

## AN ACT

1 Amending the act of December 4, 1996 (P.L.911, No.147), entitled  
2 "An act providing for registration requirements for  
3 telemarketers and for powers and duties of the Office of  
4 Attorney General," further providing for definitions and for  
5 unwanted telephone solicitation calls.

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

8 Section 1. The definitions of "do-not-call list,"  
9 "established business relationship" and "telephone solicitation  
10 call" in section 2 of the act of December 4, 1996 (P.L.911,  
11 No.147), known as the Telemarketer Registration Act, amended  
12 September 12, 2003 (P.L.105, No.22), are amended to read:

13 Section 2. Definitions.

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

17 \* \* \*

18 "Do-not-call list." A list of residential, business or  
19 wireless telephone subscribers who have notified the list

1 administrator of their desire not to receive telephone  
2 solicitation calls.

3 "Established business relationship." A prior or existing  
4 relationship formed by a voluntary two-way communication between  
5 a person or entity and a residential, business or wireless  
6 telephone subscriber, with or without an exchange of  
7 consideration, on the basis of an inquiry, application, purchase  
8 or transaction by the residential, business or wireless  
9 telephone subscriber regarding products or services offered by  
10 such persons or entity. In regard to an inquiry, the person or  
11 entity shall obtain the consent of a residential, business or  
12 wireless telephone subscriber to continue the business  
13 relationship beyond the initial inquiry.

14 \* \* \*

15 "Telephone solicitation call." A call made to a residential, business  
16 business or wireless telephone subscriber for the purpose of  
17 soliciting the sale of any consumer goods or services or for the  
18 purpose of obtaining information that will or may be used for  
19 the direct solicitation of a sale of consumer goods or services  
20 or an extension of credit for that purpose. The term does not  
21 include a call made to a residential, business or wireless  
22 telephone consumer:

23 (1) In response to an express request of the residential  
24 or wireless telephone consumer.

25 (2) In reference to an existing debt, contract, payment  
26 or performance.

27 (3) With whom the telemarketer has an established  
28 business relationship within the past 12 months preceding the  
29 call.

30 (4) On behalf of an organization granted tax-exempt

1 status under section 501(c)(3), (5) or (8) of the Internal  
2 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et  
3 seq.) or a veterans organization chartered by the Congress of  
4 the United States and or its duly appointed foundation.

5 (5) On behalf of a political candidate or a political  
6 party.

7 Section 2. Section 5.2 of the act, amended September 12,  
8 2003 (P.L.105, No.22), is amended to read:

9 Section 5.2. Unwanted telephone solicitation calls prohibited.

10 (a) General rule.--No telemarketer shall initiate or cause  
11 to be initiated a telephone solicitation call to a residential  
12 or business telephone number of a residential or business  
13 telephone subscriber who does not wish to receive telephone  
14 solicitation calls and has caused his name, address and  
15 telephone number to be enrolled on a do-not-call list maintained  
16 by the list administrator. This prohibition shall be effective  
17 30 days after a quarterly do-not-call list is issued by the list  
18 administrator which first contains a residential or business  
19 telephone subscriber's name, address and residential or business  
20 telephone number. In the event that the Federal Trade Commission  
21 and/or the Federal Communications Commission establish a  
22 national No Call Registry, the Director of the Bureau of  
23 Consumer Protection in the Office of Attorney General is  
24 authorized to release to the list administrator of such national  
25 No Call Registry sufficient data to include all those  
26 residential or business telephone subscribers currently enrolled  
27 on the do-not-call list and any residential or business  
28 telephone subscribers who subsequently enroll with the Bureau of  
29 Consumer Protection in the Office of Attorney General. Prior to  
30 releasing any such data to a national No Call Registry, the

1 Bureau of Consumer Protection in the Office of Attorney General  
2 shall provide those residential or business telephone  
3 subscribers currently enrolled with the opportunity to remove  
4 their information from the do-not-call list.

5 (b) Listings.--Telemarketers making telephone solicitation  
6 calls shall quarterly obtain listings of residential, business  
7 or wireless telephone subscribers in this Commonwealth who have  
8 arranged to have their names, addresses and telephone numbers  
9 enrolled on the list administrator's do-not-call list or shall  
10 utilize a service provider who has quarterly obtained and will  
11 use such listings.

