d) *COST AND FEES.*—The court, in issuing any final
11 *order in any action brought under subsection (a), may*
12 *award costs of suit and reasonable fees for attorneys and*
13 *expert witnesses to the prevailing party.*

14 (e) *CONSTRUCTION.*—Nothing in this section shall re-
15 *strict any right which any person may have under any stat-*
16 *ute or common law.*

17 (f) *VENUE; SERVICE OF PROCESS.*—Any civil action
18 *brought under subsection (a) in a district court of the*
19 *United States may be brought in the district in which the*
20 *defendant is found, is an inhabitant, or transacts business*
21 *or wherever venue is proper under section 1391 of title 28,*
22 *United States Code. Process in such an action may be*
23 *served in any district in which the defendant is an inhab-*
24 *itant or in which the defendant may be found.*

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

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

8 (b) *ACTIONS BY THE COMMISSION.*—*The Commission*
9 *shall prevent any person from violating a rule of the Com-*
10 *mission under section 3 in the same manner, by the same*
11 *means, and with the same jurisdiction, powers, and duties*
12 *as though all applicable terms and provisions of the Federal*
13 *Trade Commission Act (15 U.S.C. 41 et seq.) were incor-*
14 *porated into and made a part of this Act. Any person who*
15 *violates such rule shall be subject to the penalties and enti-*
16 *tled to the privileges and immunities provided in the Fed-*
17 *eral Trade Commission Act in the same manner, by the*
18 *same means, and with the same jurisdiction, power, and*
19 *duties as though all applicable terms and provisions of the*
20 *Federal Trade Commission Act were incorporated into and*
21 *made a part of this Act.*

22 (c) *EFFECT ON OTHER LAWS.*—*Nothing contained in*
23 *this Act shall be construed to limit the authority of the Com-*
24 *mission under any other provision of law.*

25 **SEC. 7. DEFINITIONS.**

26 *For purposes of this Act:*

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

3 (2) *The term “Commission” means the Federal*
4 *Trade Commission.*

5 (3) *The term “State” means any State of the*
6 *United States, the District of Columbia, Puerto Rico,*
7 *the Northern Mariana Islands, and any territory or*
8 *possession of the United States.*

9 (4) *The term “telemarketing” means a plan, pro-*
10 *gram, or campaign which is conducted to induce pur-*
11 *chases of goods or services by use of one or more tele-*
12 *phones and which involves more than one interstate*
13 *telephone call. The term does not include the sollicita-*
14 *tion of sales through the mailing of a catalog which—*

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

17 (B) *includes the business address of the sell-*
18 *er,*

19 (C) *includes multiple pages of written mate-*
20 *rial or illustrations, and*

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

23 *where the person making the sollicitation does not so-*
24 *licit customers by telephone but only receives calls*
25 *initiated by customers in response to the catalog and*

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

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

4 *Section 12(a) of the Federal Trade Commission Act*
5 *(15 U.S.C. 52(a)) is amended by inserting “services,” im-*
6 *mediately after “devices,” each place it appears.*

7 **SEC. 9. ENFORCEMENT OF ORDERS.**

8 *(a) GENERAL AUTHORITY.—Subject to subsections (b)*
9 *and (c), the Federal Trade Commission may bring a crimi-*
10 *nal contempt action for violations of orders of the Commis-*
11 *sion obtained in cases brought under section 13(b) of the*
12 *Federal Trade Commission Act (15 U.S.C. 53(b)).*

13 *(b) APPOINTMENT.—An action authorized by sub-*
14 *section (a) may be brought by the Federal Trade Commis-*
15 *sion only after, and pursuant to, the appointment by the*
16 *Attorney General of an attorney employed by the Commis-*
17 *sion, as a special assistant United States Attorney.*

18 *(c) REQUEST FOR APPOINTMENT.—*

19 *(1) APPOINTMENT UPON REQUEST OR MOTION.—*
20 *A special assistant United States Attorney may be*
21 *appointed under subsection (b) upon the request of the*
22 *Federal Trade Commission or the court which has en-*
23 *tered the order for which contempt is sought or upon*
24 *the Attorney General’s own motion.*

1 (2) *TIMING.*—*The Attorney General shall act*
2 *upon any request made under paragraph (1) within*
3 *45 days of the receipt of the request.*

4 (d) *TERMINATION OF AUTHORITY.*—*The authority of*
5 *the Federal Trade Commission to bring a criminal con-*
6 *tempt action under subsection (a) expires 2 years after the*
7 *date of the first promulgation of rules under section 3. The*
8 *expiration of such authority shall have no effect on an ac-*
9 *tion brought before the expiration date.*

10 ***SEC. 10. REVIEW.***

11 *Upon the expiration of 5 years following the date of*
12 *the first promulgation of rules under section 3, the Commis-*
13 *sion shall review the implementation of this Act and its*
14 *effect on deceptive telemarketing acts or practices and re-*
15 *port the results of the review to the Congress.*

Attest:

Clerk.

103^D CONGRESS
2^D SESSION

H. R. 868

AMENDMENT
TO
SENATE AMENDMENT