



FREQUENTLY ASKED QUESTIONS

TELEMARKETER LICENSING REGULATION

The following answers provide general advice and information only. For legal purposes, please refer to the *Business Practices and Consumer Protection Act*, the Telemarketer Licensing Regulation, and related regulations.

Why the regulation was needed:

Why are telemarketers now being regulated?

How will the new regulation address the issues of fraudulent telemarketing and nuisance calls?

What does the new regulation benefit consumers and businesses?

Who will require a licence:

What telemarketers will require licences?

What is a "distance sales contract"?

How is "telemarketer" defined?

How is "consumer transaction" defined?

What telemarketers are exempt from the regulation?

Will telemarketers located in British Columbia but who do not contact BC consumers require licences?

Will telemarketers located outside of British Columbia but who contact BC consumers require licences?

Must a business licensee who operates from several locations have a licence for each location from which they conduct business?

How to apply for a licence:

Who is responsible for licensing telemarketers?

What is the process for a telemarketing company to be licensed?

Is there a grace period for applicants to get their licence before they can start telemarketing?

Will training be required before a licence is issued?

How will stakeholders be involved in the transition to licensing?

How can a telemarketer contact the Business Practices and Consumer Protection Authority (BPCPA)?

What the regulation requires of licensees:

What are the licensing requirements?

What restrictions are placed on calling hours?

Does the new regulation require telemarketers to keep a "Do Not Call List"?

How consumers will be protected:

How will the consumer know if the telemarketer is licensed?

How can consumers complain about telemarketers?
How will the BPCPA enforce the regulatory requirements?

Examples of activities included in the regulation:

Are call centers included in the regulation?
Is licensing required where a business calls its customers regarding surveys, new products, courtesy calls, or account inquiries?
If customers call to make inquiries about their accounts, can the company call them within the 30 days?
Is it considered to be telemarketing if a business contacts existing clients?
Do businesses handling inbound calls have to be licensed?
Do businesses that contact consumers over the phone and then send salespeople to customers' homes to sign contracts require telemarketer licences?
Would the Telemarketer Licensing Regulation apply to a company that calls customers who are businesses rather than consumers?

THE AUTHORITY

What is the Business Practices and Consumer Protection Authority (BPCPA)?
What does the BPCPA do?
How does the BPCPA protect consumers?
How will the BC government ensure that the Authority meets its mandate?

LEGISLATION

What is the legislative basis for the BPCPA?

FEE SETTING

What is the BPCPA's financial mandate?
Can the Authority set fees?
What is the Authority's budget?
Who approves the Authority's budget?
How much will the licence fees be?
How will the BPCPA recover its costs?

ADVISORY GROUPS

What are the BPCPA Advisory Groups?
What is the purpose of the advisory groups?

Why the regulation was needed:

Q. Why are telemarketers now being regulated?

A. In recent years, fraudulent telemarketing has become a serious problem in North America. Legitimate operations are increasingly becoming tainted by the proliferation of bogus schemes and not only find their reputations adversely affected, but also find it difficult to compete with fraudulent schemes for the limited dollars available in the marketplace.

In addition, consumers are expressing increasing frustration with the number of calls that they are receiving from telemarketers.

Licensing of telemarketers was provided for in the *Business Practices and Consumer Protection Act*, which came in effect on July 4, 2004, subject to regulations. In March, 2005, the Telemarketer Licensing Regulation was approved, requiring the licensing of telemarketers by October 1, 2005.

Q. How will the new regulation address the issues of fraudulent telemarketing and nuisance calls?

- A.** The licensing telemarketers will allow the Business Practices and Consumer Protection Authority (BPCPA) to request Criminal Record Checks and other information from applicants for telemarketer licences to ensure their legitimacy. The regulation also restricts telemarketers to specific calling times and requires them to keep records relating to each distance sales contract.

The BPCPA will receive consumer complaints about telemarketers. The new regulation will allow the BPCPA to monitor telemarketers and take appropriate enforcement action for violations.

Q. What does the new regulation benefit consumers and businesses?

- A.** Benefits to consumers are that the regulation will:
- Reduce the nuisance factor of calls;
 - Reduce telemarketing scams; and
 - Increase enforcement & opportunity for restitution.

Benefits to businesses are that the regulation will:

- Improve reputation of legitimate businesses;
- Increase consumer confidence in the industry; and
- Ensure a fair marketplace.

