

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 318 Session of 2019

INTRODUCED BY MIZGORSKI, PICKETT, McNEILL, COX, MURT, STEPHENS, SCHROEDER, MACKENZIE, PYLE, ISAACSON, B. MILLER, SCHLOSSBERG, HAHN, FRANKEL, FREEMAN, ROTHMAN, READSHAW, FARRY, MILLARD, DONATUCCI, KAUFFMAN, RAVENSTAHL, BERNSTINE, WARREN, GREGORY, ZIMMERMAN, MARSHALL, GOODMAN, KORTZ, RYAN AND HERSHEY, FEBRUARY 1, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 19, 2019

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, for
5 unlawful acts and penalties, FOR BLOCKING OF CALLER <--
6 IDENTIFICATION AND OTHER TELEMARKETING SCREENING PRODUCTS OR
7 SERVICES PROHIBITED and for unwanted telephone solicitation
8 calls prohibited.

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

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

14 SECTION 1. THE DEFINITIONS OF "DO-NOT-CALL LIST," <--
15 "ESTABLISHED BUSINESS RELATIONSHIP" AND "TELEPHONE SOLICITATION
16 CALL" IN SECTION 2 OF THE ACT OF DECEMBER 4, 1996 (P.L.911,
17 NO.147), KNOWN AS THE TELEMARKETER REGISTRATION ACT, ARE AMENDED
18 AND THE SECTION 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 "BUSINESS TELEPHONE SUBSCRIBER." ANY NATURAL PERSON OR <--  
6 ENTITY SUBSCRIBING TO TELEPHONE SERVICE AT A BUSINESS LOCATION  
7 WITHIN THIS COMMONWEALTH WHERE THE SERVICE PROVIDER CLASSIFIES  
8 THE LINE AS A BUSINESS LINE. THE TERM DOES NOT INCLUDE A  
9 SUBSCRIBER THAT ENGAGES IN TELEMARKETING, MAKES TELEPHONE  
10 SOLICITATION CALLS OR IS A TELEMARKETING BUSINESS.

11 \* \* \*

12 "DO-NOT-CALL LIST." A LIST OF RESIDENTIAL, BUSINESS OR  
13 WIRELESS TELEPHONE SUBSCRIBERS WHO HAVE NOTIFIED THE LIST  
14 ADMINISTRATOR OF THEIR DESIRE NOT TO RECEIVE TELEPHONE  
15 SOLICITATION CALLS.

16 "ESTABLISHED BUSINESS RELATIONSHIP." A PRIOR OR EXISTING  
17 RELATIONSHIP FORMED BY A VOLUNTARY TWO-WAY COMMUNICATION BETWEEN  
18 A PERSON OR ENTITY AND A RESIDENTIAL, BUSINESS OR WIRELESS  
19 TELEPHONE SUBSCRIBER, WITH OR WITHOUT AN EXCHANGE OF  
20 CONSIDERATION, ON THE BASIS OF AN INQUIRY, APPLICATION, PURCHASE  
21 OR TRANSACTION BY THE RESIDENTIAL, BUSINESS OR WIRELESS  
22 TELEPHONE SUBSCRIBER REGARDING PRODUCTS OR SERVICES OFFERED BY  
23 SUCH PERSONS OR ENTITY. IN REGARD TO AN INQUIRY, THE PERSON OR  
24 ENTITY SHALL OBTAIN THE CONSENT OF A RESIDENTIAL, BUSINESS OR  
25 WIRELESS TELEPHONE SUBSCRIBER TO CONTINUE THE BUSINESS  
26 RELATIONSHIP BEYOND THE INITIAL INQUIRY.

27 \* \* \*

28 "Robocall." A telephone solicitation call made to a large  
29 number of people, using a computerized autodialer, to deliver a  
30 prerecorded telemarketing message.

1 \* \* \*

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

10 (1) IN RESPONSE TO AN EXPRESS REQUEST OF THE  
11 RESIDENTIAL, BUSINESS OR WIRELESS TELEPHONE CONSUMER.

