

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Governor signs bill regulating telemarketers", 5-22-2003 The Record, p.A3

"State hangs up on telemarketers", 5-22-2003 The Times, p.A8

"Do-not-call list signed into law", 5-22-2003 Courier News, p.A3

"McGreevey signs strict 'don't call' law", 5-22-03 Philadelphia Inquirer, p.B1

"McGreevey signs 'do-not-call list' into law", 5-22-03 Star Ledger, p.27

"No call measure signed into law", 5-22-2003 Asbury Park Press, p.F1

"State enacts do not call list," 5-22-2003 Home News Tribune, p.A1

P.L. 2003, CHAPTER 76, *approved May 21, 2003*
Assembly, No. 727 (*Fifth Reprint*)

1 AN ACT prohibiting unsolicited telemarketing sales calls to certain
2 customers, and supplementing ¹[chapter 17B of Title 52 of the
3 Revised Statutes.] P.L.1960, c.39 (C.56:8-1 et seq.)¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ²1. a. The Legislature finds and declares that telemarketing calls:

9 (1) Have interrupted the public's privacy, family life and home
10 sanctity with unsolicited phone calls to sell products and services;

11 (2) Cannot be selectively ignored by recipients, since the calls are
12 commonly made by means which do not enable the recipient to use
13 caller I.D. to identify, in advance, a telemarketing call or an
14 emergency;

15 (3) May arrive at inconvenient times when a resident or family
16 member is retired for the night;

17 (4) May arrive when a resident or family member is having a meal
18 and the interruption disrupts valuable time when family members are
19 together, where family members are more remote from a telephone and
20 when food may, during the interruption, cool, melt, thicken, dry, or
21 undergo a change in palatability;

22 (5) May arrive at inconvenient times when a resident or family
23 member is engaged in entertainment, a compelling activity or
24 relaxation;

25 (6) Use a strategy called "predictive calling" which results in tens
26 of thousands of call recipients rushing to answer phone calls, to find
27 no one is on the line. This results in great aggravation and
28 inconvenience to the public, merely to spare telemarketers (who won't
29 identify themselves as the source of the aggravation) the inconvenience
30 of finding no one home;

31 (7) Have been made to wireless phone lines resulting in cost to the
32 recipient, and in some cases, endangering the recipient's safety when
33 they may have been driving;

34 (8) Have been increasing in number, causing increased

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted June 13, 2002.

² Senate SCM committee amendments adopted September 26, 2002.

³ Senate floor amendments adopted October 7, 2002.

⁴ Assembly floor amendments adopted November 18, 2002.

⁵ Senate floor amendments adopted February 27, 2003.

1 inconvenience, widespread public outrage and urgent appeals to
2 protect the public from such calls;

3 (9) Are not the only means for marketers to promote their product
4 or services to prospective customers, although marketers often claim
5 it to be more economical and more productive than other means to
6 provide the benefits of increased competition. Marketers have
7 available mail, email, face to face personal solicitation and various
8 forms of advertising;

9 (10) Are in some cases beyond the regulatory jurisdiction of this
10 Legislature and any New Jersey statute, because they are forms of
11 speech protected by State and federal constitutional case law.

12 b. The Legislature further declares it to be the policy of this State
13 to provide the broadest possible protection to protect public privacy
14 and the sanctity of homes and to protect families and individuals from
15 unsolicited interruptions.

16 c. It is not the intent of the State to restrict telemarketing activity
17 where such activity is protected by State and federal case law, where
18 such restriction is prohibited by State and federal constitutional case
19 law or to restrict purely charitable activities.²

20

21 ²[1.] 2.² As used in this act:

22 "Customer" means an individual who is a resident of this State and
23 ¹[and]¹ a prospective recipient of ¹[consumer goods and services
24 offered through telemarketing.] a telemarketing sales call.¹

25 ¹"Director" means the Director of the Division of Consumer Affairs
26 in the Department of Law and Public Safety.¹

27 "Division" means the Division of Consumer Affairs in the
28 Department of Law and Public Safety.

29 ¹["Doing business in this State" means conducting telephone sales
30 calls: from a location in this State; or from a location outside of this
31 State to customers residing in this State.

32 "Goods and services" means any goods and services and shall
33 include, but not be limited to, any real property, any tangible personal
34 property, or services of any kind.]

35 ³[²"Established business relationship" means a prior or existing
36 relationship formed by a voluntary two-way communication between
37 a person and a customer with or without an exchange of consideration,
38 on the basis of an inquiry, application, purchase or transaction initiated
39 by the customer regarding merchandise offered by that person within
40 the preceding four years, which relationship has not been previously
41 terminated by either party.²]³

42 "Merchandise" means merchandise as defined in subsection (c) of
43 section 1 of P.L.1960, c.39 (C.56:8-1)² including an extension of
44 credit.²¹

45 "Local exchange telephone company" means a telecommunications
46 carrier authorized by the Board of Public Utilities to provide local

1 telecommunications services.

2 "No telemarketing call list" or "no call list" means a list of
3 customers in this State who ¹[do not]¹ desire ¹not¹ to receive
4 unsolicited ²telemarketing² sales calls.

5 "Telemarketer" means any ³[person] entity, whether an individual
6 proprietor, corporation, partnership, limited liability corporation or
7 any other form of business organization, whether on behalf of itself or
8 others,³ who¹ [, for financial profit or commercial purposes in
9 connection with telemarketing,]¹ makes ²residential² telemarketing
10 sales calls to a customer when the customer is in this State or any
11 person who directly controls or supervises the conduct of a
12 telemarketer. ¹[For the purposes of this section, "commercial
13 purposes" means the sale or offer for sale of goods or services.]¹

14 "Telemarketing" means any plan, program or campaign which is
15 conducted ¹[to induce payment, or the exchange of any other
16 consideration, for any goods or services by use of one or more
17 telephones and which involves more than one telephone call by a
18 telemarketer in which the customer is located within the State at the
19 time of the call] by telephone to encourage the purchase or rental of,
20 or investment in, merchandise¹, but does not include the solicitation
21 of sales through ³[²unsolicited telemarketing sales calls or²]³ media
22 other than a telephone call.

23 "Telemarketing sales call" means a telephone call made by a
24 telemarketer to a customer ¹[for the purpose of inducing payment or
25 the exchange of any other consideration for any goods or services] to
26 encourage the purchase or rental of, or investment in, merchandise^{1 2},
27 except for continuing services².

28 "Unsolicited telemarketing sales call" means any telemarketing sales
29 call other than a call made:

30 ²[a.] ⁽¹⁾² in response to an express written ⁴[or verbal]⁴ request
31 of the customer called;

32 ²[b.]³ [⁽²⁾² in connection with an established business relationship,
33 which has not been terminated by either party;]^{3 2}or²

34 ²[c.]³ [⁽³⁾²] ⁽²⁾³ to an existing customer, ⁴which shall include the
35 ability to collect on accounts ⁵[.] and⁵ follow up on contractual
36 obligations, ⁵[and offer product upgrades or enhancements,⁴]⁵ unless
37 the customer has stated to the telemarketer that the customer no
38 longer desires to receive the telemarketing sales calls of the
39 telemarketer²; or

40 d. in which the ¹[sale of goods and services] purchase or rental of,
41 or investment in, merchandise¹ is not completed, and payment or
42 authorization of payment is not required until after a sales presentation
43 made in person by the telemarketer or a meeting between the
44 telemarketer and the customer]².