Who will require a licence:

Q. What telemarketers will require licences?

- A.** All telemarketers operating in British Columbia or who contact consumers in British Columbia by telephone or fax for the purpose of entering into a distance sales contract will be subject to the new Telemarketer Licensing Regulation. As well, all telemarketers who initiate contact with consumers for the purpose of soliciting a consumer, on behalf or for the benefit of another supplier, for a contribution of money or other property by the consumer (i.e. third-party fund raisers) will be subject to the regulation. The regulation falls under the *Business Practices and Consumer Protection Act* which provides for the licensing of telemarketers.

Q. What is a “distance sales contract”?

- A.** A distance sales contract is a contract for the supply of goods or services between a supplier and a consumer that is **not** entered into in person and, with respect to goods, for which the consumer does not have the opportunity to inspect the goods that are the subject of the contract before the contract is entered into. This definition is provided in the *Business Practices and Consumer Protection Act* (s. 17).

Suppliers entering into distance sales contracts must make the information required available in a manner that requires the consumer to access the information, and

allows them to retain and print the information, as well as providing an express opportunity to correct errors in the contract, and to accept or decline the contract. In addition, there are specific disclosure requirements and cancellation provisions for distance sales contracts.

Q. How is “telemarketer” defined?

A. A telemarketer is someone who sells goods or services over the phone or by fax, and may include someone who solicits donations for charities. The *Business Practices and Consumer Protection Act* provides a specific definition of “telemarketer” as a supplier who initiates contact with a consumer by telephone or facsimile for the purpose of conducting a consumer transaction (s 142).

Q. What is “consumer transaction” defined?

A. The *Business Practices and Consumer Protection Act* defines consumer transaction as:

“(a) a supply of goods or services or real property by a supplier to a consumer for purposes that are primarily personal, family or household, or
(b) a solicitation, offer, advertisement or promotion by a supplier with respect to a transaction referred to in paragraph (a),
and, except in Parts 4 and 5, includes a solicitation of a consumer by a supplier for a contribution of money or other property by the consumer.”

Q. What telemarketers are exempt from the regulation?

A. A supplier is exempt if the supplier does not initiate contact with consumers for the purpose of selling them goods or services under a distance sales contract or for the purpose of soliciting contributions on behalf of another supplier.

This would include charities who call or fax consumers directly and may include educational institutions, political organizations, and firms conducting surveys.

In addition, telemarketers who sell goods such as a security as defined in the *Securities Act* or contracts of insurance under the *Insurance Act* would be exempt.

Q. Will telemarketers located in British Columbia but who do not contact BC consumers require licences?

A. Yes, if telemarketers conduct business in British Columbia, they will require licences, whether or not they contact BC consumers. The *Business Practices and Consumer Protection Act* defines “consumer” as an individual, whether in British Columbia or not, who participates in a consumer transaction.

Q. Will telemarketers located outside of British Columbia but who contact BC consumers require licences?

A. Yes, if telemarketers contact BC consumers, they will require licences, regardless of where they are located. The *Business Practices and Consumer Protection Act* defines “supplier” as a person, whether in British Columbia or not, who in the course of business participates in a consumer transaction.

Q. Must a business licensee who operates from several locations have a licence for each location from which they conduct business?

A. Yes, section 5 of the Telemarketer Licensing Regulation requires a telemarketer to have a licence for each location from which the telemarketer conducts business in BC.

How to apply for a licence:

Q. Who is responsible for licensing telemarketers?

A. The Business Practices and Consumer Protection Authority (BPCPA) is responsible for licensing applicants.

Q. What is the process for a telemarketing company to be licensed?

A. Licence application packages will be available in mid-August, 2005 at www.bpcpa.ca. Applicants may also contact the BPCPA to request an application package at that time. The package will consist of business licence application forms, criminal record check consent forms, and sample statutory declarations for any applicants who declare criminal records. Once complete, these forms, along with the applicable payment, may be forwarded to the BPCPA for processing.

Q. Is there a grace period for applicants to get their licences before they can start telemarketing?

A. The regulation is not in effect until October 1, 2005. Telemarketers will be responsible for submitting their licence applications before that date.

Q. Will training be required before a licence is issued?

A. No educational requirement was outlined in the regulation and the Authority has no plans to offer a training program for licensees. Anyone licensed under the *Business Practices and Consumer Protection Act* should be aware of the provisions of both the Act and regulations, in particular, the sections in the Act relating to contracts and unfair practices.