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

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

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

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

24 Section 2. Section 5(a)(2) of the act is amended and the  
25 subsection is amended by adding a paragraph to read:

26 Section 5. Unlawful acts and penalties.

27 (a) Acts enumerated.--The following acts are prohibited:

28 \* \* \*

29 (2) Initiating an outbound telephone call, including a  
30 robocall, to a person when [that] THE person previously has <--

1 stated that [he or she] THE PERSON does not wish to receive <--  
2 an outbound telephone call made by or on behalf of the seller  
3 whose goods or services are being offered. A seller or  
4 telemarketer will not be liable for violating the provisions  
5 of this paragraph if:

6 (i) he has established and implemented written  
7 procedures to comply with this paragraph;

8 (ii) he has trained his personnel in the procedures;

9 (iii) the seller or the telemarketer acting on  
10 behalf of the seller has maintained and recorded lists of  
11 persons who may not be contacted; and

12 (iv) any subsequent call is the result of error.

13 \* \* \*

14 (10) Making a telephone solicitation call on a legal  
15 holiday.

16 \* \* \*

17 ~~Section 3. Section 5.2(c) and (j) of the act are amended and <--~~  
18 ~~the section is amended by adding a subsection to read:~~

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

20 \* \* \*

21 SECTION 3. SECTION 5.1 OF THE ACT IS AMENDED TO READ: <--

22 SECTION 5.1. BLOCKING OF CALLER IDENTIFICATION AND OTHER  
23 TELEMARKETING SCREENING PRODUCTS OR SERVICES  
24 PROHIBITED.

25 NO TELEMARKETER SHALL TAKE ANY ACTION WITH THE PRIMARY  
26 INTENT:

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

1 TELEMARKETER'S NAME OR TELEPHONE NUMBER; OR  
2 (2) TO CIRCUMVENT, BYPASS OR DISABLE ANY PRODUCT OR  
3 SERVICE USED BY THE RESIDENTIAL OR BUSINESS TELEPHONE  
4 SUBSCRIBER TO SCREEN TELEPHONE CALLS.

5 SECTION 4. SECTION 5.2(A), (B), (C), (E), (G), (H) AND (J)  
6 OF THE ACT ARE AMENDED AND THE SECTION IS AMENDED BY ADDING A  
7 SUBSECTION TO READ:

8 SECTION 5.2. UNWANTED TELEPHONE SOLICITATION CALLS PROHIBITED.

9 (A) GENERAL RULE.--NO TELEMARKETER SHALL INITIATE OR CAUSE  
10 TO BE INITIATED A TELEPHONE SOLICITATION CALL TO A [RESIDENTIAL]  
11 TELEPHONE NUMBER OF A RESIDENTIAL OR BUSINESS TELEPHONE  
12 SUBSCRIBER WHO DOES NOT WISH TO RECEIVE TELEPHONE SOLICITATION  
13 CALLS AND HAS CAUSED HIS NAME, ADDRESS AND TELEPHONE NUMBER TO  
14 BE ENROLLED ON A DO-NOT-CALL LIST MAINTAINED BY THE LIST  
15 ADMINISTRATOR. THIS PROHIBITION SHALL BE EFFECTIVE 30 DAYS AFTER  
16 A QUARTERLY DO-NOT-CALL LIST IS ISSUED BY THE LIST ADMINISTRATOR  
17 WHICH FIRST CONTAINS A RESIDENTIAL OR BUSINESS TELEPHONE  
18 SUBSCRIBER'S NAME, ADDRESS AND RESIDENTIAL TELEPHONE NUMBER. IN  
19 THE EVENT THAT THE FEDERAL TRADE COMMISSION AND/OR THE FEDERAL  
20 COMMUNICATIONS COMMISSION ESTABLISH A NATIONAL NO CALL REGISTRY,  
21 THE DIRECTOR OF THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE  
22 OF ATTORNEY GENERAL IS AUTHORIZED TO RELEASE TO THE LIST  
23 ADMINISTRATOR OF SUCH NATIONAL NO CALL REGISTRY SUFFICIENT DATA  
24 TO INCLUDE ALL THOSE RESIDENTIAL AND BUSINESS TELEPHONE  
25 SUBSCRIBERS CURRENTLY ENROLLED ON THE DO-NOT-CALL LIST AND ANY  
26 RESIDENTIAL OR BUSINESS TELEPHONE SUBSCRIBERS WHO SUBSEQUENTLY  
27 ENROLL WITH THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF  
28 ATTORNEY GENERAL. PRIOR TO RELEASING ANY SUCH DATA TO A NATIONAL  
29 NO CALL REGISTRY, THE BUREAU OF CONSUMER PROTECTION IN THE  
30 OFFICE OF ATTORNEY GENERAL SHALL PROVIDE THOSE RESIDENTIAL AND

1 BUSINESS TELEPHONE SUBSCRIBERS CURRENTLY ENROLLED WITH THE  
2 OPPORTUNITY TO REMOVE THEIR INFORMATION FROM THE DO-NOT-CALL  
3 LIST.

