

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

AS AMENDED ON SECOND CONSIDERATION, APRIL 8, 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"; and further providing for the
6 definitions of "telemarketing" and "telephone solicitation
7 call," for registration requirement and for unwanted
8 telephone solicitation calls. FURTHER PROVIDING FOR <—
9 DEFINITIONS AND FOR REGISTRATION REQUIREMENT; AND PROVIDING
10 FOR UNWANTED AUTOMATIC POLITICAL CALLS.

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

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

18 Section 2. Definitions.

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

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

5 * * *

6 ~~"Telemarketing."—A plan, program or campaign which is~~
7 ~~conducted to induce the purchase of goods or services or to~~
8 ~~solicit contributions for any charitable purpose, charitable~~
9 ~~promotion or for or on behalf of any charitable organization by~~
10 ~~use of one or more telephones and which involves more than one~~
11 ~~telephone call. The term includes the use of an automatic~~
12 ~~dialing announcing device on behalf of a candidate or party as~~
13 ~~defined under section 102 of the act of June 3, 1937 (P.L.1333,~~
14 ~~No.320), known as the Pennsylvania Election Code. For purposes~~
15 ~~of this act, the terms "charitable purpose," "charitable~~
16 ~~promotion," "charitable organization," "professional fundraising~~
17 ~~counsel," "professional solicitor" and "solicitation" have the~~
18 ~~meanings as defined in the act of December 19, 1990 (P.L.1200,~~
19 ~~No.202), known as the Solicitation of Funds for Charitable~~
20 ~~Purposes Act.~~

21 * * *

22 ~~"Telephone solicitation call."—A call made to a residential~~
23 ~~or wireless telephone subscriber for the purpose of soliciting~~
24 ~~the sale of any consumer goods or services or for the purpose of~~
25 ~~obtaining information that will or may be used for the direct~~
26 ~~solicitation of a sale of consumer goods or services or an~~
27 ~~extension of credit for that purpose. The term includes the use~~
28 ~~of an automatic dialing announcing device on behalf of a~~
29 ~~candidate or party as defined under section 102 of the act of~~
30 ~~June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania~~

1 ~~Election Code. The term does not include a call made to a~~
2 ~~residential or wireless telephone consumer:~~

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

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

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

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

15 ~~(5) On behalf of a political candidate or a political~~
16 ~~party made by an individual and not by an automatic dialing~~
17 ~~announcing device.~~

18 ~~Section 2. Section 3(a) of the act is amended to read:~~

19 ~~Section 3. Registration requirement.~~

20 ~~(a) General rule. In addition to any other requirements~~
21 ~~imposed by law, a telemarketer or the telemarketing business~~
22 ~~which employs the telemarketer is required to register with the~~
23 ~~Office of Attorney General at least 30 days prior to offering~~
24 ~~for sale consumer goods or services through any medium. This~~
25 ~~section will not apply, however, to persons or businesses~~
26 ~~licensed by or registered with a Federal or Commonwealth agency~~
27 ~~or to a person or business conducting telemarketing on behalf of~~
28 ~~a candidate or party as defined under section 102 of the act of~~
29 ~~June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania~~
30 ~~Election Code. Notwithstanding any other provision of this act,~~

1 ~~any business which provides telemarketing services to other~~
2 ~~entities and has been under the same ownership and control for~~
3 ~~less than five years shall register under this section.~~

4 * * *

5 ~~Section 3. Section 5.2(a) of the act, amended September 12,~~
6 ~~2003 (P.L.105, No.22), is amended to read:~~

