

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1469 Session of
2001

INTRODUCED BY RAYMOND, HERMAN, ADOLPH, ALLEN, McCALL, ARGALL,
J. BAKER, M. BAKER, BEBKO-JONES, BELARDI, BELFANTI, BUNT,
CALTAGIRONE, CAPPELLI, CLARK, CLYMER, CORRIGAN, COSTA,
CREIGHTON, DALEY, DALLY, DeLUCA, FAIRCHILD, FEESE, FLICK,
FREEMAN, GABIG, GANNON, GEIST, GEORGE, GODSHALL, HARHAI,
HARPER, HERSHEY, HORSEY, JADLOWIEC, KELLER, KENNEY, KIRKLAND,
LEH, MAJOR, MANN, MARSICO, McILHATTAN, McILHINNEY, MELIO,
R. MILLER, MUNDY, NICKOL, PETRARCA, READSHAW, ROHRER, ROSS,
RUBLEY, SAINATO, SCRIMENTI, SHANER, B. SMITH, SOLOBAY,
STABACK, STERN, R. STEVENSON, SURRA, E. Z. TAYLOR, TIGUE,
WALKO, WANSACZ, WATSON, WOJNAROSKI, YOUNGBLOOD, YUDICHAK,
ZUG, J. EVANS, SCHRODER, SAYLOR, HENNESSEY, TULLI, BROWNE,
STEELMAN, GRUCELA, MAHER AND PICKETT, MAY 1, 2001

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 14, 2001

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," defining "LISTING ADMINISTRATOR" AND <—
5 "telephone solicitation call"; ~~requiring identification of~~ <—
6 ~~telephone solicitation~~; prohibiting blocking of caller
7 identification and other telemarketing screening products or
8 services; AND prohibiting unwanted telephone solicitation <—
9 calls.; ~~and establishing an individual right of action.~~ <—

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 2 of the act of December 4, 1996
13 (P.L.911, No.147), known as the Telemarketer Registration Act,
14 is amended by adding a ~~definition~~ DEFINITIONS to read: <—

15 Section 2. Definitions.

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

4 * * *

5 ~~"Telephone solicitation call." A call made to a residential~~ <—
6 ~~telephone consumer for the purpose of soliciting the sale of any~~
7 ~~consumer goods or services or for the purpose of obtaining~~
8 ~~information that will or may be used for the direct solicitation~~
9 ~~of a sale of consumer goods or services or an extension of~~
10 ~~credit for that purpose. The term does not include a call made~~
11 ~~to a residential telephone consumer:~~

12 ~~(1) In response to an express request of the residential~~
13 ~~telephone consumer.~~

14 ~~(2) In reference to an existing debt, contract, payment~~
15 ~~or performance.~~

16 ~~(3) With whom the telemarketer has had a business~~
17 ~~relationship within the past six months preceding the call.~~

18 ~~(4) On behalf of a charitable organization granted tax~~
19 ~~exempt status under section 501(c)(3) of the Internal Revenue~~
20 ~~Code of 1986 (Public Law 99 514, 26 U.S.C. § 1 et seq.).~~

21 ~~(5) On behalf of a political candidate or a political~~
22 ~~party.~~

23 ~~"DO-NOT-CALL LIST." A LIST OF RESIDENTIAL TELEPHONE~~ <—
24 ~~CONSUMERS WHO HAVE NOTIFIED THE LIST ADMINISTRATOR OF THEIR~~
25 ~~DESIRE NOT TO RECEIVE TELEPHONE SOLICITATION CALLS.~~

26 ~~"LIST ADMINISTRATOR." A NONPROFIT ORGANIZATION AS DESIGNATED~~
27 ~~BY CONTRACT ENTERED INTO BY THE DIRECTOR OF THE BUREAU OF~~
28 ~~CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY GENERAL, THAT~~
29 ~~ACCEPTS INDIVIDUAL NAMES, ADDRESSES AND TELEPHONE NUMBERS OF~~
30 ~~PERSONS WHO DO NOT WISH TO RECEIVE TELEPHONE SOLICITATION CALLS~~

