

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 713 Session of  
2005

INTRODUCED BY WONDERLING, C. WILLIAMS, CORMAN, RAFFERTY,  
WOZNIAK, FUMO, THOMPSON, KITCHEN, PUNT, EARLL, D. WHITE,  
VANCE, PICCOLA, STOUT, STACK, SCARNATI, ERICKSON, WENGER,  
M. WHITE, ORIE, WAUGH, LEMMOND, FERLO, RHOADES, BOSCOLA AND  
LOGAN, JUNE 9, 2005

SENATOR THOMPSON, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
NOVEMBER 14, 2005

## AN ACT

1 Prohibiting a provider of ~~mobile telephony services~~ COMMERCIAL <—  
2 MOBILE SERVICE from including the dialing number of any  
3 subscriber without first obtaining the express consent of  
4 that subscriber.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Telephone  
9 Subscriber Directory Express Consent Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 ~~"Mobile telephony services."~~ Commercially available <—  
15 ~~interconnected mobile phone services that provide access to the~~  
16 ~~public switched telephone network (PSTN) via mobile~~  
17 ~~communication devices employing radio wave technology to~~

~~transmit calls, including cellular radiotelephone, broadband personal communications services (PCS), and digital specialized mobile radio (SMR). The term does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.~~

~~"Unpublished or unlisted access number." A telephone, telex, teletex, facsimile, computer modem or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.~~

### ~~Section 3.—General rule.~~

~~A provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber.~~

### ~~Section 4.—Subscriber's express consent form.~~

~~The provider's form for obtaining the subscriber's express consent shall meet all of the following requirements:~~

~~(1) It shall be recorded in oral, electronic or written form.~~

~~(2) It shall be a separate document that is not attached to any other document.~~

~~(3) It shall be signed and dated by the subscriber.~~

~~(4) It shall be a separate screen or if it is within another screen shall be in a separate section of the screen~~

1 ~~that includes the disclosure.~~

2 ~~(5) It shall be a sound recording of a discrete verbal~~  
3 ~~confirmation.~~

4 ~~(6) It shall be unambiguous, be legible and~~  
5 ~~conspicuously disclose that, by signing, the subscriber is~~  
6 ~~consenting to have the subscriber's dialing number sold or~~  
7 ~~licensed as part of a list of subscribers and the~~  
8 ~~subscriber's dialing number may be included in a publicly~~  
9 ~~available directory.~~

10 ~~(7) If under the subscriber's calling plan the~~  
11 ~~subscriber may be billed for receiving unsolicited calls or~~  
12 ~~text messaging from a telemarketer, the provider's form shall~~  
13 ~~include a disclosure, which shall be unambiguous and legible,~~  
14 ~~that, by consenting to have the subscriber's dialing number~~  
15 ~~sold or licensed as part of a list of subscribers or be~~  
16 ~~included in a publicly available directory, the subscriber~~  
17 ~~may incur additional charges for receiving unsolicited calls~~  
18 ~~or text messages.~~

19 ~~Section 5. Prior express consent.~~

20 ~~A subscriber who provides express prior consent under section~~  
21 ~~4 may revoke that consent at any time. A provider of mobile~~  
22 ~~telephony services shall comply with the subscriber's request to~~  
23 ~~opt out within a reasonable period of time, not to exceed 60~~  
24 ~~days.~~

25 "COMMERCIAL MOBILE SERVICE PROVIDER." A PROVIDER OF <—  
26 COMMERCIAL MOBILE SERVICE AS DEFINED BY SECTION 332(D) OF THE  
27 COMMUNICATIONS ACT OF 1934 (48 STAT. 1064, 47 U.S.C. § 151 ET  
28 SEQ.), FEDERAL COMMUNICATIONS COMMISSION RULES, AND THE OMNIBUS  
29 BUDGET RECONCILIATION ACT OF 1993 (PUBLIC LAW 103-66, 107 STAT.  
30 312).

"PERSON." ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED  
LIABILITY COMPANY OR OTHER ORGANIZATION OR ANY COMBINATION  
THEREOF.

SECTION 3. REQUIRED CONSENT.

A COMMERCIAL MOBILE SERVICE PROVIDER OR ANY DIRECT OR  
INDIRECT AFFILIATE OR AGENT OF A PROVIDER OR ANY OTHER PERSON  
DOING BUSINESS IN THIS COMMONWEALTH MAY NOT PUBLISH IN A  
DIRECTORY OR PROVIDE FOR PUBLICATION IN A DIRECTORY THE NAME AND  
TELEPHONE NUMBER OF A MOBILE SERVICE CUSTOMER IN THIS  
COMMONWEALTH WITHOUT THE EXPRESS CONSENT OF THE CUSTOMER. THE  
CONSENT OF A CUSTOMER MUST BE GIVEN BY ONE OF THE FOLLOWING:

(1) IN WRITING IN A SEPARATE WRITTEN DOCUMENT OR IN A  
SEPARATE DISTINCT SECTION WITHIN A WRITTEN DOCUMENT THAT  
INCLUDES THE CUSTOMER'S SIGNATURE AND THE DATE.

(2) A DISTINCT VERBAL CONFIRMATION.

(3) ON AN INTERNET WEBSITE MAINTAINED BY THE COMMERCIAL  
MOBILE SERVICE PROVIDER OR AN AGENT ACTING ON BEHALF OF THE  
PROVIDER. THE INTERNET WEBSITE SHALL PROVIDE A SEPARATE  
SCREEN OR IF IT IS WITHIN ANOTHER SCREEN THERE SHALL BE A  
SEPARATE SECTION OF THE SCREEN THAT INCLUDES THE DISCLOSURE.