Q. How will stakeholders be involved in the transition to licensing?

A. The BPCPA will work closely with consumer and industry stakeholders in regulating this industry. This began with a call for expressions of interest in April, 2005 from consumers and businesses to volunteer on the Telemarketing Industry Advisory Group.

The purpose of the group is to identify consumer and industry related issues and potential solutions for consideration by the Authority and to provide feedback on any matters put forward by the BPCPA for consideration.

Q. How can telemarketers contact the BPCPA?

A. For licensing and other business inquiries, the BPCPA may be contacted through its toll free number 1 888 564-9963; local phone number 604 320-1664; fax: 250 920-7181; email: operations@bpcpa.ca, or mailing address: PO Box 9244, Victoria BC V8W 9J2.

Complaints and consumer enquiries can be directed to the toll free number 1 888 564-9963, local phone number 604 320-1667, fax 250 920-7181 or by email at info@bpcpa.ca.

What the regulation requires of licensees:

Q. What are the licensing requirements?

A. The Telemarketer Licensing Regulation regulates the acts or practices of telemarketers. Telemarketers will be required to:

- Collect and maintain records of consumer transactions for 2 years;
- Comply with conditions of communication:
 - restricted hours of communication
 - must not “call block” the originating call number
 - may not contact a consumer more than once in a 30 day period for the same proposed consumer transaction;
- Disclose identifying information about the call (and supplier, if different from the caller); and
- Disclose descriptive information about the solicited good or service, or the purpose of a contribution.

Q. What restrictions will be placed on calling hours?

A. The regulation restricts the times that licensees can communicate with consumers to weekdays between 9 am and 9:30 pm and weekends between 10 am and 6 pm. No calls will be permitted on statutory holidays. The time refers to the local time of the person being contacted. In addition, a telemarketer may not contact a consumer more than once in every 30 day period for the same good or service without the consumer’s permission.

Q. Does the new regulation require telemarketers to keep a “Do Not Call List”?

A. No, the Telemarketer Licensing Regulation does not require this. However, the federal Canadian Radio-television and Telecommunications Commission does require telemarketers to maintain "do not call/fax lists" and provide customers with contact information for a responsible person to whom the called party can write.

How consumers will be protected:

Q. How will the consumer know if the telemarketer is licensed?

A. The consumer may ask telemarketers for their licence number. If there is an issue, the consumer should also note the date and time of the call, the originating number and other information in order to provide information to the BPCPA.

There will be a list of licensees posted on the BPCPA website (<http://www.bpcpa.ca>) after October 1, 2005 which will allow consumers to search for licensees.

Q. How can consumers complain about telemarketers?

A. Consumers may call the BPCPA toll free number at 1 888 564-9963.

A general complaint form is available on the BPCPA website at

http://www.bpcpa.ca/Docs/consumer_complaintform.pdf.

Q. How will the BPCPA enforce the regulatory requirements?

A. The BPCPA will first encourage licensing through education, communication, and voluntary compliance. However, a telemarketer who operates without a licence is committing an offence and is liable to a fine not more than \$10,000 for an individual and not more than \$100,000 for a corporation.

For non-compliance with the regulation, the BPCPA will take progressive enforcement action as follows:

- Accept undertakings in writing;
- Issue compliance orders;
- Impose administrative monetary penalties; and
- File undertakings or orders in Supreme Court.

Examples of activities included in the regulation

Q. Are call centers included in the regulation?

A. Call centers, conducting business in BC or contacting BC consumers, would be included if they are initiating contact with consumers for the purpose of conducting consumer transactions under distance sales contracts or if they are third party fund raisers.

Q. Is licensing required where a business calls its customers regarding:

- **Surveys**
- **New Products**
- **Courtesy Calls**
- **Account Inquiries?**

A. The regulation applies only to those calls made for the purpose of entering into a distance sales contract, i.e. not surveys or account inquiries. Calls about new products and courtesy calls depend upon whether they are made for the purpose of entering into a distance sales contract.

Q. Is it considered to be telemarketing if a business contacts existing clients?

A. The legislation does not address the existing relationship between the supplier and consumer, so this is not a factor in identifying who would fall under the regulation. Again, all telemarketers, conducting business in BC or contacting BC consumers, who are contacting consumers for the purpose of conducting consumer transactions under distance sales contracts or as third party fund raisers would require licences – regardless of whether they are existing clients.

