

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 820 Session of 2007

INTRODUCED BY PILEGGI, O'PAKE, ERICKSON, VANCE, CORMAN, ORIE, TOMLINSON, RAFFERTY, WONDERLING, MUSTO, EARLL, WAUGH, PIPPY, LAVALLE, KASUNIC, BRUBAKER, BROWNE, D. WHITE, C. WILLIAMS AND GREENLEAF, MAY 2, 2007

SENATOR PICCOLA, STATE GOVERNMENT, AS AMENDED, JANUARY 29, 2008

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," providing for the definition of "automatic <—
5 dialing-announcing device"; further defining "telephone
6 solicitation call"; and further providing for unlawful acts
7 and penalties. PROVIDING FOR THE DEFINITION OF "AUTOMATIC <—
8 DIALING-ANNOUNCING DEVICE"; AND FURTHER PROVIDING FOR THE
9 DEFINITIONS OF "TELEMARKETING" AND "TELEPHONE SOLICITATION
10 CALL," FOR REGISTRATION REQUIREMENT AND FOR UNWANTED
11 TELEPHONE SOLICITATION CALLS.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The definition of "telephone solicitation call" <—
15 in section 2 of the act of December 4, 1996 (P.L.911, No.147),
16 known as the Telemarketer Registration Act, amended September
17 12, 2003 (P.L.105, No.22), is amended and the section is amended
18 by adding a definition to read:

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the

1 ~~context clearly indicates otherwise:~~

2 ~~"Automatic dialing announcing device." A device that selects~~
3 ~~and dials telephone numbers and that, working alone or in~~
4 ~~conjunction with other equipment, disseminates a prerecorded or~~
5 ~~synthesized voice message to the telephone number called.~~

6 * * *

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

14 ~~(1) In response to an express request of the residential~~
15 ~~or wireless telephone consumer.~~

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

18 ~~(3) With whom the telemarketer has an established~~
19 ~~business relationship within the past 12 months preceding the~~
20 ~~call.~~

21 ~~(4) On behalf of an organization granted tax exempt~~
22 ~~status under section 501(c)(3), (5) or (8) of the Internal~~
23 ~~Revenue Code of 1986 (Public Law 99 514, 26 U.S.C. § 1 et~~
24 ~~seq.) or a veterans organization chartered by the Congress of~~
25 ~~the United States and or its duly appointed foundation.~~

26 ~~(5) On behalf of a political candidate or a political~~
27 ~~party unless the call is made by an automatic dialing~~
28 ~~announcing device.~~

29 ~~Section 2. Section 5(a) of the act is amended by adding a~~
30 ~~paragraph and the section is amended by adding a subsection to~~

1 read:

2 ~~Section 5. Unlawful acts and penalties.~~

3 ~~(a) Acts enumerated. The following acts are prohibited:~~

4 * * *

5 ~~(9.1) Utilizing an automatic dialing announcing device~~
6 ~~on behalf of any of the following:~~

7 ~~(i) A candidate or party as defined under section~~
8 ~~102 of the act of June 3, 1937 (P.L.1333, No.320), known~~
9 ~~as the Pennsylvania Election Code.~~

10 ~~(ii) A political committee as defined in section~~
11 ~~1621(h) of the Pennsylvania Election Code.~~

12 ~~(iii) A political organization as defined in section~~
13 ~~527(e) of the Internal Revenue Code of 1986 (Public Law~~
14 ~~99-514, 26 U.S.C. § 1 et seq.).~~

15 * * *

16 ~~(c) Penalty. In addition to any other penalties that may be~~
17 ~~imposed, any person who violates subsection (a)(9.1) shall be~~
18 ~~subject to a civil penalty of not more than \$500 for each~~
19 ~~violation. The penalty for a second violation shall be no more~~
20 ~~than \$1,000 and \$5,000 for a subsequent violation. Each~~
21 ~~violation of subsection (a)(9.1) shall constitute a separate~~
22 ~~offense.~~

23 ~~Section 3. This act shall take effect in 60 days.~~

24 SECTION 1. THE DEFINITIONS OF "TELEMARKETING" AND "TELEPHONE <—
25 SOLICITATION CALL" IN SECTION 2 OF THE ACT OF DECEMBER 4, 1996
26 (P.L.911, NO.147), KNOWN AS THE TELEMARKETER REGISTRATION ACT,
27 AMENDED SEPTEMBER 12, 2003 (P.L.105, NO.22), ARE AMENDED AND THE
28 SECTION IS AMENDED BY ADDING A DEFINITION TO READ:

29 SECTION 2. DEFINITIONS.

30 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL

1 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
2 CONTEXT CLEARLY INDICATES OTHERWISE:

3 "AUTOMATIC DIALING-ANNOUNCING DEVICE." A DEVICE THAT SELECTS
4 AND DIALS TELEPHONE NUMBERS AND THAT, WORKING ALONE OR IN
5 CONJUNCTION WITH OTHER EQUIPMENT, DISSEMINATES A PRERECORDED OR
6 SYNTHESIZED VOICE MESSAGE TO THE TELEPHONE NUMBER CALLED.