45

46 ²[^{1 2}.] ^{3 2} a. A person shall not make or cause to be made, or

1 attempt to make or cause to be made, ²[a] an unsolicited ²
 2 telemarketing sales call to a customer in the State of New Jersey
 3 unless that person is registered with or employed by a person who is
 4 registered with the Division of Consumer Affairs in the Department of
 5 Law and Public Safety in accordance with the provisions of this act.
 6 b. Every telemarketer ⁴[³making unsolicited telemarketing sales
 7 calls³]⁴, including telemarketers whose residence or principal place of
 8 business is located outside of ²[the] this² State, shall annually register
 9 with the director. Application for registration shall be on a form
 10 provided by the director and shall include the name and address of the
 11 applicant and any other information which the director shall prescribe
 12 by rule. The application shall be accompanied by a reasonable fee, set
 13 by the director in an amount sufficient to defray the division's
 14 ²[expense] expenses² incurred in administering and enforcing this act
 15 ⁴[², except that the annual fee shall not exceed ³[\$50 for
 16 telemarketers performing 15,000 or less man-hours on telemarketing
 17 in the preceding calendar year; \$100 for telemarketers performing
 18 more than 15,000 but less than 75,000 man-hours on telemarketing in
 19 the preceding calendar year; and \$150 for telemarketers performing
 20 more than 75,000 man-hours on telemarketing in the preceding
 21 calendar year²] \$125³]⁴.¹
 22

23 ²[¹³.] 4.² In addition to any other procedure, condition or
 24 information required by this act:

25 a. Every applicant for registration shall file a disclosure statement
 26 with the director stating whether the applicant has been convicted of
 27 any crime, which for the purposes of this act shall mean a violation of
 28 any of the following provisions of the "New Jersey Code of Criminal
 29 Justice," Title 2C of the New Jersey Statutes, or the equivalent under
 30 the laws of any other jurisdiction:

31 (1) Any crime of the first degree

32 (2) Any crime which is a second or third degree crime and is a
 33 violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes;
 34 or

35 (3) Any other crime which is a violation of N.J.S.2C:5-1,
 36 N.J.S.2C:5-2, N.J.S.2C:12-3, N.J.S.2C:15-1, N.J.S.2C:18-2,
 37 N.J.S.2C:20-4, N.J.S.2C:20-5, N.J.S.2C:20-7, N.J.S.2C:20-9,
 38 N.J.S.2C:21-1, N.J.S.2C:21-2, ²[N.J.S.2C:21-2.1] section 1 of
 39 P.L.1983, c.565 (C.2C:21-2.1)², ²[N.J.S.2C:21-2.3] section 2 of
 40 P.L.1997, c.385 (C.2C:21-2.3)², N.J.S.2C:21-3, N.J.S.2C:21-4,
 41 N.J.S.2C:21-5, N.J.S.2C:21-6, N.J.S.2C:21-7, N.J.S.2C:21-9 through
 42 N.J.S.2C:21-17, N.J.S.2C:21-19, or ²[N.J.S.2C:21-25] section 3 of
 43 P.L.1994, c.121 (C.2C:21-25),² chapter 27 or 28 of Title 2C of the
 44 New Jersey Statutes, N.J.S.2C:30-2, or N.J.S.2C:30-3.

45 b. Each disclosure statement may be reviewed and used by the
 46 director as grounds for denying, suspending or revoking registration.

1 except that in cases in which the provisions of P.L.1968, c.282
2 (C.2A:168A-1 et seq.) apply, the director shall comply with the
3 requirements of that act.

4 c. An applicant whose registration is denied, suspended or revoked
5 pursuant to this section shall, upon a written request transmitted to the
6 director within 30 calendar days of that action, be afforded an
7 opportunity for a hearing in a manner provided for contested cases
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
9 (C.52:14B-1 et seq.).

10 d. An applicant shall have the continuing duty to provide any
11 assistance or information requested by the director, and to cooperate
12 in any inquiry, investigation or hearing conducted by the director.

13 e. If any of the information required to be included in the
14 disclosure statement changes, or if additional information should be
15 added after the filing of the statement, the applicant shall provide that
16 information to the director, in writing, within 30 calendar days of the
17 change or addition.¹

18

19 ²[^{14.} 5.² a. The director may refuse to issue or renew, and may
20 revoke, any registration for failure to comply with, or violation of, the
21 provisions of this act or ²[for any other good cause shown within the
22 meaning and purpose of] any regulation promulgated pursuant to² this
23 act. A refusal or revocation shall not be made except upon reasonable
24 notice to, and opportunity to be heard by, the applicant or registrant.

25 b. The director, in lieu of revoking a registration, may suspend the
26 registration for a reasonable period of time, or assess a penalty in lieu
27 of suspension, or both, and may issue a new registration,
28 notwithstanding the revocation of a prior registration, if the applicant
29 is found to have become entitled to the new registration.¹

30

31 ²[^{15.} All registrants shall prominently display their registration
32 numbers within their places of business, and in all advertisements,
33 business documents and correspondence.¹²

34

35 ¹6. a. Any registration number issued by the director shall remain
36 the property of the State and shall be immediately returned to the
37 director upon its suspension, non-renewal or revocation pursuant to
38 this act.

39 b. The issuance of a registration to an applicant who is a
40 nonresident of this State shall be deemed to be the applicant's
41 irrevocable consent that service of process in any action or proceeding
42 may be made upon the applicant by service upon the director.¹

43

44 ¹7. Any material change in any information filed with the director
45 pursuant to this act shall be reported in writing to the director within
46 30 business days of the change.¹

1 ²[¹8. a. Any person required to be registered pursuant to this act
 2 shall maintain a bond issued by a surety authorized to transact business
 3 in this State. The principal sum of the bond shall not be less than
 4 \$25,000, which amount the director may adjust by regulation. The
 5 bond shall be filed or deposited with the director for the use of any
 6 person who is damaged or suffers any loss for any violation of this act.
 7 Any person claiming against the bond may maintain an action at law
 8 against the surety or director, as the case may be. The aggregate
 9 liability of the surety or director to all persons for all breaches of the
 10 conditions of the bond held by the director shall not exceed the
 11 amount of the bond held by the director.

12 b. Any person required to be registered pursuant to this act shall
 13 file a copy of the bond with the director and a certificate by the surety
 14 that the surety will notify the director at least 10 days in advance of
 15 the date of any cancellation or material change in the bond.¹²

16
 17 ⁴8. a. The director may establish that any person required to be
 18 registered pursuant to this act maintain a bond issued by a surety
 19 authorized to transact business in this State. The principal sum of the
 20 bond shall not be less than \$25,000, which amount the director may
 21 adjust by regulation. The bond shall be filed or deposited with the
 22 director for the use of any person who is damaged or suffers any loss
 23 for any violation of this act. Any person claiming against the bond
 24 may maintain an action at law against the surety or director, as the
 25 case may be. The aggregate liability of the surety or director to all
 26 persons for all breaches of the conditions of the bond held by the
 27 director shall not exceed the amount of the bond held by the director.

