

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0298

SENATE ENGROSSED NO. **SB 33** - 02/05/2003

Introduced by: The Committee on Commerce at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to telemarketing.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 37-30A-8 be amended to read as follows:

4 37-30A-8. The provisions of this chapter do not apply to a transaction:

5 (1) Made by a merchant who operates an established business that has a fixed permanent
6 location ~~and~~, who displays or offers consumer goods or services for sale on a
7 continuing basis, and less than twenty-five percent of total new sales are made by
8 unsolicited consumer telephone calls;

9 (2) In which the business establishment making the solicitation is establishing a
10 business-to-business relationship or has a clear, preexisting business relationship with
11 the consumer, if that relationship resulted in the consumer becoming aware of the full
12 name, business address, and telephone number of the establishment; or

13 (3) In which the consumer purchases goods or services pursuant to an examination of a
14 television, radio, or print advertisement or a sample, brochure, catalog, or other
15 mailing material of the telemarketer that contains:

16 (a) The name, address, and telephone number of the telemarketer;



1 (b) A full description of the goods or services being sold along with a list of all
2 prices or fees being requested, including any handling, shipping, sales tax, or
3 delivery charges; and

4 (c) Any limitations or restrictions that apply to the offer.

5 Section 2. That § 37-30A-1 be amended to read as follows:

6 37-30A-1. Terms used in this chapter mean:

7 (1) "Consumer," an actual or prospective purchaser, lessee, or recipient of consumer
8 goods or services bought primarily for use for personal, family, or household
9 purposes;

10 (2) "Consumer goods or services," any tangible personal property or services, including
11 merchandise as defined by subdivision 37-24-1(7), normally used for personal, family,
12 or household purposes, and not for resale or for use or consumption in a trade or
13 business;

14 (3) "Consumer telephone call," a call made by a telephone solicitor or telemarketer for
15 the purpose of soliciting a sale of any consumer goods or services to the person
16 called, or for the purpose of soliciting an extension of credit for consumer goods or
17 services to the person called, or for the purpose of obtaining information that may be
18 used for the direct solicitation of a sale of consumer goods or services to the person
19 called or an extension of credit for such purposes;

20 (4) "Telemarketer," any person or organization who individually or through salespersons,
21 initiates the sale, lease, or rental of consumer goods or services, or offers gifts or
22 prizes with the intent to sell, lease, or rent consumer goods or services by telephonic
23 means or by postcard or other written notice sent through the mail in which the goods
24 and services and all the material terms of the transaction, including price and any fees

1 or handling, shipping, or delivery charges, are not fully described and which request
2 that the consumer contact the seller to initiate the transaction. This term does not
3 include any not-for-profit or charitable organization exempt from federal income
4 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of
5 January 1, 1997;

6 (5) "Unsolicited consumer telephone call," a consumer telephone call other than a call
7 made:

8 (a) In response to an express request of the person called;

9 (b) Primarily in connection with an existing debt or contract, payment or
10 performance of which has not been completed at the time of such call;

11 (c) To any person with whom the telemarketer has an existing business
12 relationship; ~~or~~

13 (d) By a newspaper publisher or such publisher's agent or employee in connection
14 with such publisher's business; or

15 (e) To any person for the purpose of establishing a date and time for an
16 appointment with a person licensed under Title 58 which will take place at a
17 mutually agreeable physical location.