7 * * *

8 "TELEMARKETING." A PLAN, PROGRAM OR CAMPAIGN WHICH IS
9 CONDUCTED TO INDUCE THE PURCHASE OF GOODS OR SERVICES OR TO
10 SOLICIT CONTRIBUTIONS FOR ANY CHARITABLE PURPOSE, CHARITABLE
11 PROMOTION OR FOR OR ON BEHALF OF ANY CHARITABLE ORGANIZATION BY
12 USE OF ONE OR MORE TELEPHONES AND WHICH INVOLVES MORE THAN ONE
13 TELEPHONE CALL. THE TERM INCLUDES THE USE OF AN AUTOMATIC
14 DIALING-ANNOUNCING DEVICE ON BEHALF OF A CANDIDATE OR PARTY AS
15 DEFINED UNDER SECTION 102 OF THE ACT OF JUNE 3, 1937 (P.L.1333,
16 NO.320), KNOWN AS THE PENNSYLVANIA ELECTION CODE. FOR PURPOSES
17 OF THIS ACT, THE TERMS "CHARITABLE PURPOSE," "CHARITABLE
18 PROMOTION," "CHARITABLE ORGANIZATION," "PROFESSIONAL FUNDRAISING
19 COUNSEL," "PROFESSIONAL SOLICITOR" AND "SOLICITATION" HAVE THE
20 MEANINGS AS DEFINED IN THE ACT OF DECEMBER 19, 1990 (P.L.1200,
21 NO.202), KNOWN AS THE SOLICITATION OF FUNDS FOR CHARITABLE
22 PURPOSES ACT.

23 * * *

24 "TELEPHONE SOLICITATION CALL." A CALL MADE TO A RESIDENTIAL
25 OR WIRELESS TELEPHONE SUBSCRIBER FOR THE PURPOSE OF SOLICITING
26 THE SALE OF ANY CONSUMER GOODS OR SERVICES OR FOR THE PURPOSE OF
27 OBTAINING INFORMATION THAT WILL OR MAY BE USED FOR THE DIRECT
28 SOLICITATION OF A SALE OF CONSUMER GOODS OR SERVICES OR AN
29 EXTENSION OF CREDIT FOR THAT PURPOSE. THE TERM INCLUDES THE USE
30 OF AN AUTOMATIC DIALING-ANNOUNCING DEVICE ON BEHALF OF A

1 CANDIDATE OR PARTY AS DEFINED UNDER SECTION 102 OF THE ACT OF
2 JUNE 3, 1937 (P.L.1333, NO.320), KNOWN AS THE PENNSYLVANIA
3 ELECTION CODE. THE TERM DOES NOT INCLUDE A CALL MADE TO A
4 RESIDENTIAL OR WIRELESS TELEPHONE CONSUMER:

5 (1) IN RESPONSE TO AN EXPRESS REQUEST OF THE RESIDENTIAL
6 OR WIRELESS TELEPHONE CONSUMER.

7 (2) IN REFERENCE TO AN EXISTING DEBT, CONTRACT, PAYMENT
8 OR PERFORMANCE.

9 (3) WITH WHOM THE TELEMARKETER HAS AN ESTABLISHED
10 BUSINESS RELATIONSHIP WITHIN THE PAST 12 MONTHS PRECEDING THE
11 CALL.

12 (4) ON BEHALF OF AN ORGANIZATION GRANTED TAX-EXEMPT
13 STATUS UNDER SECTION 501(C)(3), (5) OR (8) OF THE INTERNAL
14 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET
15 SEQ.) OR A VETERANS ORGANIZATION CHARTERED BY THE CONGRESS OF
16 THE UNITED STATES AND OR ITS DULY APPOINTED FOUNDATION.

17 (5) ON BEHALF OF A POLITICAL CANDIDATE OR A POLITICAL
18 PARTY MADE BY AN INDIVIDUAL AND NOT BY AN AUTOMATIC DIALING-
19 ANNOUNCING DEVICE.

