## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## **HOUSE BILL**

No. 820

Session of 2015

INTRODUCED BY COX, BAKER, BARRAR, BENNINGHOFF, BOBACK, R. BROWN, V. BROWN, COHEN, D. COSTA, SCHLEGEL CULVER, CUTLER, DAVIS, DEAN, DEASY, DeLUCA, DIAMOND, DUNBAR, ELLIS, EVERETT, FARRY, FEE, GABLER, GILLEN, GODSHALL, GOODMAN, GREINER, HAHN, HARHAI, A. HARRIS, HELM, HICKERNELL, PHILLIPS-HILL, IRVIN, KAUFFMAN, M. K. KELLER, KNOWLES, KORTZ, LAWRENCE, LONGIETTI, MACKENZIE, MAJOR, MARSHALL, MARSICO, MATZIE, MCGINNIS, MILLARD, MILNE, MOUL, MURT, O'BRIEN, O'NEILL, PASHINSKI, PETRI, PICKETT, PYLE, RAPP, RAVENSTAHL, READSHAW, SAMUELSON, SCHLOSSBERG, SCHREIBER, STEPHENS, THOMAS, WARD, WATSON, YOUNGBLOOD, ZIMMERMAN, MCCARTER, ENGLISH, B. MILLER, DUSH AND MICCARELLI, JUNE 16, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 30, 2015

## AN ACT

Amending the act of December 4, 1996 (P.L.911, No.147), entitled "An act providing for registration requirements for 2 telemarketers and for powers and duties of the Office of 3 Attorney General," further providing for DEFINITIONS, FOR unlawful acts and penalties and for unwanted telephone 5 solicitation calls prohibited. 7 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: Section 1. Section 5(a) of the act of December 4, 1996 (P.L.911, No.147), known as the Telemarketer Registration Act, 11 is amended by adding a paragraph to read: 12 Section 5. Unlawful acts and penalties. 13 (a) Acts enumerated. The following acts are prohibited: \* \* \* 14

- 1 (10) Conducting telemarketing on a legal holiday.
- 2 \* \* \*
- 3 Section 2. Section 5.2(c) of the act, amended September 12,
- 4 2003 (P.L.105, No.22), is amended to read:
- 5 SECTION 1. SECTION 2 OF THE ACT OF DECEMBER 4, 1996 <--
- 6 (P.L.911, NO.147), KNOWN AS THE TELEMARKETER REGISTRATION ACT,
- 7 IS AMENDED BY ADDING A DEFINITION TO READ:
- 8 SECTION 2. DEFINITIONS.
- 9 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
- 10 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
- 11 CONTEXT CLEARLY INDICATES OTHERWISE:
- 12 \* \* \*
- 13 "ROBOCALL." A TELEPHONE SOLICITATION CALL MADE TO A LARGE
- 14 NUMBER OF PEOPLE, USING A COMPUTERIZED AUTODIALER, TO DELIVER A
- 15 PRERECORDED TELEMARKETING MESSAGE.
- 16 \* \* \*
- 17 SECTION 2. SECTION 5(A)(2) OF THE ACT IS AMENDED AND THE
- 18 SUBSECTION IS AMENDED BY ADDING A PARAGRAPH TO READ:
- 19 SECTION 5. UNLAWFUL ACTS AND PENALTIES.
- 20 (A) ACTS ENUMERATED. -- THE FOLLOWING ACTS ARE PROHIBITED:
- 21 \* \* \*
- 22 (2) INITIATING AN OUTBOUND TELEPHONE CALL, INCLUDING A
- 23 ROBOCALL, TO A PERSON WHEN THAT PERSON PREVIOUSLY HAS STATED
- 24 THAT HE OR SHE DOES NOT WISH TO RECEIVE AN OUTBOUND TELEPHONE
- 25 CALL MADE BY OR ON BEHALF OF THE SELLER WHOSE GOODS OR
- 26 SERVICES ARE BEING OFFERED. A SELLER OR TELEMARKETER WILL NOT
- 27 BE LIABLE FOR VIOLATING THE PROVISIONS OF THIS PARAGRAPH IF:
- 28 (I) HE HAS ESTABLISHED AND IMPLEMENTED WRITTEN
- 29 PROCEDURES TO COMPLY WITH THIS PARAGRAPH;
- 30 (II) HE HAS TRAINED HIS PERSONNEL IN THE PROCEDURES;

