

[First Reprint]  
ASSEMBLY, No. 2360

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Assemblymen BAGGER and Cohen

1 AN ACT concerning commercial telephone solicitations and  
2 supplementing P.L.1960, c.69 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Commercial Telephone Solicitation Consumer Protection Act."

9

10 2. As used in this act:

11 "Commercial telephone solicitation" means an unsolicited telephone  
12 call to a person offering or selling merchandise.

13 "Commercial telephone seller" means any person who engages in  
14 the business of offering or selling merchandise through a commercial  
15 telephone solicitation.

16 "Director" means the Director of the Division of Consumer Affairs  
17 in the Department of Law and Public Safety.

18

19 3. a. No person shall engage in commercial telephone solicitations  
20 unless registered with the Division of Consumer Affairs in the  
21 Department of Law and Public Safety in accordance with the  
22 provisions of this act.

23 b. Every commercial telephone seller, including any person whose  
24 residence or principal place of business is located outside of this State,  
25 shall annually register with the director. Application for registration  
26 shall be on a form provided by the director and shall include the name  
27 and address of the applicant and any other information which the  
28 director shall prescribe by rule. The application shall be accompanied  
29 by a reasonable fee, set by the director in an amount sufficient to  
30 defray the division's expenses incurred in administering and enforcing  
31 this act.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly ACP committee amendments adopted November 7, 1996.**

- 1       4. The provisions of this act shall not apply to:
- 2       a. A person engaging in commercial telephone solicitation in which  
3 the solicitation is an isolated transaction and not done in the course of  
4 a pattern of repeated transactions of a similar nature.
- 5       b. A person properly registered with the Division of Consumer  
6 Affairs pursuant to the "Charitable Registration and Investigation  
7 Act," P.L.1994, c.16 (C.45:17A-18 et seq.).
- 8       c. A person who does not make the major sales presentation during  
9 the commercial telephone solicitation and who does not intend to, and  
10 does not actually complete or obtain provisional acceptance of a sale  
11 during the commercial telephone solicitation. However, if a seller,  
12 directly following a commercial telephone solicitation, causes an  
13 individual whose primary purpose it is to go to the prospective  
14 purchaser to collect the payment or deliver any merchandise  
15 purchased, this exemption does not apply.
- 16       d. Any licensed securities, commodities or investment broker,  
17 dealer or investment adviser, when soliciting within the scope of his  
18 license. As used in this section, "licensed securities, commodities or  
19 investment broker, dealer or investment adviser" means a person  
20 subject to registration as such by the Securities and Exchange  
21 Commission, by the National Association of Securities Dealers or  
22 other self-regulatory organization, as defined in paragraph (26) of  
23 section 3 of the Securities Exchange Act of 1934 (15 U.S.C. §78c), or  
24 by an official or agency of this State or of any state of the United  
25 States.
- 26       e. Any licensed associated person of a securities, commodities or  
27 investment adviser, when soliciting within the scope of practice of his  
28 license. As used in this section, "licensed associated person of a  
29 securities, commodities or investment broker, dealer or investment  
30 adviser" means any associated person registered or licensed by the  
31 National Association of Securities Dealers or other self-regulatory  
32 organization, as defined in paragraph (26) of section 3 of the  
33 Securities Exchange Act of 1934 (15 U.S.C. §78c), or by an official  
34 or agency of this State or any state of the United States.
- 35       f. A person primarily soliciting the sale of a newspaper of general  
36 circulation.
- 37       g. <sup>1</sup>[Any state or federally chartered bank, savings bank, savings  
38 and loan association or credit union or any other lender regulated  
39 pursuant to Title 17 of the Revised Statutes] Any supervised financial  
40 institution. As used in this section, "supervised financial institution"  
41 means any bank, trust company, savings and loan association, savings  
42 bank, credit union, industrial loan company, consumer finance lender,  
43 or insurer subject to supervision by an official or agency of this State  
44 or of the United States<sup>1</sup>.
- 45       h. Any person licensed pursuant to the "New Jersey Insurance  
46 Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.).

