

–CITE–

18 USC CHAPTER 113A – TELEMARKETING FRAUD 01/06/03

–EXPCITE–

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE

PART I – CRIMES

CHAPTER 113A – TELEMARKETING FRAUD

.

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CHAPTER 113A – TELEMARKETING FRAUD

–MISC1–

Sec.

2325. Definition.

2326. Enhanced penalties.

2327. Mandatory restitution.

PRIOR PROVISIONS

A prior chapter 113A of part I of this title, consisting of section 2331 et seq. and relating to terrorism, was renumbered chapter 113B of part I of this title by Pub. L. 103–322, title XXV, Sec. 250002(a)(1), Sept. 13, 1994, 108 Stat. 2082.

–CITE–

18 USC Sec. 2325 01/06/03

–EXPCITE–

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE

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–HEAD–

Sec. 2325. Definition

–STATUTE–

In this chapter, "telemarketing" –

(1) means a plan, program, promotion, or campaign that is conducted to induce –

(A) purchases of goods or services;

(B) participation in a contest or sweepstakes; or

(C) a charitable contribution, donation, or gift of money or any other thing of value,

by use of 1 or more interstate telephone calls initiated either

by a person who is conducting the plan, program, promotion, or

campaign or by a prospective purchaser or contest or sweepstakes participant or charitable contributor, or donor; but

(2) does not include the solicitation of sales through the mailing of a catalog that –

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

(B) includes the business address of the seller;

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

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

if the person making the solicitation does not solicit customers

by telephone but only receives calls initiated by customers in

response to the catalog and during those calls takes orders

without further solicitation.

–SOURCE–

(Added Pub. L. 103–322, title XXV, Sec. 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 107–56, title X, Sec. 1011(d), Oct. 26, 2001, 115 Stat. 396.)

–MISC1–

AMENDMENTS

2001 – Par. (1). Pub. L. 107–56 added subpar. (C) and inserted "or charitable contributor, or donor" before semicolon in concluding provisions.

SHORT TITLE

Section 250001 of title XXV of Pub. L. 103–322 provided that: "This Act (probably should be "title", meaning title XXV (Sec. 250001–250008) of Pub. L. 103–322, which enacted this chapter, amended sections 1029, 1341, and 3059 of this title, and enacted provisions set out as notes under this section and section 994 of Title 28, Judiciary and Judicial Procedure) may be cited as the 'Senior Citizens Against Marketing Scams Act of 1994'."

INFORMATION NETWORK

Section 250008 of title XXV of Pub. L. 103–322, as amended by Pub. L. 104–294, title VI, Sec. 604(b)(29), Oct. 11, 1996, 110 Stat. 3508, provided that:

"(a) Hotline. – The Attorney General shall, subject to the availability of appropriations, establish a national toll–free hotline for the purpose of –

"(1) providing general information on telemarketing fraud to interested persons; and

"(2) gathering information related to possible violations of provisions of law amended by this title (see Short Title note above).

"(b) Action on Information Gathered. – The Attorney General shall work in cooperation with the Federal Trade Commission to ensure that information gathered through the hotline shall be acted on in an appropriate manner."

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 982, 2703 of this title.

–CITE–

18 USC Sec. 2326 01/06/03

–EXPCITE–

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE

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–HEAD–

Sec. 2326. Enhanced penalties

–STATUTE–

A person who is convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or a conspiracy to commit such an offense, in connection with the conduct of telemarketing –

(1) shall be imprisoned for a term of up to 5 years in addition to any term of imprisonment imposed under any of those sections, respectively; and

(2) in the case of an offense under any of those sections that

–

(A) victimized ten or more persons over the age of 55; or

(B) targeted persons over the age of 55,

shall be imprisoned for a term of up to 10 years in addition to any term of imprisonment imposed under any of those sections, respectively.

–SOURCE–

(Added Pub. L. 103–322, title XXV, Sec. 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 105–184, Sec. 3, 4, June 23, 1998, 112 Stat. 520.)

–MISC1–

AMENDMENTS

1998 – Pub. L. 105–184 inserted ", or a conspiracy to commit such an offense," after "or 1344" in introductory provisions and substituted "shall" for "may" in two places.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2327 of this title.

–CITE–

18 USC Sec. 2327 01/06/03

–EXPCITE–

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE

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–HEAD–

Sec. 2327. Mandatory restitution

–STATUTE–

(a) In General. – Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution to all victims of any offense for which an enhanced penalty is provided under section 2326.

(b) Scope and Nature of Order. –

(1) Directions. – The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement. – An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition. – For purposes of this subsection, the term "full amount of the victim's losses" means all losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory. – (A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of –

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim Defined. – In this section, the term "victim" has the meaning given that term in section 3663A(a)(2).

–SOURCE–

(Added Pub. L. 103–322, title XXV, Sec. 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 104–132, title II, Sec. 205(e), Apr. 24, 1996, 110 Stat. 1232; Pub. L. 104–294, title VI, Sec. 601(n), Oct. 11, 1996, 110 Stat. 3502; Pub. L. 105–184, Sec. 5, June 23, 1998, 112 Stat. 520.)

–MISC1–

AMENDMENTS

1998 – Subsec. (a). Pub. L. 105–184, Sec. 5(1), substituted "to all victims of any offense for which an enhanced penalty is provided under section 2326" for "for any offense under this chapter".

Subsec. (c). Pub. L. 105–184, Sec. 5(2), added subsec. (c) and struck out former subsec. (c) which read as follows:

"(c) Definition. – For purposes of this section, the term 'victim' includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian."

1996 – Subsec. (a). Pub. L. 104–132, Sec. 205(e)(1), inserted "or 3663A" after "3663".

Subsec. (b)(1). Pub. L. 104–132, Sec. 205(e)(2)(A), reenacted heading without change and amended text generally. Prior to

amendment, text read as follows: "The order of restitution under this section shall direct that –

"(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means."

Subsec. (b)(2). Pub. L. 104–132, Sec. 205(e)(2)(B), struck out "by victim" after "Enforcement" in heading and amended text generally. Prior to amendment, text read as follows: "An order of restitution may be enforced by a victim named in the order to receive the restitution as well as by the United States Attorney, in the same manner as a judgment in a civil action."

Subsec. (b)(4)(C), (D). Pub. L. 104–132, Sec. 205(e)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, Sec. 205(e)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–294, which directed substitution of "designee" for "delegee" wherever appearing, could not be

executed because of amendment by Pub. L. 104–132, Sec. 205(e)(3),

(4). See below.

Pub. L. 104–132, Sec. 205(e)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104–132, Sec. 205(e)(3), struck out subsecs. (d) and (e) which read as follows:

"(d) Modification of Order. – A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

"(e) Reference to Magistrate or Special Master. – The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court."

Subsec. (f). Pub. L. 104–132, Sec. 205(e)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

–SECRET–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3563, 3613, 3664 of this

title.

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