1 AND THAT HAS BEEN IN EXISTENCE FOR TEN OR MORE YEARS.

2 "TELEPHONE SOLICITATION CALL." A CALL MADE TO A RESIDENTIAL
3 TELEPHONE CONSUMER FOR THE PURPOSE OF SOLICITING THE SALE OF ANY
4 CONSUMER GOODS OR SERVICES OR FOR THE PURPOSE OF OBTAINING
5 INFORMATION THAT WILL OR MAY BE USED FOR THE DIRECT SOLICITATION
6 OF A SALE OF CONSUMER GOODS OR SERVICES OR AN EXTENSION OF
7 CREDIT FOR THAT PURPOSE. THE TERM DOES NOT INCLUDE A CALL MADE
8 TO A RESIDENTIAL TELEPHONE CONSUMER:

9 (1) IN RESPONSE TO AN EXPRESS REQUEST OF THE RESIDENTIAL
10 TELEPHONE CONSUMER.

11 (2) IN REFERENCE TO AN EXISTING DEBT, CONTRACT, PAYMENT
12 OR PERFORMANCE.

13 (3) WITH WHOM THE TELEMARKETER HAS AN ESTABLISHED
14 BUSINESS RELATIONSHIP WITHIN THE PAST 12 MONTHS PRECEDING THE
15 CALL.

16 (4) ON BEHALF OF A CHARITABLE ORGANIZATION GRANTED TAX-
17 EXEMPT STATUS UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE
18 CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.) OR A
19 VETERAN'S ORGANIZATION CHARTERED BY THE CONGRESS OF THE
20 UNITED STATES AND OR ITS DULY APPOINTED FOUNDATION.

21 (5) ON BEHALF OF A POLITICAL CANDIDATE OR A POLITICAL
22 PARTY.

23 Section 2. The act is amended by adding sections to read:

24 ~~Section 4.1. Identification of telephone solicitor required.~~ <—

25 ~~A telemarketer who makes a telephone solicitation call must~~
26 ~~identify himself and the name of the person on whose behalf the~~
27 ~~telephone solicitation call is being made promptly upon making~~
28 ~~contact with the recipient of the telephone solicitation call.~~

29 ~~Section 4.2. Blocking of caller identification and other~~
30 ~~telemarketing screening products or services~~

~~prohibited.~~

~~No telemarketer shall take any action with the primary
intent:~~

~~(1) to prevent the transmission of the telephone
solicitor's name or telephone number to any recipient of a
telephone solicitation call when the equipment or service
used by the telephone solicitor is capable of creating and
transmitting the telephone solicitor's name or telephone
number; or~~

~~(2) to circumvent, bypass or disable any product or
service used by a person to screen telephone calls or to
prevent the completion of telephone solicitation calls.~~

~~Section 4.3. Unwanted telephone solicitation calls prohibited.~~

~~(a) General rule. No telemarketer shall initiate or cause
to be initiated, a telephone solicitation call to a residential
telephone number:~~

~~(1) When a person at such telephone number previously
stated that he does not wish to receive telephone
solicitation calls made by the telemarketer or person on
whose behalf the telephone solicitation call is being made.~~

~~(2) When a person has arranged to have his name and
telephone number included on a list maintained by a National
Association of Telemarketers, which accepts individual names
and telephone numbers of persons who do not wish to receive
telephone solicitation calls.~~

~~(b) Duration of request. Any such request not to receive
telephone solicitation calls shall be valid for a minimum of ten
years from the date the request is made.~~

~~(c) Listings. Telemarketers shall semiannually obtain
listings of residential telephone consumers in this Commonwealth~~