28 b. The director may also establish that any person required to be
 29 registered pursuant to this act file a copy of the bond with the director
 30 and a certificate by the surety that the surety will notify the director at
 31 least 10 days in advance of the date of any cancellation or material
 32 change in the bond.⁴

33
 34 ¹[^{2.}] ²[^{9.}¹] ⁴[^{8.}²] ^{9.}⁴ The division shall establish and maintain
 35 a no telemarketing call list. The division may contract with a private
 36 vendor to establish and maintain the no call list, provided ³:

37 a.³ the private vendor ²[has]² ¹[maintained a no call list for
 38 another state for more than two years] ²[proper qualifications and
 39 experience as determined by the division,¹] meets standards
 40 established by the division by regulation ³[for financial soundness, the
 41 capacity to perform the service required, a record of past performance,
 42 and prohibiting conflicts of interest and requiring arms-length
 43 transactions,²] that require that the vendor:

- 44 (1) is financially sound;
 45 (2) has the capacity to perform the service required;
 46 (3) has a record of past performance; and

1 (4) does not have a conflict of interest with a telemarketer or an
2 association thereof,³ and

3 ³b.³ the contract requires the vendor to provide the list in a printed
4 hard copy format, and in any other format, as prescribed by the
5 division.

6
7 ¹[3.] ²[10.]⁴ [^{9.}²] ^{10.}⁴ a.¹ No telemarketer ²[may] shall² make
8 or cause to be made any unsolicited telemarketing sales call to any
9 customer more than ¹[30] ⁴⁵¹ days after the customer's ¹[name
10 and]¹ telephone number ¹[appear] appears¹ on the ¹[then current
11 quarterly]¹ no telemarketing call list established pursuant to section
12 ¹[2] ²[9¹]⁴ [⁸²] ⁹⁴ of this act.

13 ¹b. A telemarketer making a telemarketing sales call shall, within
14 the first 30 seconds of the call, identify the telemarketer's name, the
15 person on whose behalf the call is being made, and the purpose of the
16 call.

17 c. A telemarketer shall not make or cause to be made any
18 unsolicited telemarketing sales call to any customer between the hours
19 of 9 p.m. and 8 a.m. ²,² local time, at the customer's location.

20 d. A telemarketer shall not ²intentionally² use any method that
21 blocks a caller identification service from displaying caller
22 identification information or otherwise circumvents a customer's use
23 of a telephone caller identification service.¹

24
25 ¹[4.] ²[11¹] ⁴[10.²] ^{11.}⁴ a. A customer who desires to be
26 included on the no telemarketing call list shall notify the division by
27 calling a toll-free number provided by the division, or in any other
28 manner and at a time prescribed by the division. A customer who is
29 included on the no call list shall be removed from the no call list upon
30 the customer's written request. The division shall update the no call
31 list not less than quarterly and shall make the no call list available to
32 telemarketers ²and others² for a fee ²[as] that² the division shall
33 prescribe ⁴[², except that the fee shall not exceed \$500 annually]⁴.

34 b. A local exchange telephone company shall include, in every
35 telephone directory published after the effective date of this act, notice
36 concerning the provisions of this act as those provisions relate to the
37 rights of customers with respect to telemarketers and the no
38 telemarketing call list. A local exchange telephone company shall also
39 enclose, at least ¹[annually] semiannually¹, in every telephone bill, a
40 notice concerning the provisions of this act as those provisions relate
41 to the rights of customers with respect to telemarketers and the no
42 telemarketing call list.

43
44 ⁴[²11.] ^{12.}⁴ a. No telemarketer shall make or cause to be made
45 any telemarketing sales call to a commercial mobile service device of
46 any customer ³, except that a telemarketer that is a commercial mobile

1 services company may call its customer using its commercial mobile
 2 services if its customer will not incur telecommunication charges or a
 3 usage allocation deduction as a result of such call and the call is
 4 directly related to the commercial mobile services of the commercial
 5 mobile services company, unless the customer has stated to the
 6 commercial mobile services company that the customer no longer
 7 desires to receive these calls³.

8 b. For purposes of this section, "commercial mobile service" means
 9 a type of mobile telecommunications service as defined in subsection
 10 (d) of section 332 of the Communications Act of 1934 (47 U.S.C.
 11 s.332(d)); and "commercial mobile service device" means any
 12 equipment used for the purpose of providing commercial mobile
 13 service.

14 c. The provisions of this section shall apply to those numbers for
 15 commercial mobile service devices which the division is able to
 16 distinguish from numbers for devices for telecommunications service
 17 as defined in section 2 of P.L.1991, c.428 (C.48:2-21.17) on the 30th
 18 day following certification of such to the Governor and the
 19 Legislature.²

20
 21 ¹[5. a. After a person has been afforded an opportunity for a
 22 hearing pursuant to the "Administrative Procedure Act," P.L.1968,
 23 c.410 (C.52:14B-1 et seq.) and the division determines that the person
 24 has violated one or more provisions of this act, that person shall be
 25 liable to a civil administrative penalty not to exceed \$2,000 for each
 26 violation.

27 b.] ⁴[²12.] ^{13.}⁴ Nothing in this ¹[section] act¹ shall be construed
 28 to restrict any right which a person may have under any other statute
 29 or at common law.

30
 31 ¹[^{6.]} ⁴[^{13.}¹] ^{14.}⁴ A ¹violation of any provision of this act shall be
 32 an unlawful practice subject to the penalties applicable pursuant to
 33 ²section 1 of² P.L.1966 c.39 (C.56:8-13) and section 2 of P.L.1999
 34 c.129 (C.56:8-14.3), except that a¹ person may not be held liable for
 35 violating this act if:

36 a. the person has obtained a copy of, and updated quarterly, the no
 37 call list and has established and implemented written policies and
 38 procedures related to the requirements of this ²[section] act²;

39 b. the person has trained telemarketers in the person's employ in
 40 the requirements of this act;

41 c. the person maintains records demonstrating compliance with
 42 subsections a. and b. of this section and the requirements of this act;
 43 and

44 d. any ⁴[subsequent]⁴ unsolicited telemarketing sales call ²[is ¹an
 45 isolated call made no more than one time in a 12-month period and]²
 46 ⁴[was¹ the result of error ², which was not the result of a pattern and
 47 practice of errors²] is an isolated call made no more than one time in

1 a 12-month period⁴.

2

3 ¹[7.] ⁴[14.1] 15.⁴ There is hereby established in the General Fund
4 a special dedicated, non-lapsing fund to be known as the "Consumer
5 Protection Fund," which shall be administered by the State Treasurer.
6 The State Treasurer shall deposit into the "Consumer Protection Fund"
7 all fees and penalties collected pursuant to this act.

8 The Legislature shall annually appropriate from the fund monies to
9 the division for the payment of costs of producing and distributing
10 educational materials and conducting educational activities relating to
11 the promotion of the no telemarketing call list and all related costs and
12 expenditures incurred in the administration of this act.

13

14 ¹[8.] ⁴[15.1] 16.⁴ The division, pursuant to the provisions of the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), shall promulgate rules and regulations necessary to implement
17 this act, which shall include, but not be limited to:

18 a. provisions governing the availability and distribution of the no
19 call list established ²[in] pursuant to² section ¹[2] ²[9¹] ⁴[8²] 9⁴ of
20 this act; ⁴[and]⁴

21 b. any other matters relating to the no call list established ²[in]
22 pursuant to² section ¹[2] ²[9¹] ⁴[8²] 9⁴ of this act that the division
23 deems necessary ⁴[.]; and⁴

24 ⁴c. such procedures as may be most-effective to ensure that the no
25 call list is up-to-date and accurately reflects the names and telephone
26 numbers of persons wishing to be on the no call list and procedures to
27 identify telephone numbers that have been reallocated to persons other
28 than those who have indicated that they wish to be on the no call list.
29 Such procedures may include, but not be limited to, establishing a
30 means of matching the no call list with the names and numbers of
31 persons with current listings supplied by the local exchange telephone
32 companies, or establishing a requirement for re-enrollment to the list
33 from time to time.⁴

34

35 ⁴[²16.] 17.⁴ Information submitted to the division by a customer
36 pursuant to the provisions of this act shall not be a government record
37 under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law
38 concerning access to government records except as provided in this
39 act.²

40

41 ¹[9.] ²[16.1] ⁴[17.2] 18.⁴ This act shall take effect
42 immediately ¹but shall remain inoperative until the Director of the
43 Division of Consumer Affairs in the Department of Law and Public
44 Safety certifies to the Attorney General that the division is prepared
45 to establish and maintain a no telemarketing call list, but such
46 operative date shall be no later than the 365th day following
47 enactment, except that the division may take such anticipatory action

1 as shall be necessary to implement the provisions of the act in advance
2 of the operative date¹.