(4) OTHER VERIFIABLE MEANS UTILIZING THE CUSTOMER'S  
HANDSET.

A SUBSCRIBER WHO PROVIDES EXPRESS PRIOR CONSENT UNDER THIS  
SECTION MAY REVOKE THAT CONSENT AT ANY TIME. A COMMERCIAL MOBILE  
SERVICE PROVIDER SHALL COMPLY WITH THE SUBSCRIBER'S REQUEST TO  
OPT OUT WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 60  
DAYS. IF UNDER THE SUBSCRIBER'S CALLING PLAN THE SUBSCRIBER MAY  
BE BILLED FOR RECEIVING UNSOLICITED CALLS OR TEXT MESSAGES, THE  
PROVIDER'S FORM SHALL INCLUDE A DISCLOSURE, WHICH SHALL BE  
UNAMBIGUOUS AND LEGIBLE, THAT, BY CONSENTING TO HAVE THE

1 SUBSCRIBER'S DIALING NUMBER SOLD OR LICENSED AS PART OF A LIST  
2 OF SUBSCRIBERS OR BE INCLUDED IN A PUBLICLY AVAILABLE DIRECTORY,  
3 THE SUBSCRIBER MAY INCUR ADDITIONAL CHARGES FOR RECEIVING  
4 UNSOLICITED CALLS OR TEXT MESSAGES.

5 SECTION 4. SALE OF LIST.

6 BEFORE A CUSTOMER CONSENTS UNDER SECTION 3, A COMMERCIAL  
7 MOBILE SERVICE PROVIDER MUST DISCLOSE TO THE CUSTOMER IN WRITING  
8 OR VERBALLY, AS APPROPRIATE, THAT BY CONSENTING THE CUSTOMER  
9 AGREES TO HAVE THE CUSTOMER'S TELEPHONE NUMBER SOLD OR LICENSED  
10 AS PART OF A LIST OF CUSTOMERS AND THE CUSTOMER'S TELEPHONE  
11 NUMBER MAY BE INCLUDED IN A PUBLICLY AVAILABLE DIRECTORY.

12 Section ~~6~~ 5. Charges. <—

13 A subscriber shall not be charged for making the choice to  
14 not be listed in a directory.

15 Section ~~7~~ 6. Applicability. <—

16 This ~~section does~~ ACT SHALL not apply to the provision of <—  
17 telephone numbers to the following parties for the following  
18 purposes:

19 (1) To a collection agency, ~~to the extent disclosures~~ <—  
20 ~~made by the agency are supervised by the Pennsylvania Public~~  
21 ~~Utility Commission,~~ exclusively for the collection of unpaid  
22 debts.

23 (2) (i) To any law enforcement agency, fire protection  
24 agency, public health agency, ~~public environmental health~~ <—  
25 ~~agency,~~ city or county emergency services planning  
26 agency, or private for-profit agency operating under  
27 contract with and at the direction of one or more of  
28 these agencies, for the exclusive purpose of responding  
29 to a 911 call or communicating an imminent threat to life  
30 or property.

1           (ii) Any information or records provided to a  
2 private for-profit agency pursuant to this section shall  
3 be held in confidence by that agency and by any  
4 individual employed by or associated with that agency.  
5 This information or these records shall not be open to  
6 examination for any purpose not directly connected with  
7 the administration of the services specified in this  
8 paragraph.

9           (3) To a FEDERAL, STATE OR LOCAL AGENCY, BOARD OR           <—  
10 COMMISSION, PURSUANT TO lawful process issued under Federal  
11 or State law.

12           (4) To a telephone corporation providing service between  
13 service areas for the provision to the subscriber of  
14 telephone service between service areas or to third parties  
15 for the limited purpose of providing billing services.

16           (5) To a telephone corporation to effectuate a  
17 customer's request to transfer the customer's assigned  
18 telephone number from the customer's existing provider of  
19 telecommunications services to a new provider of  
20 telecommunications services.

21           ~~(6) To the Pennsylvania Public Utility Commission           <—~~  
22 ~~pursuant to its jurisdiction and control over telephone and~~  
23 ~~telegraph corporations.~~

24 Section 8 7. Civil relief.           <—

25           (a) General rule.--The Office of Attorney General may bring  
26 a civil action against an entity which intentionally violates  
27 this act.

28           (b) Additional remedies.--In addition to any other remedy  
29 provided by law, ~~a person~~ THE ATTORNEY GENERAL bringing an           <—  
30 action under this section may:

1           (1) Seek injunctive relief to restrain the violator from  
2 continuing the violation.

3           (2) Recover actual damages arising from the willful  
4 violation.

5           (3) Seek both injunctive relief and recovery of damages  
6 as provided by this subsection.

7 Section 9 8. Liability.

<—

8 No telephone corporation, nor any official or employee  
9 thereof, shall be subject to criminal or civil liability for the  
10 release of customer information as authorized by ~~this section~~

<—

11 SECTION 7.

<—

12 ~~Section 10. Severability.~~

<—

13 ~~The provisions of this act are severable. If any provision of~~  
14 ~~this act or its application to any person or circumstance is~~  
15 ~~held invalid, the invalidity shall not affect other provisions~~  
16 ~~or applications of this act which can be given effect without~~  
17 ~~the invalid provision or application.~~

18 Section 11 9. Effective date.

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19 This act shall take effect in 60 days.