~~who have arranged to have their names and telephone numbers removed from direct marketing lists maintained by a National Association of Telemarketers.~~

~~(d) Affirmative defense. It shall be an affirmative defense in any action brought under section 6 or 8 that the defendant has established and implemented practices and procedures to effectively prevent telephone solicitation calls in violation of this section.~~

~~Section 5.1. Individual action for damages.~~

~~(a) Right of action. Any person aggrieved by a violation of sections 4.1, 4.2 and 4.3 shall have the right to initiate an action to enjoin such violation and to recover damages in the amount of \$500 for each such violation.~~

~~(b) Willful violations. For willful violations of sections 4.1, 4.2 and 4.3, the court may, in its discretion, increase the amount of the award to an amount not exceeding \$2,000.~~

~~(c) Attorney fees and costs recoverable. Notwithstanding any other provision of the law to the contrary, in addition to any damages awarded, such person may be awarded reasonable attorney fees and court costs.~~

§ 5.1. BLOCKING OF CALLER IDENTIFICATION AND OTHER

TELEMARKETING SCREENING PRODUCTS OR SERVICES

PROHIBITED.

NO PERSON SHALL TAKE ANY ACTION WITH THE PRIMARY INTENT:

(1) TO PREVENT THE TRANSMISSION OF A TELEPHONE SOLICITOR'S NAME OR TELEPHONE NUMBER TO ANY RECIPIENT OF A TELEPHONE SOLICITATION CALL WHEN THE EQUIPMENT OR SERVICE USED BY THE TELEPHONE SOLICITOR IS CAPABLE OF CREATING AND TRANSMITTING THE TELEPHONE SOLICITOR'S NAME OR TELEPHONE NUMBER; OR

(2) TO CIRCUMVENT, BYPASS OR DISABLE ANY PRODUCT OR
SERVICE USED BY THE PERSON TO SCREEN TELEPHONE CALLS.

§ 5.2. UNWANTED TELEPHONE SOLICITATION CALLS PROHIBITED.

(A) GENERAL RULE.--NO PERSON SHALL INITIATE OR CAUSE TO BE
INITIATED A TELEPHONE SOLICITATION CALL TO A RESIDENTIAL
TELEPHONE NUMBER OF A PERSON WHO DOES NOT WISH TO RECEIVE
TELEPHONE SOLICITATION CALLS AND HAS CAUSED HIS NAME, ADDRESS
AND TELEPHONE NUMBER TO BE ENROLLED ON A DO-NOT-CALL LIST
MAINTAINED BY THE LIST ADMINISTRATOR. THIS PROHIBITION SHALL BE
EFFECTIVE 30 DAYS AFTER A QUARTERLY DO-NOT-CALL LIST IS ISSUED
BY THE LIST ADMINISTRATOR WHICH FIRST CONTAINS A PERSON'S NAME,
ADDRESS AND RESIDENTIAL TELEPHONE NUMBER.

(B) LISTINGS.--PERSONS MAKING TELEPHONE SOLICITATION CALLS
SHALL QUARTERLY OBTAIN LISTINGS OF RESIDENTIAL TELEPHONE
CONSUMERS IN THIS COMMONWEALTH WHO HAVE ARRANGED TO HAVE THEIR
NAMES, ADDRESSES AND TELEPHONE NUMBERS ENROLLED ON THE LIST
ADMINISTRATOR'S DO-NOT-CALL LIST OR SHALL UTILIZE A SERVICE
PROVIDER WHO HAS QUARTERLY OBTAINED AND WILL USE SUCH LISTINGS.

(C) DURATION OF PROHIBITION.--A LISTING ON A DO-NOT-CALL
LIST SHALL BE HONORED FOR A MINIMUM OF FIVE YEARS FROM THE DATE
OF THE ENROLLMENT.