3

4

5

6

7 Prohibits unsolicited telemarketing sales calls to certain customers.

ASSEMBLY, No. 727

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

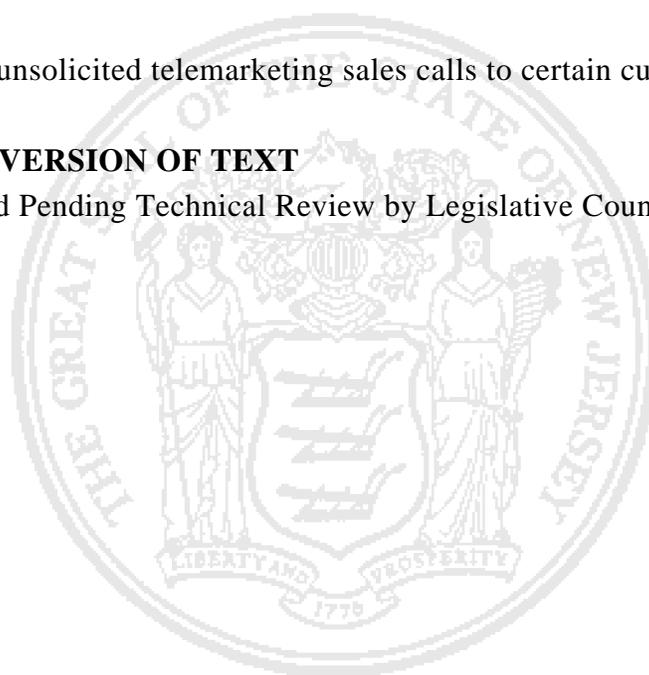
Assemblymen Cohen, Conners, Gusciora, Assemblywoman Watson Coleman, Assemblymen Arnone, R.Smith, T.Smith, Assemblywoman Weinberg, Assemblymen Barnes, Doria, Payne, Assemblywoman Quigley, Assemblymen Guear, Sires, Stanley, Wisniewski, Assemblywoman Cruz-Perez, Assemblymen Thompson, Conaway, Roberts, Assemblywoman Friscia, Assemblymen Greenwald, Biondi and Russo

SYNOPSIS

Prohibits unsolicited telemarketing sales calls to certain customers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/1/2002)

1 AN ACT prohibiting unsolicited telemarketing sales calls to certain
2 customers, and supplementing chapter 17B of Title 52 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 "Customer" means an individual who is a resident of this State and
10 and a prospective recipient of consumer goods and services offered
11 through telemarketing.

12 "Division" means the Division of Consumer Affairs in the
13 Department of Law and Public Safety.

14 "Doing business in this State" means conducting telephone sales
15 calls: from a location in this State; or from a location outside of this
16 State to customers residing in this State.

17 "Goods and services" means any goods and services and shall
18 include, but not be limited to, any real property, any tangible personal
19 property, or services of any kind.

20 "Local exchange telephone company" means a telecommunications
21 carrier authorized by the Board of Public Utilities to provide local
22 telecommunications services.

23 "No telemarketing call list" or "no call list" means a list of
24 customers in this State who do not desire to receive unsolicited sales
25 calls.

26 "Telemarketer" means any person who, for financial profit or
27 commercial purposes in connection with telemarketing, makes
28 telemarketing sales calls to a customer when the customer is in this
29 State or any person who directly controls or supervises the conduct of
30 a telemarketer. For the purposes of this section, "commercial
31 purposes" means the sale or offer for sale of goods or services.

32 "Telemarketing" means any plan, program or campaign which is
33 conducted to induce payment, or the exchange of any other
34 consideration, for any goods or services by use of one or more
35 telephones and which involves more than one telephone call by a
36 telemarketer in which the customer is located within the State at the
37 time of the call, but does not include the solicitation of sales through
38 media other than a telephone call.

39 "Telemarketing sales call" means a telephone call made by a
40 telemarketer to a customer for the purpose of inducing payment or the
41 exchange of any other consideration for any goods or services.

42 "Unsolicited telemarketing sales call" means any telemarketing sales
43 call other than a call made:

- 44 a. in response to an express written or verbal request of the
45 customer called;
46 b. in connection with an established business relationship, which

1 has not been terminated by either party;

2 c. to an existing customer, unless the customer has stated to the
3 telemarketer that the customer no longer desires to receive the
4 telemarketing sales calls of the telemarketer; or

5 d. in which the sale of goods and services is not completed, and
6 payment or authorization of payment is not required until after a sales
7 presentation made in person by the telemarketer or a meeting between
8 the telemarketer and the customer.

9

10 2. The division shall establish and maintain a no telemarketing call
11 list. The division may contract with a private vendor to establish and
12 maintain the no call list, provided the private vendor has maintained a
13 no call list for another state for more than two years and the contract
14 requires the vendor to provide the list in a printed hard copy format,
15 and in any other format, as prescribed by the division.

16

17 3. No telemarketer may make or cause to be made any unsolicited
18 telemarketing sales call to any customer more than 30 days after the
19 customer's name and telephone number appear on the then current
20 quarterly no telemarketing call list established pursuant to section 2 of
21 this act.

22

23 4. a. A customer who desires to be included on the no
24 telemarketing call list shall notify the division by calling a toll-free
25 number provided by the division, or in any other manner and at a time
26 prescribed by the division. A customer who is included on the no call
27 list shall be removed from the no call list upon the customer's written
28 request. The division shall update the no call list not less than
29 quarterly and shall make the no call list available to telemarketers for
30 a fee as the division shall prescribe.

31

32 b. A local exchange telephone company shall include, in every
33 telephone directory published after the effective date of this act, notice
34 concerning the provisions of this act as those provisions relate to the
35 rights of customers with respect to telemarketers and the no
36 telemarketing call list. A local exchange telephone company shall also
37 enclose, at least annually, in every telephone bill, a notice concerning
38 the provisions of this act as those provisions relate to the rights of
39 customers with respect to telemarketers and the no telemarketing call
40 list.

40

41 5. a. After a person has been afforded an opportunity for a hearing
42 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
43 (C.52:14B-1 et seq.) and the division determines that the person has
44 violated one or more provisions of this act, that person shall be liable
45 to a civil administrative penalty not to exceed \$2,000 for each
46 violation.

1 state for more than two years and the contract requires the vendor to
2 provide the list in a printed hard copy format, and in any other format
3 as prescribed by the division.

4 The bill prohibits unsolicited telemarketing sales calls to any
5 customer more than 30 days after the customer's name and telephone
6 number appear on the then current quarterly no telemarketing call list.