7 ~~Section 5.2. Unwanted telephone solicitation calls prohibited.~~

8 ~~(a) General rule. No telemarketer shall initiate or cause~~
9 ~~to be initiated a telephone solicitation call to a residential~~
10 ~~telephone number of a residential telephone subscriber who does~~
11 ~~not wish to receive telephone solicitation calls and has caused~~
12 ~~his name, address and telephone number to be enrolled on a do-~~
13 ~~not call list maintained by the list administrator. A person~~
14 ~~requesting to be placed on a do not call list shall separately~~
15 ~~indicate whether the prohibition is to include calls made by an~~
16 ~~automatic dialing announcing device on behalf of a candidate or~~
17 ~~party as defined under section 102 of the act of June 3, 1937~~
18 ~~(P.L.1333, No.320), known as the Pennsylvania Election Code, for~~
19 ~~a political purpose. This prohibition shall be effective 30 days~~
20 ~~after a quarterly do not call list is issued by the list~~
21 ~~administrator which first contains a residential telephone~~
22 ~~subscriber's name, address and residential telephone number. In~~
23 ~~the event that the Federal Trade Commission and/or the Federal~~
24 ~~Communications Commission establish a national No Call Registry,~~
25 ~~the Director of the Bureau of Consumer Protection in the Office~~
26 ~~of Attorney General is authorized to release to the list~~
27 ~~administrator of such national No Call Registry sufficient data~~
28 ~~to include all those residential telephone subscribers currently~~
29 ~~enrolled on the do not call list and any residential telephone~~
30 ~~subscribers who subsequently enroll with the Bureau of Consumer~~

1 ~~Protection in the Office of Attorney General. Prior to releasing~~
2 ~~any such data to a national No Call Registry, the Bureau of~~
3 ~~Consumer Protection in the Office of Attorney General shall~~
4 ~~provide those residential telephone subscribers currently~~
5 ~~enrolled with the opportunity to remove their information from~~
6 ~~the do not call list.~~

7 * * *

8 ~~Section 4. This act shall take effect in 60 days.~~

9 SECTION 1. THE DEFINITION OF "LIST ADMINISTRATOR" IN SECTION ←
10 2 OF THE ACT OF DECEMBER 4, 1996 (P.L.911, NO.147), KNOWN AS THE
11 TELEMARKETER REGISTRATION ACT, AMENDED SEPTEMBER 12, 2003
12 (P.L.105, NO.22), IS AMENDED AND THE SECTION IS AMENDED BY
13 ADDING DEFINITIONS TO READ:

14 SECTION 2. DEFINITIONS.

15 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
16 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
17 CONTEXT CLEARLY INDICATES OTHERWISE:

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

22 "AUTOMATIC POLITICAL CALL." THE USE OF AN AUTOMATIC DIALING-
23 ANNOUNCING DEVICE ON BEHALF OF ANY OF THE FOLLOWING:

24 (1) A CANDIDATE AS DEFINED IN SECTION 102(A) OF THE ACT
25 OF JUNE 3, 1937 (P.L.1333, NO.320), KNOWN AS THE PENNSYLVANIA
26 ELECTION CODE; A PARTY AS DEFINED IN SECTION 102(N) OF THE
27 PENNSYLVANIA ELECTION CODE; OR A POLITICAL BODY AS DEFINED IN
28 SECTION 102(P) OF THE PENNSYLVANIA ELECTION CODE.

29 (2) A POLITICAL COMMITTEE AS DEFINED IN SECTION 1621(H)
30 OF THE PENNSYLVANIA ELECTION CODE.

1 (3) A POLITICAL ORGANIZATION AS DEFINED IN SECTION
2 527(E) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
3 514, 26 U.S.C. § 1 ET SEQ.).