Q. Do businesses handling inbound calls have to be licensed?

A. The company only requires a licence if it is initiating contact for the purpose of entering into a distance sales contract. If the company is not initiating the call, or if they are not entering into a distance sales contract, they will not require a licence.

Q. Do businesses that contact consumers over the phone and then send salespeople to customers' homes to sign contracts require telemarketer licences?

A. This type of situation would not fall under the Telemarketing Licensing Regulation. However, the contract signed may be a direct sales contract which has specific disclosure and cancellation requirements as well.

Q. If customers call to make inquiries about their accounts, can the company call them within the 30 days?

A. The regulation applies only to the same consumer transaction. An account inquiry is not a consumer transaction so there would be no restrictions on calls within the 30 day period.

Q. Would the Telemarketer Licensing Regulation apply to a company that calls customers who are businesses rather than consumers?

A. No. The definition of consumer transaction refers only to the supply of goods, services or real property to a consumer for purposes that are primarily: personal, family or household. It does not include business to business transactions.

THE AUTHORITY

Q. What is the Business Practices and Consumer Protection Authority (BPCPA)?

A. The BPCPA is a not for profit corporation, independent from government.

Its legislated mandate is to:

- deliver consumer protection services throughout British Columbia;
- promote fairness and understanding in the marketplace; and
- administer in the public interest any Act for which administration is delegated to the authority.

The Authority became operational on July 4, 2004. It is responsible for BC consumer protection activities including administration of the *Business Practices and Consumer Protection Act* and the *Cremation, Interment and Funeral Services Act*, promotion of a fair marketplace, regulation of specific industry groups, and information and complaint resolution services offered through a toll free number.

Currently, the industries regulated by the BPCPA include the debt collection industry, the interment, crematoria and funeral services industries, and the travel services industry. Effective October 1, 2005, telemarketers will also be regulated.

Q. What does the BPCPA do?

A. The Authority focuses on six core business activities:

- 1) **Policy, Legislation and Regulation:** provide the information and policy advice that government needs to ensure effective legislation for consumer protection.
- 2) **Consolidating Regulatory Protection:** work with government to close gaps in consumer protection.
- 3) **Ensuring Compliance and Complaint Response:** issue licences to businesses and to monitor for compliance.

- 4) **Communication and Stakeholder Relations:** respond to stakeholders and adapt to change. The Authority has established advisory groups to provide feedback on key issues.
- 5) **Education and Awareness:** provide educational and awareness services.
- 6) **Support Services:** provide efficient and affordable services while striving to achieve a full cost recovery model.

Q. Why was the BPCPA established?

A. The BPCPA was established to strengthen consumer protection in BC. As an independent authority, it has greater flexibility to respond quickly to a changing business environment. New consumer protection activities have been introduced to address internet sales, debt collection practices, and credit disclosure. As new issues emerge, the BPCPA will introduce new responses to protect consumers.

Q. How does the BPCPA protect consumers?

A. The Business Practices and Consumer Protection Authority investigates consumer complaints, seeks redress for consumers who have been treated improperly by business, and prosecutes businesses that have violated consumer protection legislation.

The Authority assists individuals with mediation and referrals where possible, but does not generally prosecute cases for individuals. The Authority gives priority to complaints of clear public interest that affect many individuals, involve significant losses or vulnerable and elderly victims.

Q. How will the BC government ensure that the Authority meets its mandate?

A. The accountability framework for the Authority includes:

- the *Business Protection and Consumer Protection Authority Act* and its requirements;
- regulations, such as the Fee Setting Criteria Regulation;
- a formal Administrative Agreement signed by the provincial government and the Authority, setting out the terms and conditions under which the Authority will operate and remain accountable to government;
- establishment of a liaison within government responsible for working with the BPCPA;
- The Authority is subject to the *Freedom of Information and Protection of Privacy Act* and the Office of the Ombudsman.

The legislation, regulations, and Administrative Agreement can be viewed on the BPCPA website (www.bpcpa.ca).

LEGISLATION

Q. What is the legislative basis for the BPCPA?

A. The BC government replaced several outdated and disparate consumer protection laws with three new pieces of consumer protection legislation in 2004: the *Business Practices and Consumer Protection Authority Act*, the *Business Practices and Consumer Protection Act*, and the *Cremation, Interment and Funeral Services Act*.