7 The bill requires local exchange telephone companies to include in
8 every telephone directory, notice concerning the provisions of the bill,
9 as those provisions relate to the rights of customers with respect to
10 telemarketers and the no telemarketing call list. Local exchange
11 telephone companies are also required to enclose, at least annually, in
12 every telephone bill, a notice concerning the provisions of this act as
13 those provisions relate to the rights of customers with respect to
14 telemarketers and the no telemarketing call list.

15 A telemarketer who violates one or more of the provisions of this
16 bill is liable for a civil administrative penalty not to exceed \$2,000 for
17 each violation.

18 The bill establishes a special dedicated, non-lapsing fund to be
19 known as the "Consumer Protection Fund." All fees and penalties
20 collected pursuant to this bill are to be deposited into the "Consumer
21 Protection Fund." This money is to be used by the Division of
22 Consumer Affairs for the payment of costs of producing and
23 distributing educational materials and conducting educational activities
24 relating to the promotion of the no telemarketing call list and all
25 related costs and expenditures incurred in the administration of the
26 bill.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 727

STATE OF NEW JERSEY

DATED: JANUARY 31, 2002

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 727.

As reported, this bill requires the Division of Consumer Affairs in the Department of Law and Public Safety to establish a no telemarketing call list. This list shall contain the names of customers in this State who do not desire to receive unsolicited sales calls. The division may contract with a private vendor to establish and maintain the no call list, provided the private vendor has maintained a no call list for another state for more than two years and the contract requires the vendor to provide the list in a printed hard copy format, and in any other format as prescribed by the division.

The bill prohibits unsolicited telemarketing sales calls to any customer more than 30 days after the customer's name and telephone number appear on the then current quarterly no telemarketing call list.

The bill requires local exchange telephone companies to include in every telephone directory, notice concerning the provisions of the bill, as those provisions relate to the rights of customers with respect to telemarketers and the no telemarketing call list. Local exchange telephone companies are also required to enclose, at least annually, in every telephone bill, a notice concerning the provisions of this act as those provisions relate to the rights of customers with respect to telemarketers and the no telemarketing call list.

A telemarketer who violates one or more of the provisions of this bill is liable for a civil administrative penalty not to exceed \$2,000 for each violation.

The bill establishes a special dedicated, non-lapsing fund to be known as the "Consumer Protection Fund." All fees and penalties collected pursuant to this bill are to be deposited into the "Consumer Protection Fund." This money is to be used by the Division of Consumer Affairs for the payment of costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the no telemarketing call list and all related costs and expenditures incurred in the administration of the bill.

MINORITY STATEMENT

Telephone calls that are made on behalf of political organizations and political candidates constitute a significant percentage of the unsolicited telemarketing calls received by residents in this State. In its current form, the bill defines telemarketers in a way that appears to limit the consumer's ability to prohibit unsolicited calls from political organizations and political candidates. Since unsolicited calls made on behalf of political organizations and political candidates can be just as disruptive as calls made for commercial purposes, the bill should define unsolicited telemarketing calls to include calls from political organizations and political candidates. In this way, consumers would have the option of excluding these types of unsolicited calls as well as unsolicited calls made for financial profit and commercial purposes.

In addition, the impact of this bill could affect New Jersey's telemarketing industry to a much greater extent than the telemarketing industry as a whole since it is unclear as to how effective the bill will be in controlling telemarketers from outside of New Jersey who make calls to residents located in this State. Since it is estimated that 75 percent of the unsolicited telemarketing calls to New Jersey residents originate from outside of this State, the majority of unsolicited telemarketing calls could continue unabated if the provisions of the bill are applied primarily to New Jersey's telemarketing industry.

Technical review was performed on this pre-filed bill, as required by Joint Rule 18A of the Senate and General Assembly.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 727

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 26, 2002

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 727(1R).

This bill, with committee amendments, supplements the consumer fraud act; provides for the registration of telemarketers who make unsolicited telemarketing sales calls with the Division of Consumer Affairs for a graduated annual fee; requires registrants to disclose any crimes they were convicted of; and requires the division to establish a no telemarketing call list. This no call list shall contain the telephone numbers of customers in this State who do not desire to receive unsolicited telemarketing sales calls. A customer who desires to be included on the no call list may be included on the list by calling a toll-free number provided by the division. A customer may be removed from the list upon the customer's written request. The division may contract with a private vendor to establish and maintain the no call list, provided the private vendor meets standards established by the division by regulation for financial soundness, the capacity to perform the service required, a record of past performance, and prohibiting conflicts of interest and requiring arms-length transactions, and the contract requires the vendor to provide the list in a printed hard copy format, and in any other format as prescribed by the division. The director of the division may refuse to issue or renew and may revoke any registration for violating the provisions of this bill.

The bill prohibits unsolicited telemarketing sales calls to any customer more than 45 days after the customer's telephone number appears on the no call list. A telemarketer is prohibited from making unsolicited telemarketing sales calls between the hours of 9 p.m. and 8 a.m. local time, at the customer's location, and requires a telemarketer to identify himself, within the first 30 seconds, by stating his name, the person on whose behalf he is calling, and the merchandise being sold. A telemarketer is prohibited from intentionally using any method that blocks or circumvents a caller identification service from displaying caller identification information.

Telemarketing includes the sale of merchandise (as defined in the consumer fraud act), including the extension of credit. Telemarketers in and outside the State are covered under the bill.

An unsolicited telemarketing sales call does not include a call made in response to an express written or verbal request of the customer called; to a person with whom the caller has an existing business relationship (which is a prior or existing relationship formed by a voluntary two-way communication between a person and a customer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction initiated by the customer regarding merchandise offered by that person within the preceding four years, which relationship has not been previously terminated by either party); or to an existing customer unless the customer has indicated a desire not to receive such calls.

The bill requires local exchange telephone companies to include in every telephone directory notice concerning the provisions of the bill, as those provisions relate to the rights of customers with respect to telemarketers and the no call list, and to enclose, at least semiannually, in every telephone bill, a notice concerning the provisions of this bill as those provisions relate to the rights of customers with respect to telemarketers and the no call list.

The bill prohibits telemarketing sales calls to some or all cell phones of customers when the cell phone numbers can be identified as such.

A telemarketer who violates one or more of the provisions of this bill is liable under the consumer fraud act for a civil penalty of not more than \$10,000 for a first violation and not more than \$20,000 for each subsequent violation. However, a telemarketer is not subject to this penalty if he obtained a copy of, and updated quarterly, the no call list; established and implemented written policies and procedures related to the requirements of this bill; trained telemarketers in his employ in the requirements of this bill; maintains records demonstrating compliance with the provisions of this bill; and any subsequent unsolicited telemarketing sales call was the result of error, which was not the result of a pattern and practice of errors.

The bill establishes a special dedicated, non-lapsing fund to be known as the "Consumer Protection Fund." All fees and penalties collected pursuant to this bill are to be deposited into the "Consumer Protection Fund." The Legislature shall annually appropriate from the fund monies to the division for the payment of costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the no call list and all related costs and expenditures incurred in the administration of the bill.

The bill provides that information submitted to the division by customers pursuant to the provisions of this bill are not public records.

The provisions of the bill are effective immediately but remain inoperative until the division certifies it is prepared to establish and maintain a no call list, but the operative date shall be no later than the 365th day following enactment.

This bill with the committee amendments is identical to Senate Committee Substitute for Senate, Nos. 153, 197, 445, 1873 and 1881.

