

Legislative Council

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South Australia

Fair Trading (Telemarketing) Amendment Bill 2009

A BILL FOR

An Act to amend the *Fair Trading Act 1987*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Fair Trading Act 1987*

- 4 Substitution of heading to Part 3
 - 5 Amendment of section 13—Interpretation
 - 6 Amendment of section 14—Application
 - 7 Amendment of section 17—Requirements in relation to prescribed contracts
 - 8 Amendment of section 18—Acceptance of consideration etc
 - 9 Substitution of heading to Part 3 Division 3
 - 10 Amendment of section 19—Prohibition hours
 - 11 Amendment of section 23—Exercise of right of rescission
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Fair Trading (Telemarketing) Amendment Act 2009*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Fair Trading Act 1987*

4—Substitution of heading to Part 3

Heading to Part 3—delete the heading and substitute:

Part 3—Door-to-door trading and telemarketing

5—Amendment of section 13—Interpretation

- (1) Section 13(1)—before the definition of *contract to which this Part applies* insert:
contract summary—see section 17(1a)(b);
- (2) Section 13(1), definition of *cooling-off period*—delete the definition and substitute:
cooling-off period, in relation to a prescribed contract, means the period of 10 days commencing on and including—
 - (a) in the case of a contract entered into in writing—the day on which the contract is made; and
 - (b) in the case of a contract entered into orally over the telephone—the day on which the contract summary is given to the consumer;
- (3) Section 13(1), definition of *dealer*—after "door-to-door trading" insert:
or telemarketing
- (4) Section 13(1), definition of *dealer*, (b)—after "calls on" insert:
, or makes a telephone call to,
- (5) Section 13(1), definition of *door-to-door trading*—delete "*door-to-door trading*" and substitute:

door-to-door trading or telemarketing

6—Amendment of section 14—Application

- (1) Section 14(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and a dealer—
 - (i) in each other's presence in South Australia at a place other than trade premises of the supplier; or
 - (ii) in the case of a consumer ordinarily resident in South Australia, in a telephone call between the consumer and the dealer;
 - (b) the dealer attends at that place or makes the telephone call—
 - (i) in the course of door-to-door trading or telemarketing; and
 - (ii) otherwise than at the unsolicited invitation of the consumer.
- (2) Section 14(2)—after "subsection (1)(b)" insert:
, in determining whether an invitation is solicited or unsolicited

- (3) Section 14(2)(a)—delete "in determining whether an invitation is solicited or unsolicited,"
- (4) Section 14(2)—delete "but" between paragraphs (a) and (b)
- (5) Section 14(2)—delete "or" between paragraphs (b) and (c)

7—Amendment of section 17—Requirements in relation to prescribed contracts

- (1) Section 17(1)—delete "The" and substitute:

Subject to subsection (1a), the
- (2) Section 17(1)(d)—delete paragraph (d) and substitute:
 - (ca) if the supplier wishes to limit the period for which the contract offer remains open (that is, the period within which the contract must be signed by the consumer and returned to the supplier), a statement to that effect specifying the period must be included in the contract;
 - (d) the consumer must be given a duplicate of the contract immediately after the making of the contract or supplied with 2 copies of the contract to sign with instructions to return 1 copy to the supplier and to retain 1 copy;
- (3) Section 17(1)(i)—delete "statement referred to in paragraph (f)" and substitute:

statements referred to in paragraphs (ca) and (f)
- (4) Section 17—after subsection (1) insert:
 - (1a) If a prescribed contract is entered into orally over the telephone, subsection (1) does not apply and the following requirements must be complied with in relation to the contract:
 - (a) before the contract is entered into, the consumer must be informed orally of the following matters:
 - (i) that the contract is subject to a cooling-off period of 10 days commencing on and including the day on which the consumer is given a written contract summary;
 - (ii) the total consideration to be paid or provided by the consumer or, if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated;
 - (iii) if the contract provides for the carrying out of work of a prescribed nature—detailed particulars of the work (including any such particulars required by the regulations);
 - (iv) any other particulars required by the regulations;
 - (b) as soon as reasonably practicable after the contract is entered into, a written contract summary must be given to the consumer in accordance with the following requirements:

- (i) the contract summary must specify the day on which the contract was entered into orally;
- (ii) the contract summary must set out in full all the contractual terms, including—
 - (A) the total consideration to be paid or provided by the consumer or, if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated; and
 - (B) if the contract provides for the carrying out of work of a prescribed nature—detailed particulars of the work (including any such particulars required by the regulations);
- (iii) the contractual terms must be printed or typewritten (apart from any insertions or amendments to the printed or typewritten form, which may be handwritten);
- (iv) if the dealer is not the supplier, the contract summary must set out the full name and address of the dealer and identify that person as the dealer;
- (v) the contract summary must contain conspicuously at the top and bottom of the document the statement "THE CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF TEN DAYS" printed in upper case in type not smaller than 18-point;
- (vi) the contract summary must be accompanied by—
 - (A) a notice, in the prescribed form, explaining the right of the consumer to rescind the contract; and
 - (B) a notice, in the prescribed form, that may be used by the consumer to rescind the contract;
- (vii) the notices referred to in subparagraph (vi) must—
 - (A) be printed or typewritten (apart from any insertion, which may be handwritten); and
 - (B) set out the full name and address of the supplier and identify that person as the supplier; and
 - (C) be separate from, and not attached to, any other document;

- (viii) the printing or typewriting of the contract summary, the statement referred to in subparagraph (v) and the notices referred to in subparagraph (vi), must be readily legible and conform with the requirements of the regulations;
 - (ix) any handwriting (apart from a signature or initial) in the contract summary or a notice referred to in subparagraph (vi) must be readily legible.
- (5) Section 17(2)—delete "any of the requirements of subsection (1) is not complied with" and substitute:
 - there has been a contravention of, or a failure to comply with, this section in relation to a prescribed contract
- (6) Section 17(3)—delete "subsection (1)" and substitute:
 - this section
- (7) Section 17(3)—delete ", as required by that subsection" and substitute:
 - as required

8—Amendment of section 18—Acceptance of consideration etc

- (1) Section 18(1)—delete "If" and substitute:
 - Subject to subsection (3), if
- (2) Section 18(3)—delete subsection (3) and substitute:
 - (3) This section or a provision of this section does not apply to a contract of a kind excluded by the regulations from the application of the section or provision.

9—Substitution of heading to Part 3 Division 3

Heading to Part 3 Division 3—delete the heading and substitute:

Division 3—Door-to-door trading and telemarketing conduct

10—Amendment of section 19—Prohibition hours

Section 19—delete "call on" and substitute:

visit

11—Amendment of section 23—Exercise of right of rescission

- (1) Section 23(2)(c)—after subparagraph (ii) insert:
 - (iii) by transmitting it to a fax number or email address shown on a notice given to the consumer under this Part.
- (2) Section 23—after subsection (3) insert:
 - (3a) A notice of rescission transmitted to a fax number or email address in accordance with subsection (2) will be taken to have been given to the supplier at the time of transmission.