12 (c) Duration.--A listing on a do-not-call list shall be  
13 maintained for a minimum of five years from the date of the  
14 enrollment or until the telephone number is no longer valid for  
15 the residential, business or wireless telephone subscriber,  
16 whichever occurs first.

17 (d) Fee limitation.--No list administrator may impose a fee  
18 for copies of a do-not-call list which exceeds the costs  
19 incurred by the list administrator in the production,  
20 preparation and distribution of that list or at a fee authorized  
21 by 16 CFR 310.8 (relating to [severability] fee for access to  
22 the National Do Not Call Registry).

23 (e) Affirmative defense.--A telemarketer is not in violation  
24 of this section if all of the following are satisfied:

25 (1) He has established and implemented written  
26 procedures to comply with this section.

27 (2) He has trained his personnel in the procedures.

28 (3) The telemarketer acting on behalf of the seller has  
29 maintained and recorded lists of residential, business or  
30 wireless telephone subscribers who may not be contacted.

1 (4) Any subsequent call is the result of error.

2 (f) Attorney General.--The list administrator shall provide  
3 the Office of Attorney General with a copy of each quarterly do-  
4 not-call list.

5 (g) Restrictions on use of do-not-call list.--No  
6 telemarketer shall use a list administrator's do-not-call list  
7 for any purpose other than to remove residential, business or  
8 wireless telephone subscribers from telephone sales call lists.

9 (h) Disclosure to residential, business or wireless  
10 telephone subscribers.--Each local exchange telephone company,  
11 competitive local exchange telephone company, long-distance  
12 interexchange carrier company, Internet service provider that  
13 provides telephone service and affiliated companies providing  
14 telecommunications billing service shall clearly notify its  
15 residential, business or wireless telephone subscribers in this  
16 Commonwealth of their ability to contact the list administrator  
17 which accepts individual names, addresses and telephone numbers  
18 of persons who do not wish to receive telephone solicitation  
19 calls. The method of notification shall include, but not be  
20 limited to, placing the notice in billing statements mailed to  
21 residential, business and wireless subscribers and publication  
22 of notice in the consumer information pages of a local telephone  
23 directory of general circulation. The notification shall specify  
24 the methods by which residential, business and wireless  
25 subscribers may place their names on the do-not-call list and  
26 how often renewal is necessary.

27 (i) Contract.--If the Bureau of Consumer Protection has not  
28 entered into a contract with a list administrator within 90 days  
29 of the effective date of this section after a good faith effort  
30 to do so, the bureau may contract with any nonprofit

1 organization to carry out the provisions of this section.

2 (j) Identification.--No telemarketer shall fail to provide a  
3 residential, business or wireless telephone subscriber with the  
4 name of the caller, the name of the person or entity on whose  
5 behalf the call is being made and, upon request, a telephone  
6 number or address at which the person or entity may be  
7 contacted. If a telemarketer makes a solicitation using an  
8 artificial or prerecorded voice message transmitted by an  
9 autodialer or prerecorded message player which placed the  
10 telephone solicitation call, the telephone number may not be a  
11 900 number or any other number for which charges exceed local or  
12 long-distance transmission charges.

13 (k) Investigation, enforcement and reporting.--

14 (1) The Bureau of Consumer Protection in the Office of  
15 Attorney General shall investigate any complaints received  
16 concerning violations of this section. If, after  
17 investigating any complaint, the Attorney General finds that  
18 there has been a violation of this section, the Attorney  
19 General may bring an action to impose a civil penalty and to  
20 seek other relief, including injunctive relief, under the act  
21 of December 17, 1968 (P.L.1224, No.387), known as the Unfair  
22 Trade Practices and Consumer Protection Law.

23 (2) The Attorney General shall remit 10% of any civil  
24 penalty collected under this section to the person filing the  
25 complaint leading to the civil penalty. In no event, however,  
26 shall the amount of this remittance exceed \$100 for any  
27 person.

28 (3) On or before November 30 of each year, the Attorney  
29 General shall submit to the General Assembly a report  
30 detailing investigations and enforcement actions taken under

1 this section during the preceding Commonwealth fiscal year.  
2 The report shall include, but not be limited to, the number  
3 of complaints received under this section, the nature of  
4 those complaints, the number of investigations and  
5 enforcement actions instituted by the Attorney General, a  
6 summary of the results of those investigations and  
7 enforcement and the amount of any civil penalties collected.  
8 Section 3. This act shall take effect in 60 days.