STATEMENT TO
ASSEMBLY, No. 727

with Assembly Floor Amendments
(Proposed By Assemblywoman GREENSTEIN)

ADOPTED: JUNE 13, 2002

These Assembly amendments change the allocation of the act from supplementing chapter 17B of Title 52 to supplementing the Consumer Fraud Act, P.L.1960, c.39 (C.56:8-1 et seq.) and modify some of the definitions in order to conform with the language of the Consumer Fraud Act.

These amendments add a requirement that a telemarketer who makes telemarketing calls to customers in New Jersey must annually register with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety and pay a reasonable fee to defray the division's expense incurred in administering this act. As part of the registration, a disclosure statement must be filed concerning the conviction for certain crimes. There is a continuing duty to provide information requested by the director and to update information. The disclosure statement may be used by the Director as grounds for denying, suspending or revoking registration. If registration is denied, suspended or revoked, an opportunity shall be provided for a hearing in a manner provided by the "Administrative Procedure Act."

These Assembly amendments also provide that all registrants shall prominently display their registration numbers within their places of business, and in all advertisements, business documents and correspondence and shall maintain a surety bond for the use of any person who is damaged or suffers any loss for violation of this act.

These amendments remove the requirement that a private vendor who contracts with the state to establish and maintain the no call list must have maintained a list for another state for more than two years and instead requires that the vendor have proper qualifications and experience as determined by the division.

These amendments require that a telemarketer making a telemarketing sales call shall, within the first 30 seconds of the call, identify himself by stating his name, the person on whose behalf the call is being made, and the purpose of the call. No telemarketer may make or cause to be made any unsolicited telemarketing sales call to any customer between the hours of 9 p.m. and 8 a.m. local time, at the customer's location. No telemarketer shall use any method that blocks a caller identification service from displaying caller identification information or otherwise circumvents a customer's use of a telephone caller identification service.

These amendments remove the civil penalty of \$2,000 for each violation and make violation of the act an unlawful practice subject to the penalties applicable pursuant to P.L.1966, c.39 (C.56:8-13) which are \$10,000 for the first offense and not more than \$20,000 for second and subsequent offenses. These amendments also make a violation subject to the penalties of P.L.1999, c.129 (C.56:8-14.3) which provides for additional penalties if the violation was knowingly directed at a senior citizen or person with disabilities.

These Assembly amendments provide time for the division to take the necessary steps to prepare for the establishment of the no telemarketing call list and others steps to implement the act by amending the effective date to provide that the act is inoperative until the 365th day after enactment and that during that time the division may take anticipatory action as shall be necessary to implement the act.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 727

with Senate Floor Amendments
(Proposed By Senators BUONO and ALLEN)

ADOPTED: OCTOBER 7, 2002

These amendments:

a. delete the provision which provided that an unsolicited telemarketing sales call was not a call made in connection with an established business relationship, which has not been terminated by either party. The bill still provides that unsolicited telemarketing sales calls do not include calls made in response to an express written or verbal request of the customer called or calls to an existing customer, unless the customer no longer desires to receive such calls from the telemarketer;

b. provide that the definition of telemarketing does include the solicitation of sales through unsolicited telemarketing sales calls;

c. clarifies that only those telemarketers who make unsolicited telemarketing sales calls must register with the State, instead of all telemarketers making telemarketing sales calls;

d. eliminate the graduated fee scale for registration of telemarketers and provide for a fee of not more than \$125;

e. clarify section 8 of the bill covering the no call list and delete the reference to arms-length transactions; and

f. allow cell phone companies to call their cell phone customers via their network to market their commercial mobile services if the customers do not incur telecommunication charges or a usage allocation deduction and the customers have not stated that they do not wish to receive such calls.

[Corrected Copy]

STATEMENT TO

[Third Reprint]

ASSEMBLY, No. 727

with Assembly Floor Amendments
(Proposed By Assemblywoman GREENSTEIN)

ADOPTED: NOVEMBER 18, 2002

These amendments amend the definition of "existing customer" in section 2 of the bill to clarify the kinds of calls industry can make.

The amendments to sections 3 and 11 of the bill grant discretion to the Director of the Division of Consumer Affairs to establish the fees to cover the cost of administering the program.

The amendments authorize the director to establish bonding requirements to ensure that telemarketers comply with the program's requirements.

The amendments would also limit the bill's exemption established by section 14 of the bill to one isolated error in a twelve-month time period.

The amendments to section 16 of the bill require the Division of Consumer Affairs to establish the most-effective regulations to ensure that the "no call" lists are accurate and up-to-date.

The amendments also make certain technical corrections to the bill.

STATEMENT TO
[Fourth Reprint]
ASSEMBLY, No. 727

with Senate Floor Amendments
(Proposed By Senator CODEY)

ADOPTED: FEBRUARY 27, 2003

This amendment provides that a call to an existing customer to offer product upgrades or enhancements would be an unsolicited telemarketing sales call under the bill.

SENATE, No. 153

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator RICHARD H. BAGGER

District 21 (Essex, Morris, Somerset and Union)

Senator BARBARA BUONO

District 18 (Middlesex)

SYNOPSIS

Prohibits telephone solicitation of certain telephone subscribers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT prohibiting telephone solicitation of certain residential
2 telephone subscribers and supplementing chapter 17 of Title 48 of
3 the Revised Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. No person shall make or cause to be made a telephone call for
9 the purpose of soliciting business by a live operator to a residential
10 telephone subscriber whose name appears in the then current
11 Telephone Preference Service maintained by the Direct Marketing
12 Association, unless the call is:

13 a. by or on behalf of a person who has obtained a residential
14 telephone subscriber's prior express invitation or permission;

15 b. by or on behalf of a person with whom a residential telephone
16 subscriber has a current business relationship, as evidenced by a
17 business transaction between the person initiating the communication
18 and the residential telephone subscriber within the previous 90 days;

19 c. by or on behalf of a person with whom a residential telephone
20 subscriber has a prior or current personal relationship; or

21 d. by or on behalf of a person properly registered with the Division
22 of Consumer Affairs pursuant to the "Charitable Registration and
23 Investigation Act," P.L.1994, c.16 (C.45:17A-18 et seq.), or any
24 person who is exempt from registration under section 9 of P.L.1994,
25 c.16 (C.45:17A-26).

26

27 2. Notwithstanding any provision of section 2 of P.L.1993, c.252
28 (C.48:17-28) to the contrary, a person shall not make a telephone call
29 for the purpose of soliciting business delivering a recorded message to
30 a residential telephone subscriber whose name appears in the then
31 current Telephone Preference Service maintained by the Direct
32 Marketing Association, unless the recorded message is introduced by
33 an operator who has obtained the residential telephone subscriber's
34 consent before playing the recorded message, and the call is:

35 a. by or on behalf of a person who has obtained a residential
36 telephone subscriber's prior express invitation or permission;

37 b. by or on behalf of a person with whom a residential telephone
38 subscriber has a current business relationship, as evidenced by a
39 business transaction between the person initiating the communication
40 and the residential telephone subscriber within the previous 90 days;

41 c. by or on behalf of a person with whom a residential telephone
42 subscriber has a prior or current personal relationship; or

43 d. by or on behalf of a person properly registered with the Division
44 of Consumer Affairs pursuant to the "Charitable Registration and
45 Investigation Act," P.L.1994, c.16 (C.45:17A-18 et seq.), or any

1 person who is exempt from registration under section 9 of P.L.1994,
2 c.16 (C.45:17A-26).

