
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1406 Session of
2015

INTRODUCED BY BROWNE, NOVEMBER 16, 2016

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
NOVEMBER 16, 2016

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
19 wireless telephone subscribers who have notified the list

1 administrator of their desire not to receive telephone
2 solicitation calls.

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

14 * * *

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

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

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

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

30 (4) On behalf of an organization granted tax-exempt

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

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

7 Section 2. Section 5.2 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 or business telephone number of a residential or business
13 telephone subscriber who does not wish to receive telephone
14 solicitation calls and has caused his name, address and
15 telephone number to be enrolled on a do-not-call list maintained
16 by the list administrator. This prohibition shall be effective
17 30 days after a quarterly do-not-call list is issued by the list
18 administrator which first contains a residential or business
19 telephone subscriber's name, address and residential or business
20 telephone number. In the event that the Federal Trade Commission
21 and/or the Federal Communications Commission establish a
22 national No Call Registry, the Director of the Bureau of
23 Consumer Protection in the Office of Attorney General is
24 authorized to release to the list administrator of such national
25 No Call Registry sufficient data to include all those
26 residential or business telephone subscribers currently enrolled
27 on the do-not-call list and any residential or business
28 telephone subscribers who subsequently enroll with the Bureau of
29 Consumer Protection in the Office of Attorney General. Prior to
30 releasing any such data to a national No Call Registry, the

1 Bureau of Consumer Protection in the Office of Attorney General
2 shall provide those residential or business telephone
3 subscribers currently enrolled with the opportunity to remove
4 their information from the do-not-call list.

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

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

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

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

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

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

28 (3) The telemarketer acting on behalf of the seller has
29 maintained and recorded lists of residential, business or
30 wireless telephone subscribers who may not be contacted.

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

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

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

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

27 (i) Contract.--If the Bureau of Consumer Protection has not
28 entered into a contract with a list administrator within 90 days
29 of the effective date of this section after a good faith effort
30 to do so, the bureau may contract with any nonprofit

1 organization to carry out the provisions of this section.

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

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

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

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

28 (3) On or before November 30 of each year, the Attorney
29 General shall submit to the General Assembly a report
30 detailing investigations and enforcement actions taken under

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