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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

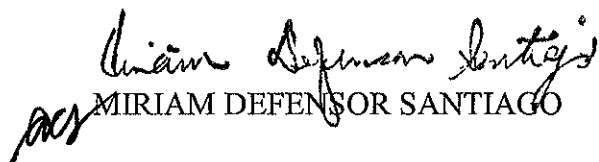
The Constitution, Article 16, Section 9, provides:

The State shall protect consumers from trade malpractices and from substandard or hazardous products.

Telemarketing is a recent innovation. Telemarketing means a plan, program, or campaign, which is conducted to induce purchase of goods or services by significant use of telephones. It differs from other sales activities in that it can be carried out by sellers without direct contact.

Because of its unique character, many consumers are victimized by several forms of telemarketing deception and abuse. Thus, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception (including fraud) and abuse.

The purpose of this bill is to strengthen the authority of the Department of Trade and Industry regarding fraud committed in connection with sales made with a telephone.

  
MIRIAM DEFENSOR SANTIAGO

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Introduced by Senator Miriam Defensor Santiago

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1 AN ACT  
2 TO STRENGTHEN THE AUTHORITY OF THE DEPARTMENT OF TRADE AND  
3 INDUSTRY REGARDING FRAUD COMMITTED IN CONNECTION WITH SALES  
4 MADE WITH A TELEPHONE

5 *Be it enacted by the Senate and the House of Representatives of the Philippines in*  
6 *Congress assembled:*

7 SECTION 1. *Short Title.* – This Act shall be known as the “Consumer Protection  
8 Telemarketing Act of 2008.”

9 SECTION 2. *Definition.* – For purposes of this Act, the term “telemarketing” means a  
10 plan, program, or campaign which is conducted to induce purchases of goods or services by  
11 significant use of one (1) or more telephones. The term does not include the solicitation of  
12 sales through the mailing of a catalog which –

13 (A) contains a written description or illustration of the goods or services offered for  
14 sale;

15 (B) includes the business address of the seller;

16 (C) includes multiple pages of written material or illustrations; and

17 (D) has been issued not less frequently than once a year, where the person making the  
18 solicitation does not solicit customers by telephone but only receives calls initiated by  
19 customers in response to the catalog and during those calls takes orders only without further  
20 solicitation.

21 SECTION 3. *Telemarketing Rule.* – (A) IN GENERAL –

22 (1) The Department of Trade and Industry shall prescribe rules prohibiting  
23 deceptive (including fraudulent) marketing activities and other abusive telemarketing  
24 activities.

1           (2) The Department shall include in such rules respecting deceptive  
2 telemarketing activities –

3           (a) a definition of deceptive telemarketing activities; and

4           (b) criteria that are symptomatic of deceptive telemarketing as distinguished  
5 from ordinary telemarketing business practices.

6           (3) The Department shall include in such rules respecting other abusive  
7 telemarketing activities a requirement that telemarketers may not undertake a pattern  
8 of unsolicited telephone calls which the reasonable consumer would consider  
9 coercive or abusive of such consumer's right to privacy. In prescribing the rules  
10 described in this paragraph, the Department shall consider –

11           (a) including a requirement that goods or services offered by telemarketing be  
12 shipped or provided within a specified period and that if the goods or services  
13 are not shipped or provided within such period, a refund be required, and

14           (b) including, where practicable, authority for a person who orders a good or  
15 service through telemarketing to cancel the order within a specified period.

16           (B) RULE-MAKING – The Department shall prescribe the rules under subsection (1)  
17 within two hundred seventy (270) days after the date of enactment of this Act.

18           SECTION 4. *Action by Private Persons.* – Any person adversely affected by any  
19 pattern or practice of telemarketing which violates any rule of the Department under section  
20 (3) or an unauthorized person acting on such person's behalf may, within three (3) years after  
21 discovery of the violation, bring a civil action against a person who has engaged or is  
22 engaging in such pattern or practice of telemarketing. Such an action may be brought to  
23 enjoin such telemarketing, to enforce compliance with any rule of the Department under  
24 Section 3, to obtain damages, or to obtain such further and other relief as the court may deem  
25 appropriate.

26           SECTION 5. *Separability Clause.* – If any provision or part thereof is held invalid or  
27 unconstitutional, the remainder of the law of the provision not otherwise affected shall  
28 remain valid and subsisting.

1           SECTION 6. *Repealing Clause.* – Any law, presidential decree or issuance, executive  
2 order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent  
3 with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

4           SECTION 7. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
5 publication in at least two (2) newspapers of general circulation.

6           Approved,