3

4 3. a. A person making a telephone call to a residential telephone
5 subscriber for the purpose of soliciting business shall, within the first
6 30 seconds of a telephone call, identify himself by stating his name, the
7 person on whose behalf the solicitation is being made, and the
8 merchandise being sold.

9 b. No person making a telephone call to a residential telephone
10 subscriber for the purpose of soliciting business shall use any method
11 that blocks a caller identification service from displaying caller
12 identification information or otherwise circumvents a residential
13 telephone subscriber's use of a telephone identification service.

14

15 4. a. Any person who violates the provisions of section 1 or 2 of
16 this act shall be liable to a civil penalty of not more than \$7,500 for a
17 first violation and not more than \$15,000 for the second and each
18 subsequent violation. It shall be a defense to a violation of section 1
19 or 2 this act that the defendant has established and implemented, with
20 due care, reasonable practices and procedures to effectively prevent
21 telephone solicitations in violation of this act.

22 b. A person who violates the provisions of section 3 of this act is
23 guilty of a disorderly persons offense.

24

25 5. a. The Superior Court and every municipal court shall have
26 jurisdiction of proceedings for the collection and enforcement of a
27 penalty imposed because of the violation, within the territorial
28 jurisdiction of the court, of any provision of this act. Except as
29 otherwise provided in this act the penalty shall be collected and
30 enforced in a summary proceeding pursuant to "the penalty
31 enforcement law" (N.J.S.2A:58-1 et seq.). Process shall be either in
32 the nature of a summons or warrant and shall issue in the name of the
33 State, upon the complaint of the Attorney General or any other person.

34 In the event that any person found to have violated any provision
35 of this act fails to pay a civil penalty assessed by the court, the court
36 may issue, upon application by the Attorney General, a warrant for the
37 arrest of that person for the purpose of bringing him before the court
38 to satisfy the civil penalty imposed.

39 b. No action or proceeding may be brought under this act more
40 than 90 days after the person bringing the action knew or should have
41 known of the occurrence of the alleged violation.

42

43 6. No provider of telephone caller identification services shall be
44 held liable for a violation of this act committed by another person or
45 entity.

1 7. A court of this State may exercise personal jurisdiction over any
2 nonresident or his executor or administrator, as to a cause of action
3 arising from this act in the same manner as if he were a resident of the
4 State, if in person or through an agent he transacts or solicits any
5 business in this State.

6
7 8. Nothing in this act shall affect any other cause of action,
8 remedy, duty, prohibition or penalty as may be provided by law
9 whenever a person makes a telephone call to a residential telephone
10 subscriber whose name does not appear in the then current Telephone
11 Preference Service maintained by the Direct Marketing Association.

12
13 9. This act shall take effect on the 180th day following enactment.

14

15

16

STATEMENT

17

18 This bill prohibits telephone solicitors from calling any residential
19 telephone subscriber in this State who is registered with the Telephone
20 Preference Service maintained by the Direct Market Association, with
21 certain exceptions.

22 Section 1 of this bill concerns calls from live operators. A call from
23 a live operator for the purpose of soliciting business to a residential
24 telephone subscriber whose name is on the current Telephone
25 Preference Service maintained by the Direct Marketing Association is
26 prohibited unless the call is: by or on behalf of a person who has
27 obtained the subscriber's invitation or permission; by or on behalf of
28 a person who has a current business relationship with the subscriber;
29 by or on behalf of a person who has a prior or current personal
30 relationship with the subscriber; or by or on behalf of a person
31 properly registered with the Division of Consumer Affairs pursuant to
32 the "Charitable Registration and Investigation Act," P.L.1994, c.16
33 (C.45:17A-18 et seq.), or any person who is exempt from registration
34 under that act.

35 Section 2 of this bill concerns calls delivering a pre-recorded
36 message. A call delivering a a pre-recorded message to a residential
37 telephone subscriber whose name is on the current Telephone
38 Preference Service maintained by the Direct Marketing Association is
39 prohibited unless the recorded message is introduced by an operator
40 who has obtained the residential telephone subscriber's consent before
41 playing the recorded message and the call is: by or on behalf of a
42 person who has obtained the subscriber's invitation or permission; by
43 or on behalf of a person who has a current business relationship with
44 the subscriber; by or on behalf of a person who has a prior or current
45 personal relationship with the subscriber; or by or on behalf of a
46 person properly registered with the Division of Consumer Affairs

S153 BAGGER, BUONO

5

1 pursuant to the "Charitable Registration and Investigation Act,"
2 P.L.1994, c.16 (C.45:17A-18 et seq.), or any person who is exempt
3 from that act.

4 Section 3 of the bill prohibits telephone solicitors from using any
5 method that blocks or circumvents a caller identification service from
6 displaying caller identification information. Additionally, the
7 provisions of section 3 of the bill require a telephone solicitor to
8 identify himself by stating his name, the person on whose behalf he is
9 calling, and the merchandise being sold.

10 Any person who violates the provisions of section 1 or 2 of this bill
11 shall be liable to a civil penalty of not more than \$7,500 for a first
12 violation and not more than \$15,000 for the second and each
13 subsequent violation. Any person who violates the provisions of
14 section 3 of this bill is guilty of a disorderly persons offense.

SENATE, No. 197

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator JOHN O. BENNETT

District 12 (Mercer and Monmouth)

Co-Sponsored by:

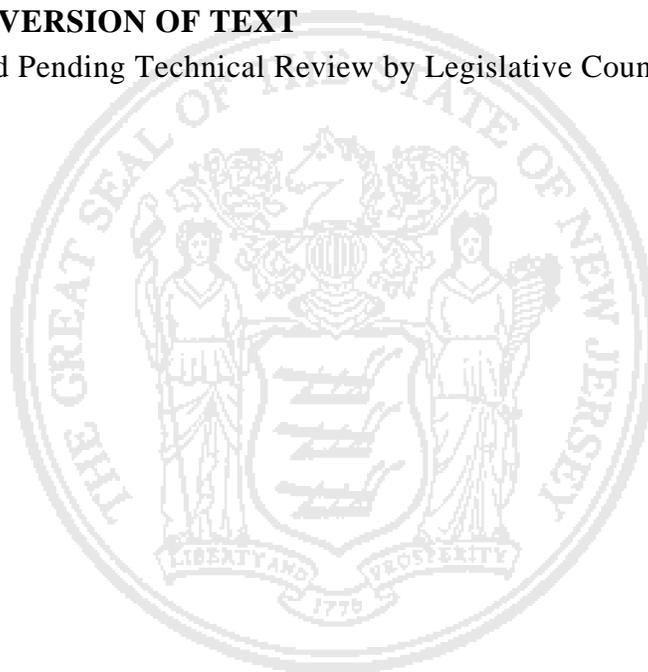
Senators Kyrillos, Bagger, Palaia, B.Smith, Bucco, Cafiero and Matheussen

SYNOPSIS

Prohibits unsolicited telephone sales calls to certain consumers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/21/2002)

1 AN ACT prohibiting unsolicited telephone sales calls to certain
2 consumers, and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. As used in this act:

8 "Caller identification service or device" means any telephone service
9 or device which permits a consumer to see the telephone number of
10 incoming calls.

11 "Consumer" means an individual who is a resident of this State and
12 a prospective recipient of consumer goods and services.

13 "Consumer goods or services" means any article or service that is
14 purchased, leased, exchanged or received primarily for personal, family
15 or household purposes, and includes, but is not limited to, stocks,
16 bonds, mutual funds, annuities and other financial products.