- 1 i. A person soliciting the sale of services provided by a cable  
2 television system operating under authority of a franchise or certificate  
3 of approval issued pursuant to the provisions of the "Cable Television  
4 Act," P.L.1972, c.186 (C.48:5A-1 et seq.).
- 5 j. A business-to-business sale in which:
- 6 (1) The commercial telephone seller has been operating  
7 continuously for at least three years under the same business name and  
8 has at least 50 percent of its dollar volume consisting of repeat sales  
9 to existing businesses;
- 10 (2) The purchaser intends to resell or offer for purposes of  
11 advertisement or as a promotional item the property or goods  
12 purchased; or
- 13 (3) The purchaser intends to use the property or goods purchased  
14 in a recycling, reuse, remanufacturing or manufacturing process.
- 15 k. A person who solicits sales by periodically publishing and  
16 delivering a catalog of the seller's merchandise to prospective  
17 purchasers, if the catalog:
- 18 (1) Contains a written description or illustration of each item  
19 offered for sale;
- 20 (2) Includes the business address or home office address of the  
21 seller;
- 22 (3) Includes at least 20 pages of written material and illustrations  
23 and is distributed in more than one state; and
- 24 (4) Has an annual circulation <sup>1</sup>[of mailing]<sup>1</sup> of not less than  
25 150,000.
- 26 l. A person who solicits contracts for the maintenance or repair of  
27 goods previously purchased from the person making the solicitation or  
28 on whose behalf the solicitation is made.
- 29 m. An issuer or a subsidiary of an issuer that has a class of  
30 securities which is subject to section 12 of the Securities Exchange  
31 Act of 1934 (15 U.S.C. §78l), and which is either registered or exempt  
32 from registration under paragraph (A), paragraph (B), paragraph (C),  
33 paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of  
34 subsection (g)(2) of that section.
- 35 n. A person soliciting a transaction regulated by the Commodity  
36 Futures Trading Commission if the person is registered or temporarily  
37 licensed for this activity with the Commodity Futures Trading  
38 Commission under the "Commodity Exchange Act," (7 U.S.C. §1 et  
39 seq.) and the registration or license has not expired or been suspended  
40 or revoked.
- 41 o. A person soliciting business from prospective consumers who  
42 have an existing business relationship with or have previously made  
43 purchases from the person, if the person is operating under the same  
44 business name.
- 45 p. A person who has been operating, for at least one year, a retail  
46 business establishment under the same name as that used in connection

1 with a commercial telephone solicitation, and the following occur on  
2 a continuing basis:

3 (1) Merchandise is offered for sale and provided at the business  
4 establishment; and

5 (2) A majority of the seller's business involves the purchaser  
6 obtaining such merchandise at the seller's location.

7 q. Any person which has been providing sales services from  
8 commercial telephone solicitations continuously for at least five years  
9 under the same ownership and control and which derives 75 percent  
10 of its gross sales revenues in commercial telephone solicitations from  
11 contracts with persons exempted in this section.

12 r. A person who is a licensed real estate salesperson, broker-  
13 salesperson or broker pursuant to P.L.1953, c.229 (C.45:15-1 et seq.)  
14 and who is acting within the scope of practice of his profession.

15 s. A publisher, or an agent of a publisher by written agreement,  
16 who solicits the sale of his periodical or magazine of general, paid  
17 circulation. The term "paid circulation" shall not include magazines  
18 that are only circulated as part of a membership package or that are  
19 given as a free gift or prize from the publisher by written agreement.

20 <sup>1</sup>t. A person soliciting, on behalf of a book, video, or record club,  
21 contractual arrangements under which the seller provides the consumer  
22 with a form which the consumer may use to instruct the seller not to  
23 ship the offered merchandise.

24 u. A telephone company subject to the provisions of chapter 17 of  
25 Title 48 of the Revised Statutes or its subsidiary or agents, or a  
26 business which is regulated by the New Jersey Board of Public  
27 Utilities, or a Federal Communications Commission licensed cellular  
28 telephone company or any other bona fide radio telecommunication  
29 services provider.

30 v. Any person licensed pursuant to P.L.1964, c.273 (C.17:15B-1  
31 et seq.) when soliciting within the scope of his license.

32 w. Any person with a certificate of authority issued pursuant to  
33 R.S.17:15-1 et seq. when soliciting within the scope of his authority.

34 x. A person soliciting the sale of perishable food, seeds or plants  
35 when a sale does not involve an amount in excess of \$100 directed to  
36 a single address.<sup>1</sup>

37

38 5. In addition to any other procedure, condition or information  
39 required by this act:

40 a. Every applicant shall file a disclosure statement with the director  
41 stating whether the applicant has been convicted of any crime, which  
42 for the purposes of this act shall mean a violation of any of the  
43 following provisions of the "New Jersey Code of Criminal Justice,"  
44 Title 2C of the New Jersey Statutes, or the equivalent under the laws  
45 of any other jurisdiction:

46 (1) Any crime of the first degree;

1 (2) Any crime which is a second or third degree crime and is a  
2 violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes;  
3 or

4 (3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-2,  
5 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2,  
6 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-  
7 2, 2C:18-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through  
8 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-  
9 19, chapter 27 or 28 of Title 2C of the New Jersey Statutes,  
10 N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, 2C:37-1 through  
11 2C:37-4.

12 b. Each disclosure statement may be reviewed and used by the  
13 director as grounds for denying, suspending or revoking registration,  
14 except that in cases in which the provisions of P.L.1968, c.282  
15 (2A:168A-1 et seq.) apply, the director shall comply with the  
16 requirements of that act.

