

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1533 Session of 2013

INTRODUCED BY SANTARSIERO, MACKENZIE, COHEN, V. BROWN, MILLARD, CALTAGIRONE, YOUNGBLOOD, WATSON, SCHLOSSBERG, DAVIS, DeLUCA, D. COSTA, GIBBONS, THOMAS, DAVIDSON, FRANKEL, MULLERY, SWANGER, MILNE, FARRY, GOODMAN, WHITE, PARKER AND MURT, JUNE 17, 2013

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 17, 2013

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

1 wireless telephone subscribers who have notified the list
2 administrator of their desire not to receive telephone
3 solicitation calls.

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

15 * * *

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

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

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

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

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

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

8 Section 2. Section 5.2 of the act, amended September 12,
9 2003 (P.L.105, No.22), is amended to read:

10 Section 5.2. Unwanted telephone solicitation calls prohibited.

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

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

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

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

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

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

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

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

29 (3) The telemarketer acting on behalf of the seller has
30 maintained and recorded lists of residential, business or

wireless telephone subscribers who may not be contacted.

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

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

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

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

(i) Contract.--If the Bureau of Consumer Protection has not entered into a contract with a list administrator within 90 days of the effective date of this section after a good faith effort

1 to do so, the bureau may contract with any nonprofit
2 organization to carry out the provisions of this section.

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

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

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

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

29 (3) On or before November 30 of each year, the Attorney
30 General shall submit to the General Assembly a report

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