

No. 2019-73

AN ACT

HB 318

Amending the act of December 4, 1996 (P.L.911, No.147), entitled "An act providing for registration requirements for telemarketers and for powers and duties of the Office of Attorney General," further providing for definitions, for unlawful acts and penalties, for blocking of caller identification and other telemarketing screening products or services prohibited and for unwanted telephone solicitation calls prohibited.

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

Section 1. The definitions of "do-not-call list," "established business relationship" and "telephone solicitation call" in section 2 of the act of December 4, 1996 (P.L.911, No.147), known as the Telemarketer Registration Act, are amended and the section is amended by adding definitions to read:

Section 2. Definitions.

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

"Business telephone subscriber." Any natural person or entity subscribing to telephone service at a business location within this Commonwealth where the service provider classifies the line as a business line. The term does not include a subscriber that engages in telemarketing, makes telephone solicitation calls or is a telemarketing business.

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"Do-not-call list." A list of residential, ***business*** or wireless telephone subscribers who have notified the list administrator of their desire not to receive telephone solicitation calls.

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

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

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"Telephone solicitation call." A call made to a residential, ***business*** or wireless telephone subscriber for the purpose of soliciting the sale of any

consumer goods or services or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for that purpose. The term does not include a call made to a residential, **business** or wireless telephone consumer:

(1) In response to an express request of the residential, **business** or wireless telephone consumer.

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

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

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

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

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

Section 5. Unlawful acts and penalties.

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

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(2) Initiating an outbound telephone call, **including a robocall**, to a person when **[that] the** person previously has stated that **[he or she] the person** does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. A seller or telemarketer will not be liable for violating the provisions of this paragraph if:

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

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

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

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

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

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Section 3. Section 5.1 of the act is amended to read:

Section 5.1. Blocking of caller identification and other telemarketing screening products or services prohibited.

No telemarketer shall take any action with the primary intent:

(1) to prevent the transmission of a telemarketer's name or telephone number to any recipient of a telephone solicitation call when the equipment or service used by the telemarketer is capable of creating and transmitting the telemarketer's name or telephone number; or

(2) to circumvent, bypass or disable any product or service used by the residential **or business** telephone subscriber to screen telephone calls.

Section 4. Section 5.2(a), (b), (c), (e), (g), (h) and (j) of the act are amended and the section is amended by adding a subsection to read:

Section 5.2. Unwanted telephone solicitation calls prohibited.

(a) General rule.—No telemarketer shall initiate or cause to be initiated a telephone solicitation call to a **[residential]** telephone number of a residential *or business* telephone subscriber who does not wish to receive telephone solicitation calls and has caused his name, address and telephone number to be enrolled on a do-not-call list maintained by the list administrator. This prohibition shall be effective 30 days after a quarterly do-not-call list is issued by the list administrator which first contains a residential *or business* telephone subscriber's name, address and residential telephone number. In the event that the Federal Trade Commission and/or the Federal Communications Commission establish a national No Call Registry, the Director of the Bureau of Consumer Protection in the Office of Attorney General is authorized to release to the list administrator of such national No Call Registry sufficient data to include all those residential *and business* telephone subscribers currently enrolled on the do-not-call list and any residential *or business* telephone subscribers who subsequently enroll with the Bureau of Consumer Protection in the Office of Attorney General. Prior to releasing any such data to a national No Call Registry, the Bureau of Consumer Protection in the Office of Attorney General shall provide those residential *and business* telephone subscribers currently enrolled with the opportunity to remove their information from the do-not-call list.

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

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

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

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

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

(3) The telemarketer acting on behalf of the seller has 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.

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(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.

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

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(l) Robocall requirements.—

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

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

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

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

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

(2) When a robocall is left on an answering machine or a voicemail service, the message must provide a toll-free telephone number that enables the called person to call back at a later time and connect

directly to the automated, interactive voice-activated or key-press-activated opt-out mechanism and automatically record the called person's number to the do-not-call list of the telemarketer or telemarketing business.

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

APPROVED—The 4th day of October, A.D. 2019

TOM WOLF