4 (B) LISTINGS.--TELEMARKETERS MAKING TELEPHONE SOLICITATION  
5 CALLS SHALL QUARTERLY OBTAIN LISTINGS OF RESIDENTIAL [OR],  
6 BUSINESS AND WIRELESS TELEPHONE SUBSCRIBERS IN THIS COMMONWEALTH  
7 WHO HAVE ARRANGED TO HAVE THEIR NAMES, ADDRESSES AND TELEPHONE  
8 NUMBERS ENROLLED ON THE LIST ADMINISTRATOR'S DO-NOT-CALL LIST OR  
9 SHALL UTILIZE A SERVICE PROVIDER WHO HAS QUARTERLY OBTAINED AND  
10 WILL USE SUCH LISTINGS.

11 (c) Duration.--A listing on a do-not-call list shall be  
12 maintained [for a minimum of five years from the date of the  
13 enrollment or] until the telephone number is no longer valid for  
14 the residential, BUSINESS or wireless telephone subscriber[, <--  
15 whichever occurs first] or until the subscriber requests to have  
16 the telephone number removed from the list.

17 \* \* \*

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

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

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

23 (3) THE TELEMARKETER ACTING ON BEHALF OF THE SELLER HAS  
24 MAINTAINED AND RECORDED LISTS OF RESIDENTIAL, BUSINESS OR  
25 WIRELESS TELEPHONE SUBSCRIBERS WHO MAY NOT BE CONTACTED.

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

27 \* \* \*

28 (G) RESTRICTIONS ON USE OF DO-NOT-CALL LIST.--NO  
29 TELEMARKETER SHALL USE A LIST ADMINISTRATOR'S DO-NOT-CALL LIST  
30 FOR ANY PURPOSE OTHER THAN TO REMOVE RESIDENTIAL, BUSINESS OR

1 WIRELESS TELEPHONE SUBSCRIBERS FROM TELEPHONE SALES CALL LISTS.

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

20 \* \* \*

21 (j) Identification.--No telemarketer shall fail to provide a  
22 residential, BUSINESS or wireless telephone subscriber with the <--  
23 name of the caller, the name of the person or entity on whose  
24 behalf the call is being made and, upon request, a telephone  
25 number or address at which the person or entity may be  
26 contacted. If a telemarketer makes a solicitation using [an  
27 artificial or prerecorded voice message transmitted by an  
28 autodialer or prerecorded message player which placed the  
29 telephone solicitation call] a robocall, the telephone number  
30 may not be a 900 number or any other number for which charges

1 exceed local or long-distance transmission charges.

2 \* \* \*

3 (1) Robocall requirements.--

4 (1) A telemarketer or telemarketing business that uses  
5 robocalls:

6 (i) Shall establish a procedure, consistent with the  
7 requirements under subparagraph (ii), for a called person  
8 to opt out of receiving future telephone solicitation  
9 calls from that telemarketer or telemarketing business  
10 and be immediately taken off the telemarketer's call  
11 list.

12 (ii) Shall provide notice to a called number, at the  
13 beginning of the call, stating how a called person can  
14 opt out of receiving future telephone solicitation calls  
15 from that telemarketer or telemarketing business.  
16 Immediate opt out shall be available through an  
17 automated, interactive voice-activated or key-press-  
18 activated opt-out mechanism for the called person to make  
19 a do-not-call request, including brief explanatory  
20 instructions on how to use the opt-out mechanism, within  
21 two seconds of disclosing the name of the caller and the  
22 name of the person or entity on whose behalf the call is  
23 being made. The called person shall be able to opt out  
24 throughout the duration of the call.

25 (iii) May not require a called person's written  
26 consent as a condition to opt out of future telemarketing  
27 calls.

28 (iv) May not consider the action of opting out as  
29 the creation of an established business relationship.

30 (2) When a robocall is left on an answering machine or a



1 voicemail service, the message must provide a toll-free  
2 telephone number that enables the called person to call back  
3 at a later time and connect directly to the automated,  
4 interactive voice-activated or key-press-activated opt-out  
5 mechanism and automatically record the called person's number  
6 to the do-not-call list of the telemarketer or telemarketing  
7 business.

8 Section 4 5. This act shall take effect in 60 days.

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