The BPCPA was established by the *Business Protection and Consumer Protection Authority Act* (BPCPA Act).

The *Business Practices and Consumer Protection Act* consolidated six consumer statutes, providing clearer and more consistent language and reducing overlap. It better protects consumers by standardizing contract terms, clarifying cancellation rights, and ensuring that penalties for infractions are applied consistently across industries.

FEE SETTING

Q. What is the BPCPA's financial mandate?

A. The BPCPA is a not for profit agency which operates on a cost-recovery basis.

Q. Can the Authority set fees?

A. Yes, the Authority has been delegated the authority to set fees, charges and amounts for the industries it regulates and the areas of its authority. The fees are set so that the Authority can achieve full cost-recovery by December 2005.

The *Business Practices and Consumer Protection Act* and the Fee Setting Criteria Regulation require the Authority to consult with affected industry and interested parties before setting fees and to give at least 90 days notice to the affected industry before a fee, charge or other amount has effect.

Q. What is the Authority's budget?

A. Annual expenditures are estimated to be \$3.8 million. This compares to a budget of \$2.6 million when the Consumer Services Division (CSD) of the BC Ministry of Public Safety and Solicitor General regulated the industry. The CSD only collected licensing revenue of \$1.0 million; taxpayers subsidized the balance.

The Authority is also incurring increased expenditures due to costs that government either did not pay (insurance) or that were centrally administered (payroll, human relations, labour relations, etc.). The expenditure increase of \$1.2 million is due to:

- Corporate Services (Accounting, Facilities, Voice Services, etc.);
- Human Resource (Labour Relations, Recruitment, etc.);
- Policy Development;
- Freedom of Information;
- Records Management;
- Legal Services;
- Information Technology;
- Payroll Services (including Benefits and Disability Administration);
- Governance (Board and Advisory Groups);
- Insurance; and
- Contingency/Retained Earnings Planning.

Q. Who approves the Authority's budget?

A. The Board of Directors is responsible for approving the budget and for ensuring that expenditures are cost effective, efficient and reasonable.

Q. What process was used to determine the new fee structure?

A. The fee structure was based on an analysis of a range of projected expenditures related to enforcement, regulation, mediation and inquiries, client relations/policy and administration. There is no cross subsidization among the industries.

The process currently being followed to set fees, as reviewed with the Telemarketing Advisory Group on May 19, 2005, is as follows:

- review BPCPA future expenditure needs;
- consider quantitative and qualitative data;
- allocate time by industry;
- attribute future expenditures by industry;
- determine fee increases required;
- review options for fee increases;
- consult with industry (May-June);
- provide notice (June 30);
- implement (October 1); and
- achieve full cost recovery.

Q. How much will the licence fees be?

A. Consistent with the BPCPA's mandate, fees will be set to ensure full cost-recovery. The fees will be based on estimated expenditures by the BPCPA for this industry, and will be developed in consultation with the industry and other interested parties.

The first consultation on the fee structure was held with the Telemarketing Advisory Group in May, 2005. The proposed fee schedule is being posted on the BPCPA website to allow interested parties to provide input.

Q. How will the BPCPA recover its costs?

A. All costs of industry regulation will be recovered through fees. The BPCPA will move business regulation to a full-cost recovery model rather than a taxpayer-subsidized system. The BPCPA will also recover costs from investigations and seizures.

ADVISORY GROUPS

Q. What are the BPCPA Advisory Groups?

A. The advisory groups are structured around individual regulated industries, such as debt collection, travel, and cremation, interment and funeral services. The Board initiated the process to establish several advisory groups in the summer, 2004 with a call for expressions of interest from consumers and businesses interested in volunteering on the advisory groups. The Debt Collection Industry, Travel Industry, and Cremation, Interment and Funeral Services Advisory Groups began to meet in the fall, 2004 and the Telemarketing Advisory Group in May, 2005.

Q. What is the purpose of the advisory groups?

A. Their purpose is:

- To identify consumer and industry related issues and potential solutions for consideration by the Authority;
- To provide feedback on matters put forward by the BPCPA for consideration;
- To consider other related matters.

The terms of reference for the Advisory Groups are available on the BPCPA website at <http://www.bpcpa.ca/advisory-groups/telemarketers/advisory-telemarketers.htm>.