- 1 (III) THE SELLER OR THE TELEMARKETER ACTING ON
- 2 BEHALF OF THE SELLER HAS MAINTAINED AND RECORDED LISTS OF
- 3 PERSONS WHO MAY NOT BE CONTACTED; AND
- 4 (IV) ANY SUBSEQUENT CALL IS THE RESULT OF ERROR.
- 5 \* \* \*
- 6 (10) CONDUCTING TELEMARKETING ON A LEGAL HOLIDAY.
- 7 \* \* \*
- 8 SECTION 3. SECTION 5.2(C) AND (J) OF THE ACT, AMENDED
- 9 SEPTEMBER 12, 2003 (P.L.105, NO.22), ARE AMENDED AND THE SECTION
- 10 IS AMENDED BY ADDING A SUBSECTION TO READ:
- 11 Section 5.2. Unwanted telephone solicitation calls prohibited.
- 12 \* \* \*
- 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 or wireless telephone subscriber[, whichever
- 17 occurs first or until the subscriber requests to have the
- 18 telephone number removed from the list.
- 19 \* \* \*
- 20 (J) IDENTIFICATION. -- NO TELEMARKETER SHALL FAIL TO PROVIDE A <--
- 21 RESIDENTIAL OR WIRELESS TELEPHONE SUBSCRIBER WITH THE NAME OF
- 22 THE CALLER, THE NAME OF THE PERSON OR ENTITY ON WHOSE BEHALF THE
- 23 CALL IS BEING MADE AND, UPON REQUEST, A TELEPHONE NUMBER OR
- 24 ADDRESS AT WHICH THE PERSON OR ENTITY MAY BE CONTACTED. IF A
- 25 TELEMARKETER MAKES A SOLICITATION USING [AN ARTIFICIAL OR
- 26 PRERECORDED VOICE MESSAGE TRANSMITTED BY AN AUTODIALER OR
- 27 PRERECORDED MESSAGE PLAYER WHICH PLACED THE TELEPHONE
- 28 SOLICITATION CALL] A ROBOCALL, THE TELEPHONE NUMBER MAY NOT BE A
- 29 900 NUMBER OR ANY OTHER NUMBER FOR WHICH CHARGES EXCEED LOCAL OR
- 30 LONG-DISTANCE TRANSMISSION CHARGES.

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| 2  | (L) ROBOCALL REQUIREMENTS                                 |
| 3  | (1) A TELEMARKETER OR TELEMARKETING BUSINESS THAT USES    |
| 4  | ROBOCALLS:  |
| 5  | (I) SHALL ESTABLISH A PROCEDURE, CONSISTENT WITH THE      |
| 6  | REQUIREMENTS UNDER SUBPARAGRAPH (II), FOR A CALLED PERSON |
| 7  | TO OPT OUT OF RECEIVING FUTURE TELEPHONE SOLICITATION     |
| 8  | CALLS FROM THAT TELEMARKETER OR TELEMARKETING BUSINESS    |
| 9  | AND BE IMMEDIATELY TAKEN OFF THE TELEMARKETER'S CALL      |
| _0 | LIST.   |
| 1  | (II) SHALL PROVIDE NOTICE TO A CALLED NUMBER, AT THE      |
| _2 | BEGINNING OF THE CALL, STATING HOW A CALLED PERSON CAN    |
| 13 | OPT OUT OF RECEIVING FUTURE TELEPHONE SOLICITATION CALLS  |
| 4  | FROM THAT TELEMARKETER OR TELEMARKETING BUSINESS.         |
| _5 | IMMEDIATE OPT OUT SHALL BE AVAILABLE THROUGH AN           |
| _6 | AUTOMATED, INTERACTIVE VOICE-ACTIVATED OR KEY PRESS-      |
| _7 | ACTIVATED OPT-OUT MECHANISM FOR THE CALLED PERSON TO MAKE |
| 8_ | A DO-NOT-CALL REQUEST, INCLUDING BRIEF EXPLANATORY        |
| _9 | INSTRUCTIONS ON HOW TO USE THE OPT OUT MECHANISM, WITHIN  |
| 20 | TWO SECONDS OF DISCLOSING THE NAME OF THE CALLER AND THE  |
| 21 | NAME OF THE PERSON OR ENTITY ON WHOSE BEHALF THE CALL IS  |
| 22 | BEING MADE. THE CALLED PERSON SHALL BE ABLE TO OPT OUT    |
| 23 | THROUGHOUT THE DURATION OF THE CALL.                      |
| 24 | (III) MAY NOT REQUIRE A CALLED PERSON'S WRITTEN           |
| 25 | CONSENT AS A CONDITION TO OPT OUT OF FUTURE TELEMARKETING |
| 26 | <u>CALLS.</u>   |
| 27 | (IV) MAY NOT CONSIDER THE ACTION OF OPTING OUT AS         |
| 28 | THE CREATION OF AN ESTABLISHED BUSINESS RELATIONSHIP.     |
| 29 | (2) WHEN A ROBOCALL IS LEFT ON AN ANSWERING MACHINE OR A  |
| 30 | VOICE MAIL SERVICE, THE MESSAGE MUST PROVIDE A TOLL-FREE  |

- 1 TELEPHONE NUMBER THAT ENABLES THE CALLED PERSON TO CALL BACK
- 2 AT A LATER TIME AND CONNECT DIRECTLY TO THE AUTOMATED,
- 3 INTERACTIVE VOICE-ACTIVATED OR KEY PRESS-ACTIVATED OPT-OUT
- 4 MECHANISM AND AUTOMATICALLY RECORD THE CALLED PERSON'S NUMBER
- 5 TO THE DO-NOT-CALL LIST OF THE TELEMARKETER OR TELEMARKETING
- 6 <u>BUSINESS.</u>
- 7 Section  $\frac{3}{4}$ . This act shall take effect in 60 days. <--