4 * * *

5 "LIST ADMINISTRATOR." [A NONPROFIT] AN ORGANIZATION, AS
6 DESIGNATED BY CONTRACT ENTERED INTO BY THE DIRECTOR OF THE
7 BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY GENERAL,
8 THAT ACCEPTS INDIVIDUAL NAMES, ADDRESSES AND TELEPHONE NUMBERS
9 OF PERSONS WHO DO NOT WISH TO RECEIVE TELEPHONE SOLICITATION
10 CALLS AND THAT HAS BEEN IN EXISTENCE FOR TEN OR MORE YEARS. IN
11 THE EVENT THAT THE FEDERAL TRADE COMMISSION AND/OR FEDERAL
12 COMMUNICATIONS COMMISSION ESTABLISH A UNIFIED NATIONAL NO CALL
13 REGISTRY FOR THE PURPOSE OF PROVIDING CONSUMERS WITH PROTECTION
14 FROM RECEIVING UNWANTED TELEPHONE SOLICITATION CALLS SIMILAR TO
15 THE PROTECTION PROVIDED IN THIS ACT, THEN THE DIRECTOR OF THE
16 BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY GENERAL
17 MAY ENTER INTO AN AGREEMENT TO UTILIZE THE SERVICES OF THE
18 ADMINISTRATOR OF ANY SUCH NATIONAL NO CALL REGISTRY IN LIEU OF
19 USING ANY NONPROFIT ORGANIZATION.

20 * * *

21 SECTION 2. SECTION 3 OF THE ACT IS AMENDED TO READ:

22 SECTION 3. REGISTRATION REQUIREMENT.

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

1 USE OF AUTOMATIC POLITICAL CALLS. NOTWITHSTANDING ANY OTHER
2 PROVISION OF THIS ACT, ANY BUSINESS WHICH PROVIDES TELEMARKETING
3 SERVICES TO OTHER ENTITIES AND HAS BEEN UNDER THE SAME OWNERSHIP
4 AND CONTROL FOR LESS THAN FIVE YEARS SHALL REGISTER UNDER THIS
5 SECTION.

6 (B) UNLAWFUL CONDUCT.--IT SHALL BE UNLAWFUL FOR ANY
7 TELEMARKETER TO INITIATE A TELEPHONE CALL TO OR RECEIVE A
8 TELEPHONE CALL FROM A CONSUMER IN CONNECTION WITH THE PURCHASE
9 OF CONSUMER GOODS OR SERVICES UNLESS THE TELEMARKETER OR THE
10 TELEMARKETING BUSINESS WHICH EMPLOYS THE TELEMARKETER IS
11 REGISTERED WITH THE OFFICE OF ATTORNEY GENERAL.

12 (C) PENALTY.--FAILURE TO REGISTER AS REQUIRED BY THIS ACT
13 CONSTITUTES A MISDEMEANOR OF THE SECOND DEGREE.

14 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
15 SECTION 5.3. UNWANTED AUTOMATIC POLITICAL CALLS.

16 (A) GENERAL RULE.--

17 (1) EXCEPT AS SET FORTH IN SUBSECTION (B), BEGINNING 30
18 DAYS AFTER PUBLICATION OF THE NOTICE UNDER PARAGRAPH (3), A
19 PERSON MAY NOT INITIATE OR CAUSE TO BE INITIATED AN AUTOMATED
20 POLITICAL CALL TO A RESIDENTIAL TELEPHONE NUMBER OF A
21 RESIDENTIAL TELEPHONE SUBSCRIBER WHO DOES NOT WISH TO RECEIVE
22 TELEPHONE SOLICITATION CALLS AND HAS CAUSED THE SUBSCRIBER'S
23 NAME, ADDRESS AND TELEPHONE NUMBER TO BE ENROLLED ON A DO-
24 NOT-CALL LIST FOR POLITICAL CALLS MAINTAINED BY A LIST
25 ADMINISTRATOR.

26 (2) THE LIST UNDER PARAGRAPH (1) SHALL BE DEVELOPED AND
27 MAINTAINED SEPARATELY FROM THE LIST ESTABLISHED UNDER SECTION
28 5.2.