17 c. An applicant whose registration is denied, suspended or revoked  
18 pursuant to this section shall, upon a written request transmitted to the  
19 director within 30 calendar days of that action, be afforded an  
20 opportunity for a hearing in a manner provided for contested cases  
21 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
22 (C.52:14B-1 et seq.).

23 d. An applicant shall have the continuing duty to provide any  
24 assistance or information requested by the director, and to cooperate  
25 in any inquiry, investigation or hearing conducted by the director.

26 e. If any of the information required to be included in the  
27 disclosure statement changes, or if additional information should be  
28 added after the filing of the statement, the applicant shall provide that  
29 information to the director, in writing, within 30 calendar days of the  
30 change or addition.

31  
32 6. a. The director may refuse to issue or renew, and may revoke,  
33 any registration for failure to comply with, or violation of, the  
34 provisions of this act or for any other good cause shown within the  
35 meaning and purpose of this act. A refusal or revocation shall not be  
36 made except upon reasonable notice to, and opportunity to be heard  
37 by, the applicant or registrant.

38 b. The director, in lieu of revoking a registration, may suspend the  
39 registration for a reasonable period of time, or assess a penalty in lieu  
40 of suspension, or both, and may issue a new registration,  
41 notwithstanding the revocation of a prior registration, if the applicant  
42 is found to have become entitled to the new registration.

43  
44 7. All registrants shall prominently display their registration  
45 numbers within their places of business, and in all advertisements,  
46 business documents and correspondence.

1       8. a. Any registration number issued by the director shall remain  
2 the property of the State and shall be immediately returned to the  
3 director upon its suspension, non-renewal or revocation pursuant to  
4 this act.

5       b. The issuance of a registration to an applicant who is a  
6 nonresident of this State shall be deemed to be his irrevocable consent  
7 that service of process in any action or proceeding may be made upon  
8 him by service upon the director.

9  
10       9. Any material change in any information filed with the director  
11 pursuant to this act shall be reported in writing to the director within  
12 10 business days of the change.

13  
14       10. a. Any person required to be registered pursuant to this act  
15 shall maintain a bond issued by a surety authorized to transact business  
16 in this State. The principal sum of the bond shall not be less than  
17 \$50,000, which amount the director may adjust by regulation. The  
18 bond shall be filed or deposited with the director for the use of any  
19 person who is damaged or suffers any loss for any violation of this act.  
20 Any person claiming against the bond may maintain an action at law  
21 against the surety or director, as the case may be. The aggregate  
22 liability of the surety or director to all persons for all breaches of the  
23 conditions of the bond held by the director shall not exceed the  
24 amount of the bond held by the director.

25       b. The commercial telephone seller shall file a copy of the bond  
26 with the director and a certificate by the surety that the surety will  
27 notify the director at least 10 days in advance of the date of any  
28 cancellation or material change in the bond.

29  
30       11. a. Within the first 30 seconds of a telephone call, a commercial  
31 telephone seller shall identify himself by stating his name, the person  
32 on whose behalf the solicitation is being made, and the merchandise  
33 being sold.

34       b. If a sale or an agreement to purchase is completed, the  
35 commercial telephone seller shall inform the purchaser of his  
36 cancellation rights as provided in this act, state the registration number  
37 issued by the director for the commercial telephone seller, give the  
38 street address of the commercial telephone seller, and provide any  
39 other disclosure as prescribed by the director by rule.

40       c. All oral disclosures required by this section shall be made in a  
41 clear and intelligible manner.

42  
43       12. a. A purchase of merchandise ordered as a result of a  
44 commercial telephone solicitation, if not followed by a signed written  
45 contract, is not final. If a contract is not made in compliance with this  
46 section, it is not valid and enforceable against the purchaser. The

1 contract made pursuant to a commercial telephone solicitation shall:

- 2 (1) Be in writing and signed by the purchaser;
- 3 (2) Match the description of the merchandise described in the  
4 commercial telephone solicitation;
- 5 (3) Contain the name, address, telephone number, and registration  
6 number of the commercial telephone seller, the total price of the  
7 contract, and a detailed description of the merchandise being sold;
- 8 (4) Contain the disclosures required by section 11 of this act;
- 9 (5) Contain, in at least 12-point type, immediately preceding the  
10 signature, the following statement: "YOU ARE NOT OBLIGATED  
11 TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT  
12 AND RETURN IT TO THE COMMERCIAL TELEPHONE  
13 SELLER;"
- 14 (6) Include any oral representations made by the commercial  
15 telephone seller to the purchaser in connection with the transaction;  
16 and
- 17 (7) Contain any other information as may be prescribed by the  
18 director by rule.

