
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, PICKETT, PRESTON AND ZIMMERMAN,
MAY 1, 2001

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, MARCH 26, 2002

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 "ESTABLISHED BUSINESS <—
5 RELATIONSHIP," "listing administrator" and "telephone
6 solicitation call"; prohibiting blocking of caller
7 identification and other telemarketing screening products or
8 services; ~~and prohibiting unwanted telephone solicitation~~ <—
9 ~~calls; AND PROVIDING FOR PRIVATE CAUSE OF ACTION. CALLS.~~ <—

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 definitions to read:

1 Section 2. Definitions.

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

5 * * *

6 "Do-not-call list." A list of residential telephone
7 ~~consumers~~ SUBSCRIBERS who have notified the list administrator <—
8 of their desire not to receive telephone solicitation calls.

9 "ESTABLISHED BUSINESS RELATIONSHIP." A PRIOR OR EXISTING <—
10 RELATIONSHIP FORMED BY A VOLUNTARY TWO-WAY COMMUNICATION BETWEEN
11 A PERSON OR ENTITY AND A RESIDENTIAL TELEPHONE SUBSCRIBER WITH <—
12 OR WITHOUT AN EXCHANGE OF CONSIDERATION, ON THE BASIS OF AN
13 INQUIRY, APPLICATION, PURCHASE OR TRANSACTION BY THE RESIDENTIAL
14 TELEPHONE SUBSCRIBER REGARDING PRODUCTS OR SERVICES OFFERED BY <—
15 SUCH PERSONS OR ENTITY. IN REGARD TO AN INQUIRY, THE PERSON OR
16 ENTITY SHALL OBTAIN THE CONSENT OF A RESIDENTIAL TELEPHONE <—
17 SUBSCRIBER TO CONTINUE THE BUSINESS RELATIONSHIP BEYOND THE
18 INITIAL INQUIRY.

19 "List administrator." A nonprofit organization as designated
20 by contract entered into by the Director of the Bureau of
21 Consumer Protection in the Office of Attorney General, that
22 accepts individual names, addresses and telephone numbers of
23 persons who do not wish to receive telephone solicitation calls
24 and that has been in existence for ten or more years.

25 "Telephone solicitation call." A call made to a residential
26 telephone ~~consumer~~ SUBSCRIBER for the purpose of soliciting the <—
27 sale of any consumer goods or services or for the purpose of
28 obtaining information that will or may be used for the direct
29 solicitation of a sale of consumer goods or services or an
30 extension of credit for that purpose. The term does not include

1 a call made to a residential telephone consumer:

2 (1) In response to an express request of the residential
3 telephone consumer.

4 (2) In reference to an existing debt, contract, payment
5 or performance.

6 (3) With whom the telemarketer has an established
7 business relationship within the past 12 months preceding the
8 call.

9 (4) On behalf of a ~~charitable~~ AN organization granted <—
10 tax-exempt status under section 501(c)(3), (5) ~~AND~~ OR (8) of <—
11 the Internal Revenue Code of 1986 (Public Law 99-514, 26
12 U.S.C. § 1 et seq.) or a veteran's organization chartered by
13 the Congress of the United States and or its duly appointed
14 foundation.

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

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

18 § SECTION 5.1. Blocking of caller identification and other <—
19 telemarketing screening products or services
20 prohibited.

21 No ~~person~~ TELEMARKETER shall take any action with the primary <—
22 intent:

23 (1) to prevent the transmission of a ~~telephone~~ <—
24 ~~solicitor's~~ TELEMARKETER'S name or telephone number to any <—
25 recipient of a telephone solicitation call when the equipment
26 or service used by the ~~telephone solicitor~~ TELEMARKETER is <—
27 capable of creating and transmitting the ~~telephone~~ <—
28 ~~solicitor's~~ TELEMARKETER'S name or telephone number; or <—

29 (2) to circumvent, bypass or disable any product or
30 service used by the ~~person~~ RESIDENTIAL TELEPHONE SUBSCRIBER <—

1 to screen telephone calls.

2 ~~§~~ SECTION 5.2. Unwanted telephone solicitation calls

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3 prohibited.

