

ACT 8

S.B. NO. 2902

A Bill for an Act Relating to Telemarketing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to harmonize Hawaii's telemarketing law with the new Do-Not-Call provisions of the Telemarketing Sales Rule and the Telephone Consumer Protection Act as administered by the Federal Trade Commission and the Federal Communications Commission by providing that a violation of the federal Do-Not-Call provisions constitutes an unfair or deceptive trade practice under Hawaii law.

SECTION 2. Section 481P-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is an unfair or deceptive act or practice and a violation of this chapter for any seller or telephone solicitor to:

- (1) Fail to commence, within the first minute of an outbound telephone call, and complete within the first three minutes of the outbound call, and before payment is requested and prior to any solicitation, disclosure of the following:
  - (A) The true purpose of the telephone call;
  - (B) The telephone solicitor's name and the company or entity on whose behalf the solicitation is being made; and
  - (C) The goods or services being offered;
- (2) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, the following information:
  - (A) Total purchase costs to the consumer of the goods or services to be received;
  - (B) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of any offer;
  - (C) Any material term or condition of the seller's refund, cancellation, or exchange policy, including, if applicable, that no such policies exist;
  - (D) All material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the “no purchase” method of entering the contest;
  - (E) Any material aspect of an investment opportunity being offered, including but not limited to risk, liquidity, earnings potential, market value, and profitability; and
  - (F) The quantity, and any material aspect of the quality or basic characteristics of any goods or services offered;

- (3) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered;
- (4) Represent that the telephone solicitor or seller is registered as a telephone solicitor in the State or has in any way received an endorsement or approval by any governmental agency of the State;
- (5) Make a false or misleading statement with the purpose of inducing a consumer to pay for any goods or services;
- (6) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization; provided that no express verifiable authorization is required if the seller adopts and complies with a policy that:
  - (A) Affords the consumer at least seven days after the receipt of goods or services to review goods or services and return undamaged or unused goods or submit a cancellation of services notice;
  - (B) Requires the seller to process the full refund within thirty days after receipt of returned merchandise or the cancellation of services notice from the consumer; and
  - (C) Requires the disclosure of the seller's return and refund policy to the consumer, orally by telephone, and in writing with any advertising or promotional material, and with delivery of the goods or services;
- (7) Fail to include on the express verifiable authorization in a clear and conspicuous manner, the following language:  
 "YOU ARE NOT OBLIGATED TO MAKE ANY PAYMENT UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER.";
- (8) Procure the services of any professional delivery, courier, or other pick-up service to obtain immediate receipt or possession of a consumer's payment;
- (9) Offer to consumers in the State any prize promotion, in which a purchase or payment is necessary to obtain the prize; [e¶]
- (10) Fail to comply with the recordkeeping requirements of this chapter[-];  
 or
- (11) Initiate or cause to be initiated, a telephone solicitation call to a telephone number that is listed on the national Do-Not-Call registry administered by the Federal Trade Commission and the Federal Communications Commission pursuant to and in violation of the Telemarketing Sales Rule, 16 C.F.R. part 310, and the Telephone Consumer Protection Act, 47 C.F.R. parts 64 and 68."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2004.)

**Note**

1. Prior to amendment "exist" appeared here.