19 b. A commercial telephone seller shall not make or submit any  
20 charge to the purchaser's credit card account or make or cause to be  
21 made any electronic transfer of funds until after the commercial  
22 telephone seller receives from the purchaser a copy of the contract,  
23 signed by the purchaser, which is in compliance with the provisions of  
24 this section. Upon receipt of the contract, the commercial telephone  
25 seller shall send the purchaser a written confirmation of the sale.

26 c. The written contract shall contain an explanation of the  
27 purchaser's rights under this section and a statement indicating when  
28 notice of cancellation should be sent. The purchaser may give notice  
29 of cancellation to the commercial telephone seller in writing within  
30 three business days after receipt of the confirmation. If the  
31 commercial telephone seller has not provided an address for receipt of  
32 such notice, cancellation is effective by mailing the notice to the  
33 director.

34 d. Notice of cancellation by the commercial telephone seller shall  
35 be given by certified mail, return receipt requested, and shall be  
36 effective when mailed. Notice of cancellation given by the purchaser  
37 need not take a particular form and is sufficient if it indicates, by any  
38 form of written expression, the name and address of the purchaser and  
39 the purchaser's stated intention not to be bound by the sale.

40 e. If a commercial telephone seller violates the provisions of this  
41 act in making a sale, or fails to deliver an item within 30 calendar days,  
42 the contract is voidable by giving notice to the commercial telephone  
43 seller, and the purchaser is entitled to a return from the seller, within  
44 14 days, of all consideration paid. Notice of cancellation given by the  
45 purchaser need not take a particular form and is sufficient given orally  
46 or in writing. Upon receipt by the purchaser of the consideration paid

1 to the commercial telephone seller, the purchaser shall return to the  
2 commercial telephone seller the merchandise received by the  
3 purchaser. Any cost of returning the merchandise received by the  
4 purchaser shall be borne by the commercial telephone seller, by  
5 providing or guaranteeing payment for return shipping. If such  
6 payment is not provided or guaranteed, the purchaser may keep,  
7 without further obligation, the merchandise received.

8 f. A person who purchases merchandise pursuant to a commercial  
9 telephone solicitation shall be given a refund, credit or replacement, at  
10 his option, if:

11 (1) The merchandise is defective, is not as represented, or if any  
12 merchandise is not received as promised; or

13 (2) The person returns the merchandise or makes a written request  
14 for the refund, credit or replacement within seven days after receiving  
15 the merchandise, whichever is received later.

16 g. If a purchaser of merchandise returns only a portion of the  
17 merchandise, the refund, credit or replacement required by this section  
18 may be prorated accordingly.

19 h. Any refund, credit or replacement required by this section shall  
20 be guaranteed by the commercial telephone seller who made the sale,  
21 regardless of whether payment for the merchandise is made to that  
22 person.

23 i. Any contract, agreement to purchase, or written confirmation  
24 executed by a commercial telephone seller which purports to waive the  
25 purchaser's rights under this act is against public policy and shall be  
26 unenforceable, provided that an agreement between a purchaser and  
27 commercial telephone seller to extend the delivery time of any  
28 merchandise to more than 30 days shall be enforceable if the  
29 commercial telephone seller has a reasonable basis to expect that he  
30 will be unable to ship the merchandise within 30 days and if the  
31 agreement is included in the terms of the written confirmation.

32 j. If a contract or agreement to purchase confers on a purchaser  
33 greater rights to cancellation, refund or return than those enumerated  
34 in this act, such contract shall be enforceable and not in violation of  
35 this act, provided that all rights under such a contract or agreement to  
36 purchase are specifically stated in a written confirmation sent pursuant  
37 to the provisions of this section.

38 k. The provisions of this section shall not reduce, restrict or  
39 eliminate any existing rights or remedies available to purchasers.

40 l. The requirements pursuant to <sup>1</sup>[paragraphs (1) through (7) of  
41 subsection] subsections<sup>1</sup>a. <sup>1</sup>through e.<sup>1</sup> of this section shall not apply  
42 to any sale in which the purchaser is given a full refund for the return  
43 of undamaged and unused merchandise or a cancellation notice is  
44 given to the commercial telephone seller, within seven days after  
45 receipt of the merchandise by the purchaser, and the commercial  
46 telephone seller processes the refund within 30 days after receipt of

1 the returned merchandise by the purchaser.

2

3 13. It is an unlawful practice and a violation of P.L.1960, c.39  
4 (C.56:8-1 et seq.) to violate any provision of this act.

5

6 14. The director, pursuant to the provisions of the "Administrative  
7 Procedure Act," P.L.1968, c.140 (C.52:14B-1 et seq.), shall  
8 promulgate rules and regulations to effectuate the purposes of this act.

9

10 15. This act shall take effect 180 days following enactment.

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12

13

14

15 "New Jersey Commercial Telephone Solicitation Consumer Protection  
16 Act."