20 SECTION 2. SECTION 3(A) OF THE ACT IS AMENDED TO READ:

21 SECTION 3. REGISTRATION REQUIREMENT.

22 (A) GENERAL RULE.--IN ADDITION TO ANY OTHER REQUIREMENTS
23 IMPOSED BY LAW, A TELEMARKETER OR THE TELEMARKETING BUSINESS
24 WHICH EMPLOYS THE TELEMARKETER IS REQUIRED TO REGISTER WITH THE
25 OFFICE OF ATTORNEY GENERAL AT LEAST 30 DAYS PRIOR TO OFFERING
26 FOR SALE CONSUMER GOODS OR SERVICES THROUGH ANY MEDIUM. THIS
27 SECTION WILL NOT APPLY, HOWEVER, TO PERSONS OR BUSINESSES
28 LICENSED BY OR REGISTERED WITH A FEDERAL OR COMMONWEALTH AGENCY
29 OR TO A PERSON OR BUSINESS CONDUCTING TELEMARKETING ON BEHALF OF
30 A CANDIDATE OR PARTY AS DEFINED UNDER SECTION 102 OF THE ACT OF

1 JUNE 3, 1937 (P.L.1333, NO.320), KNOWN AS THE PENNSYLVANIA
2 ELECTION CODE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
3 ANY BUSINESS WHICH PROVIDES TELEMARKETING SERVICES TO OTHER
4 ENTITIES AND HAS BEEN UNDER THE SAME OWNERSHIP AND CONTROL FOR
5 LESS THAN FIVE YEARS SHALL REGISTER UNDER THIS SECTION.

6 * * *

7 SECTION 3. SECTION 5.2(A) 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 TELEPHONE NUMBER OF A RESIDENTIAL TELEPHONE SUBSCRIBER WHO DOES
13 NOT WISH TO RECEIVE TELEPHONE SOLICITATION CALLS AND HAS CAUSED
14 HIS NAME, ADDRESS AND TELEPHONE NUMBER TO BE ENROLLED ON A DO-
15 NOT-CALL LIST MAINTAINED BY THE LIST ADMINISTRATOR. A PERSON
16 REQUESTING TO BE PLACED ON A DO-NOT-CALL LIST SHALL SEPARATELY
17 INDICATE WHETHER THE PROHIBITION IS TO INCLUDE CALLS MADE BY AN
18 AUTOMATIC DIALING-ANNOUNCING DEVICE ON BEHALF OF A CANDIDATE OR
19 PARTY AS DEFINED UNDER SECTION 102 OF THE ACT OF JUNE 3, 1937
20 (P.L.1333, NO.320), KNOWN AS THE PENNSYLVANIA ELECTION CODE, FOR
21 A POLITICAL PURPOSE. THIS PROHIBITION SHALL BE EFFECTIVE 30 DAYS
22 AFTER A QUARTERLY DO-NOT-CALL LIST IS ISSUED BY THE LIST
23 ADMINISTRATOR WHICH FIRST CONTAINS A RESIDENTIAL TELEPHONE
24 SUBSCRIBER'S NAME, ADDRESS AND RESIDENTIAL TELEPHONE NUMBER. IN
25 THE EVENT THAT THE FEDERAL TRADE COMMISSION AND/OR THE FEDERAL
26 COMMUNICATIONS COMMISSION ESTABLISH A NATIONAL NO CALL REGISTRY,
27 THE DIRECTOR OF THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE
28 OF ATTORNEY GENERAL IS AUTHORIZED TO RELEASE TO THE LIST
29 ADMINISTRATOR OF SUCH NATIONAL NO CALL REGISTRY SUFFICIENT DATA
30 TO INCLUDE ALL THOSE RESIDENTIAL TELEPHONE SUBSCRIBERS CURRENTLY

1 ENROLLED ON THE DO-NOT-CALL LIST AND ANY RESIDENTIAL TELEPHONE
2 SUBSCRIBERS WHO SUBSEQUENTLY ENROLL WITH THE BUREAU OF CONSUMER
3 PROTECTION IN THE OFFICE OF ATTORNEY GENERAL. PRIOR TO RELEASING
4 ANY SUCH DATA TO A NATIONAL NO CALL REGISTRY, THE BUREAU OF
5 CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY GENERAL SHALL
6 PROVIDE THOSE RESIDENTIAL TELEPHONE SUBSCRIBERS CURRENTLY
7 ENROLLED WITH THE OPPORTUNITY TO REMOVE THEIR INFORMATION FROM
8 THE DO-NOT-CALL LIST.

9 * * *

10 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.