4 (a) General rule.--No ~~person~~ TELEMARKETER shall initiate or

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5 cause to be initiated a telephone solicitation call to a

6 residential telephone number of a person RESIDENTIAL TELEPHONE

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7 SUBSCRIBER who does not wish to receive telephone solicitation

8 calls and has caused his name, address and telephone number to

9 be enrolled on a do-not-call list maintained by the list

10 administrator. This prohibition shall be effective 30 days after

11 a quarterly do-not-call list is issued by the list administrator

12 which first contains a ~~person's~~ RESIDENTIAL TELEPHONE

<—

13 SUBSCRIBER'S name, address and residential telephone number.

14 (b) Listings.--~~Persons~~ TELEMARKETERS making telephone

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15 solicitation calls shall quarterly obtain listings of

16 residential telephone consumers SUBSCRIBERS in this Commonwealth

<—

17 who have arranged to have their names, addresses and telephone

18 numbers enrolled on the list administrator's do-not-call list or

19 shall utilize a service provider who has quarterly obtained and

20 will use such listings.

21 (c) ~~Duration of prohibition.~~--A listing on a do-not-call

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22 list shall be ~~honored~~ MAINTAINED for a minimum of five years

<—

23 from the date of the enrollment OR UNTIL THE TELEPHONE NUMBER IS

<—

24 NO LONGER VALID FOR THE RESIDENTIAL TELEPHONE SUBSCRIBER,

25 WHICHEVER OCCURS FIRST.

26 (d) Fee limitation.--No list administrator may impose a fee

27 for copies of a do-not-call list which exceeds the costs

28 incurred by the list administrator in the production,

29 preparation and distribution of that list.

30 (e) Affirmative defense.--A ~~person~~ TELEMARKETER is not in

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1 violation of this section if all of the following are satisfied:

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

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

5 (3) The ~~person~~ TELEMARKETER acting on behalf of the <—
6 seller has maintained and recorded lists of ~~persons~~ <—
7 RESIDENTIAL TELEPHONE SUBSCRIBERS who may not be contacted. <—

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

9 (f) Attorney General.--The list administrator shall provide
10 the Office of Attorney General with a copy of each quarterly do-
11 not-call list.

12 (g) Restrictions on use of do-not-call list.--No ~~person~~ <—
13 TELEMARKETER shall use a list administrator's do-not-call list <—
14 for any purpose other than to remove residential telephone
15 ~~customers~~ SUBSCRIBERS from telephone sales call lists. <—

16 (h) Disclosure to residential TELEPHONE subscribers.--Each <—
17 local exchange telephone company, competitive local exchange
18 telephone company, long distance interexchange carrier company,
19 Internet service provider that provides telephone service and
20 affiliated companies providing telecommunications billing
21 service shall clearly notify its residential ~~subscribers~~ <—
22 TELEPHONE SUBSCRIBERS IN THIS COMMONWEALTH of their ability to <—
23 contact the list administrator which accepts individual names,
24 addresses and telephone numbers of persons who do not wish to
25 receive telephone solicitation calls. The method of notification
26 shall include, but not be limited to, placing the notice in
27 billing statements mailed to subscribers and publication of
28 notice in the consumer information pages of a local telephone
29 directory of general circulation. The notification shall specify
30 the methods by which subscribers may place their names on the

1 DO-NOT-CALL list and how often renewal is necessary. <—

2 (i) Contract.--If the Bureau of Consumer Protection has not
3 entered into a contract with a national association LIST <—
4 ADMINISTRATOR within 90 days of the effective date of this
5 section after a good faith effort to do so, the bureau may
6 contract with any nonprofit organization to carry out the
7 provisions of this section.

8 (J) IDENTIFICATION.--NO TELEMARKETER SHALL FAIL TO PROVIDE A <—
9 RESIDENTIAL TELEPHONE SUBSCRIBER WITH THE NAME OF THE CALLER,
10 THE NAME OF THE PERSON OR ENTITY ON WHOSE BEHALF THE CALL IS
11 BEING MADE AND UPON REQUEST A TELEPHONE NUMBER OR ADDRESS AT <—
12 WHICH THE PERSON OR ENTITY MAY BE CONTACTED. IF A TELEMARKETER
13 MAKES A SOLICITATION USING AN ARTIFICIAL OR PRERECORDED VOICE
14 MESSAGE TRANSMITTED BY AN AUTODIALER OR PRERECORDED MESSAGE
15 PLAYER, WHICH PLACED THE TELEPHONE SOLICITATION CALL, THE
16 TELEPHONE NUMBER MAY NOT BE A 900 NUMBER OR ANY OTHER NUMBER FOR
17 WHICH CHARGES EXCEED LOCAL OR LONG-DISTANCE TRANSMISSION
18 CHARGES.