(D) FEE LIMITATION.--NO LIST ADMINISTRATOR MAY IMPOSE A FEE
FOR COPIES OF A DO-NOT-CALL LIST WHICH EXCEEDS THE COSTS
INCURRED BY THE LIST ADMINISTRATOR IN THE PRODUCTION,
PREPARATION AND DISTRIBUTION OF THAT LIST.

(E) AFFIRMATIVE DEFENSE.--A PERSON IS NOT IN VIOLATION OF
THIS SECTION IF ALL OF THE FOLLOWING ARE SATISFIED:

(1) HE HAS ESTABLISHED AND IMPLEMENTED WRITTEN
PROCEDURES TO COMPLY WITH THIS SECTION.

(2) HE HAS TRAINED HIS PERSONNEL IN THE PROCEDURES.

1 (3) THE PERSON ACTING ON BEHALF OF THE SELLER HAS
2 MAINTAINED AND RECORDED LISTS OF PERSONS WHO MAY NOT BE
3 CONTACTED.

4 (4) ANY SUBSEQUENT CALL IS THE RESULT OF ERROR.

5 (F) ATTORNEY GENERAL.--THE LIST ADMINISTRATOR SHALL PROVIDE
6 THE OFFICE OF ATTORNEY GENERAL WITH A COPY OF EACH QUARTERLY DO-
7 NOT-CALL LIST.

8 (G) RESTRICTIONS ON USE OF DO-NOT-CALL LIST.--NO PERSON
9 SHALL USE A LIST ADMINISTRATOR'S DO-NOT-CALL LIST FOR ANY
10 PURPOSE OTHER THAN TO REMOVE RESIDENTIAL TELEPHONE CUSTOMERS
11 FROM TELEPHONE SALES CALL LISTS.

12 (H) DISCLOSURE TO RESIDENTIAL SUBSCRIBERS.--EACH LOCAL
13 EXCHANGE TELEPHONE COMPANY, COMPETITIVE LOCAL EXCHANGE TELEPHONE
14 COMPANY, LONG DISTANCE INTEREXCHANGE CARRIER COMPANY, INTERNET
15 SERVICE PROVIDER THAT PROVIDES TELEPHONE SERVICE AND AFFILIATED
16 COMPANIES PROVIDING TELECOMMUNICATIONS BILLING SERVICE SHALL
17 CLEARLY NOTIFY ITS RESIDENTIAL SUBSCRIBERS OF THEIR ABILITY TO
18 CONTACT THE LIST ADMINISTRATOR WHICH ACCEPTS INDIVIDUAL NAMES,
19 ADDRESSES AND TELEPHONE NUMBERS OF PERSONS WHO DO NOT WISH TO
20 RECEIVE TELEPHONE SOLICITATION CALLS. THE METHOD OF NOTIFICATION
21 SHALL INCLUDE, BUT NOT BE LIMITED TO, PLACING THE NOTICE IN
22 BILLING STATEMENTS MAILED TO SUBSCRIBERS AND PUBLICATION OF
23 NOTICE IN THE CONSUMER INFORMATION PAGES OF A LOCAL TELEPHONE
24 DIRECTORY OF GENERAL CIRCULATION. THE NOTIFICATION SHALL SPECIFY
25 THE METHODS BY WHICH SUBSCRIBERS MAY PLACE THEIR NAMES ON THE
26 LIST AND HOW OFTEN RENEWAL IS NECESSARY.

27 (I) CONTRACT.--IF THE BUREAU OF CONSUMER PROTECTION HAS NOT
28 ENTERED INTO A CONTRACT WITH A NATIONAL ASSOCIATION WITHIN 90
29 DAYS OF THE EFFECTIVE DATE OF THIS SECTION AFTER A GOOD FAITH
30 EFFORT TO DO SO, THE BUREAU MAY CONTRACT WITH ANY NONPROFIT

1 ORGANIZATION TO CARRY OUT THE PROVISIONS OF THIS SECTION.

2 Section 3. This act shall take effect in 60 days.