29 (3) THE LIST UNDER PARAGRAPH (1) SHALL BE COMPLETED BY
30 SEPTEMBER 15, 2008. THE LIST ADMINISTRATOR SHALL TRANSMIT A

1 NOTICE OF COMPLETION TO THE LEGISLATIVE REFERENCE BUREAU FOR
2 PUBLICATION IN THE PENNSYLVANIA BULLETIN.

3 (4) A RESIDENTIAL TELEPHONE SUBSCRIBER'S NAME SHALL BE
4 MAINTAINED ON THE LIST UNDER PARAGRAPH (1) AS LONG AS THE
5 TELEPHONE NUMBER IS VALID FOR THE SUBSCRIBER.

6 (5) THE OFFICE OF ATTORNEY GENERAL MAY SERVE AS THE LIST
7 ADMINISTRATOR FOR PURPOSES OF THIS SUBSECTION.

8 (6) IF THE OFFICE OF ATTORNEY GENERAL DOES NOT SERVE AS
9 THE LIST ADMINISTRATOR FOR PURPOSES OF THIS SUBSECTION, THE
10 LIST ADMINISTRATOR SHALL PROVIDE THE LIST UNDER PARAGRAPH (1)
11 TO THE OFFICE OF ATTORNEY GENERAL ON A BIENNIAL BASIS.

12 (B) EXCEPTIONS.--SUBSECTION (A)(1) SHALL NOT APPLY TO A CALL
13 ON BEHALF OF A POLITICAL CANDIDATE, POLITICAL PARTY OR POLITICAL
14 BODY MADE BY AN INDIVIDUAL AND NOT BY AN AUTOMATIC DIALING-
15 ANNOUNCING DEVICE.

16 (C) LISTINGS.--A PERSON THAT MAKES AUTOMATIC POLITICAL CALLS
17 SHALL:

18 (1) OBTAIN ON A BIENNIAL BASIS A LISTING OF RESIDENTIAL
19 OR WIRELESS TELEPHONE SUBSCRIBERS IN THIS COMMONWEALTH WHO
20 HAVE ARRANGED TO HAVE THEIR NAMES, ADDRESSES AND TELEPHONE
21 NUMBERS ENROLLED ON THE LIST UNDER SUBSECTION (A)(1); OR

22 (2) USE A SERVICE PROVIDER TO OBTAIN THE LIST UNDER
23 SUBSECTION (A)(1) IN ORDER TO RESTRICT THE USE OF AUTOMATIC
24 POLITICAL CALLS.

25 (D) FEE LIMITATION.--A LIST ADMINISTRATOR MAY NOT IMPOSE A
26 FEE FOR A COPY OF THE LIST UNDER SUBSECTION (A)(1) WHICH
27 EXCEEDS:

28 (1) THE COST INCURRED BY THE LIST ADMINISTRATOR IN THE
29 PRODUCTION, PREPARATION AND DISTRIBUTION OF THE LIST; OR

30 (2) THE FEE AUTHORIZED BY 16 CFR § 310.8(C) (RELATING TO

1 FEE FOR ACCESS TO THE NATIONAL DO NOT CALL REGISTRY).

2 (E) RESTRICTION.--A PERSON MAY NOT USE THE LIST UNDER
3 SUBSECTION (A)(1) FOR ANY PURPOSE OTHER THAN TO REMOVE A
4 RESIDENTIAL OR WIRELESS TELEPHONE SUBSCRIBER FROM THE LIST.

5 (F) INVESTIGATION, ENFORCEMENT AND REPORTING.--
6 INVESTIGATION, ENFORCEMENT AND REPORTING SHALL BE CONDUCTED IN
7 ACCORDANCE WITH SECTION 5.2(K).

8 (G) VIOLATION.--

9 (1) A VIOLATION OF THIS SECTION SHALL BE A VIOLATION
10 UNDER SECTION 6.

11 (2) A VIOLATION OF THIS SECTION SHALL CONSTITUTE AN
12 UNLAWFUL ACT UNDER SECTION 3 OF THE ACT OF DECEMBER 17, 1968
13 (P.L.1224, NO.387), KNOWN AS THE UNFAIR TRADE PRACTICES AND
14 CONSUMER PROTECTION LAW.

15 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.