19 SECTION 7.1. PRIVATE CAUSE OF ACTION. <—

20 (A) GENERAL RULE. ANY PERSON WHO SUFFERS ANY ASCERTAINABLE
21 LOSS OF MONEY OR PROPERTY, REAL OR PERSONAL, AS A RESULT OF A
22 VIOLATION OF SECTION 5.2 MAY BRING A PRIVATE ACTION TO RECOVER
23 ACTUAL DAMAGES OR \$100, WHICHEVER IS GREATER. THE COURT MAY, IN
24 ITS DISCRETION, AWARD UP TO THREE TIMES THE ACTUAL DAMAGES
25 SUSTAINED, BUT NOT LESS THAN \$100, AND MAY PROVIDE SUCH
26 ADDITIONAL RELIEF AS IT DEEMS NECESSARY AND PROPER. THE COURT
27 MAY AWARD TO THE PLAINTIFF, IN ADDITION TO OTHER RELIEF PROVIDED
28 BY THIS SECTION, COSTS AND REASONABLE ATTORNEY FEES.

29 (B) OTHER LAW. AN ACTION UNDER THIS SECTION IS IN LIEU OF
30 AN ACTION UNDER THE ACT OF DECEMBER 17, 1968 (P.L.1224, NO.387),

1 ~~KNOWN AS THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.~~

2 (K) INVESTIGATION, ENFORCEMENT AND REPORTING.--

<—

3 (1) THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF
4 ATTORNEY GENERAL SHALL INVESTIGATE ANY COMPLAINTS RECEIVED
5 CONCERNING VIOLATIONS OF THIS SECTION. IF, AFTER
6 INVESTIGATING ANY COMPLAINT, THE ATTORNEY GENERAL FINDS THAT
7 THERE HAS BEEN A VIOLATION OF THIS SECTION, THE ATTORNEY
8 GENERAL MAY BRING AN ACTION TO IMPOSE A CIVIL PENALTY AND TO
9 SEEK OTHER RELIEF, INCLUDING INJUNCTIVE RELIEF, UNDER THE ACT
10 OF DECEMBER 17, 1968 (P.L.1224, NO.387), KNOWN AS THE UNFAIR
11 TRADE PRACTICES AND CONSUMER PROTECTION LAW.

12 (2) THE ATTORNEY GENERAL SHALL REMIT 10% OF ANY CIVIL
13 PENALTY COLLECTED UNDER THIS SECTION TO THE PERSON FILING THE
14 COMPLAINT LEADING TO THE CIVIL PENALTY. IN NO EVENT, HOWEVER,
15 SHALL THE AMOUNT OF THIS REMITTANCE EXCEED \$100 FOR ANY
16 PERSON.

17 (3) ON OR BEFORE NOVEMBER 30 OF EACH YEAR, THE ATTORNEY
18 GENERAL SHALL SUBMIT TO THE GENERAL ASSEMBLY A REPORT
19 DETAILING INVESTIGATIONS AND ENFORCEMENT ACTIONS TAKEN UNDER
20 THIS SECTION DURING THE PRECEDING COMMONWEALTH FISCAL YEAR.
21 THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE NUMBER
22 OF COMPLAINTS RECEIVED UNDER THIS SECTION, THE NATURE OF
23 THOSE COMPLAINTS, THE NUMBER OF INVESTIGATIONS AND
24 ENFORCEMENT ACTIONS INSTITUTED BY THE ATTORNEY GENERAL, A
25 SUMMARY OF THE RESULTS OF THOSE INVESTIGATIONS AND
26 ENFORCEMENT, AND THE AMOUNT OF ANY CIVIL PENALTIES COLLECTED.

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