

No. 2003-22

## AN ACT

HB 276

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 and for unwanted telephone solicitation calls.

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

Section 1. The definitions of "do-not-call list," "established business relationship," "list administrator" 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, added April 2, 2002 (P.L.221, No.24), are amended and the section is amended by adding a definition 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:

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"Do-not-call list." A list of residential *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 *or wireless* telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential *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 *or wireless* telephone subscriber to continue the business relationship beyond the initial inquiry.

"List administrator." A nonprofit organization, as designated by contract entered into by the Director of the Bureau of Consumer Protection in the Office of Attorney General, that accepts individual names, addresses and telephone numbers of persons who do not wish to receive telephone solicitation calls and that has been in existence for ten or more years. *In the event that the Federal Trade Commission and/or Federal Communications Commission establish a unified national No Call Registry for the purpose of providing consumers with protection from receiving unwanted telephone solicitation calls similar to the protection provided in this act, then the Director of the Bureau of Consumer Protection in the Office of Attorney General may enter into an agreement*

*to utilize the services of the administrator of any such national No Call Registry in lieu of using any nonprofit organization.*

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*“Residential telephone subscriber.” Any natural person residing within this Commonwealth at the billing address of any residential telephone numbers, including both wire line telephone service numbers and wireless telephone service numbers.*

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*“Telephone solicitation call.” A call made to a residential *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 *or* wireless telephone consumer:*

(1) In response to an express request of the residential *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 1.1. Section 5(a) of the act 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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*(9) Engaging in any deceptive or abusive telemarketing acts or practices in violation of 16 CFR 310 (relating to telemarketing sales rule).*

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Section 2. Section 5.2 of the act, added April 2, 2002 (P.L.221, No.24), is amended 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 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 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 telephone subscribers currently enrolled on the do-not-call list and any residential 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 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 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 *or wireless* telephone subscriber, whichever occurs first.

(d) Fee limitation.—No list administrator may impose a fee for copies of a do-not-call list which exceeds the costs incurred by the list administrator in the production, preparation and distribution of that list *or at a fee authorized by 16 CFR 310.8 (relating to severability)*.

(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 *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 *or wireless* telephone subscribers from telephone sales call lists.

(h) Disclosure to residential *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 *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 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 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 to do so, the bureau may contract with any nonprofit organization to carry out the provisions of this section.

(j) Identification.—No telemarketer shall fail to provide a residential *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, the telephone number may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

(k) Investigation, enforcement and reporting.—

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

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

(3) On or before November 30 of each year, the Attorney General shall submit to the General Assembly a report detailing investigations and enforcement actions taken under this section during the preceding Commonwealth fiscal year. The report shall include, but not be limited to, the number of complaints received under this section, the nature of those complaints, the number of investigations and enforcement actions instituted by the Attorney General, a summary of the results of those investigations and enforcement and the amount of any civil penalties collected.

Section 3. This act shall take effect immediately.

APPROVED—The 12th day of September, A.D. 2003.

EDWARD G. RENDELL