17 "Division" means the Division of Consumer Affairs in the
18 Department of Law and Public Safety.

19 "Doing business in this State" means conducting telephone sales
20 calls from a location in this State, or from a location outside of this
21 State to consumers residing in this State.

22 "Local exchange telephone company" means a telecommunications
23 carrier authorized by the Board of Public Utilities to provide local
24 telecommunications services.

25 "No telephone sales call list" or "list" means a list of consumers
26 who do not desire to receive unsolicited telephone sales calls.

27 "Telephone sales call" means a voice communication over a
28 telephone line to a consumer, including, but not limited to, a call from
29 a live operator to deliver a recorded message in accordance with the
30 provisions of section 2 of P.L.1993, c.252 (C.48:17-28), for the
31 purpose of encouraging the purchase or rental of, or investment in,
32 property, goods or services, that are transmitted to any consumer, for
33 the purpose of soliciting an extension of credit for consumer goods
34 and services, or for the purpose of obtaining information that will or
35 may be used for marketing or sales solicitation or exchange of or
36 extension of credit for consumer goods or services, but does not
37 include a communication: to any consumer who has provided prior
38 express written or verbal invitation or permission; by a tax-exempt
39 nonprofit organization; or to a consumer in response to a visit made
40 by the consumer to an establishment selling, leasing or exchanging
41 consumer goods or services at a fixed location.

42 "Telephone solicitor" means any individual, association,
43 corporation, partnership, limited partnership, limited liability company
44 or other business entity, or a subsidiary or affiliate thereof, doing
45 business in this State that makes or causes to be made a telephone
46 sales call.

1 "Unsolicited telephone sales call" means any telephone sales call
2 other than a call made: in response to an express written or verbal
3 request of the consumer called; primarily in connection with an
4 existing debt or contract, payment or performance which has not been
5 completed at the time of the call; or to an existing customer, unless the
6 customer has stated to the telephone solicitor that the customer no
7 longer wishes to receive the telephone sales calls of the telephone
8 solicitor.

9
10 2. The division shall establish and maintain a no telephone sales call
11 list. The division may contract with a private vendor to establish and
12 maintain the no telephone sales call list, provided the private vendor
13 has maintained a no telephone sales call list for another state for more
14 than two years, and the contract requires the vendor to provide the list
15 in a printed hard copy format, and in any other format, at a cost that
16 does not exceed the production cost of the format offered.

17 The division shall provide notice to consumers of the establishment
18 of a no telephone sales call list. A consumer who desires to be
19 included on the list shall notify the division by calling a toll-free
20 number provided by the division, or in any other manner and at such
21 times as the division may prescribe. A consumer on the list shall be
22 deleted from the list upon the consumer's written request. The
23 division shall update the list not less than quarterly and shall make the
24 list available to telephone solicitors and other persons upon request.

25
26 3. A telephone solicitor shall not make or cause to be made an
27 unsolicited telephone sales call to a consumer:

28 a. if the consumer's name appears on the most recent quarterly no
29 telephone sales call list made available by the division pursuant to
30 section 2 of this act, unless: (1) the unsolicited telephone sales call
31 was made by a telephone solicitor that first began doing business in
32 this State on or after January 1, 2000; (2) a period of less than one
33 year has passed since the telephone solicitor first began doing business
34 in this State; and (3) the consumer to whom the unsolicited telephone
35 sales call was made had not on a previous occasion stated to the
36 telephone solicitor that the consumer no longer desires to receive
37 telephone sales calls from the telephone solicitor;

38 b. between the hours of 9:00 p.m. and 9:00 a.m., local time, at the
39 consumer's location; or

40 c. in the form of electronically transmitted facsimiles.

41
42 4. No telephone solicitor shall intentionally cause to be installed or
43 shall intentionally use any blocking device or service to circumvent a
44 consumer's use of a caller identification service or device.

1 5. a. A person who obtains the name, residential address or
2 telephone number of a consumer from a published telephone directory
3 or from any other source and republishes or compiles the names and
4 residential addresses, electronically or otherwise, and sells or offers to
5 sell the publication or compilation to telephone solicitors for
6 marketing or sales solicitation purposes, shall exclude from any such
7 publication or compilation, and from the database used to prepare the
8 publication or compilation, the name, address and telephone number
9 or numbers of a consumer who's name appears in the then current
10 quarterly no telephone sales call list made available by the division
11 pursuant to section 2 of this act.

12 b. This section shall not apply to a local exchange telephone
13 company that obtains the name, residential address or telephone
14 number of a consumer for the sole purpose of compiling, publishing or
15 distributing telephone directories or causing the compilation,
16 publication or distribution of telephone directories or providing
17 directory assistance. This section shall not apply to a person who
18 obtains the name, residential address or telephone number of a
19 consumer for the sole purpose of compiling, publishing or distributing
20 telephone directories for a local exchange telephone company pursuant
21 to an agreement or other arrangement with the local exchange
22 telephone company.

23

24 6. The division, pursuant to the provisions of the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall
26 promulgate rules and regulations necessary to implement this act,
27 which shall include, but not be limited to:

28 a. provisions governing the availability and distribution of the list
29 established pursuant to section 2 of this act;

30 b. notice requirements for consumers wishing to be included on the
31 list established pursuant to section 2 of this act; and

32 c. any other matters relating to the list established pursuant to
33 section 2 of this act that the division deems necessary.

34

35 7. A violation of any provision of this act shall be an unlawful
36 practice, except that a telephone solicitor shall not be liable under this
37 act for a call made in violation of subsection a. of section 3 of this act
38 if the telephone solicitor demonstrates that:

39 a. the telephone solicitor established and implemented written
40 procedures and trained its employees to follow such procedures to
41 comply with subsection a. of section 3 of this act;

42 b. the telephone solicitor deleted from its list any listing of a
43 consumer on the most recent quarterly no telephone sales list
44 established pursuant to section 2 of this act; and

45 c. the call was made inadvertently.

1 8. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill requires the Division of Consumer Affairs in the
7 Department of Law and Public Safety to establish a no telephone sales
8 call list. This list shall contain the names of consumers in this State
9 who do not desire to receive unsolicited telephone sales calls. The
10 division may contract with a private vendor to establish and maintain
11 the list, provided that the private vendor has maintained a no telephone
12 sales call list for another state for more than two years, and the
13 contract requires the vendor to provide the list in a printed hard copy
14 format, and in any other format, at a cost that does not exceed the
15 production cost of the format offered.

16 The bill prohibits unsolicited telephone sales calls to consumers
17 whose names appear on the no telephone sales call list, unless: (1) the
18 call was made by a telephone solicitor that first began doing business
19 in this State on or after January 1, 2000; (2) a period of less than one
20 year has passed since the telephone solicitor first began doing business
21 in this State; and (3) the consumer to whom the unsolicited telephone
22 sales call was made had not on a previous occasion stated to the
23 telephone solicitor that the consumer no longer desires to receive
24 telephone sales calls from the telephone solicitor. The bill also
25 prohibits unsolicited telephone sales calls to consumers between the
26 hours of 9:00 p.m. and 9:00 a.m. or in the form of electronically
27 transmitted facsimiles.

28 The bill prohibits a telephone solicitor from intentionally causing to
29 be installed or intentionally using any blocking device or service to
30 circumvent a consumer's use of a caller identification service or device.

31 The bill requires that a person who obtains the names of consumers,
32 to compile and publish those names for sale to telephone solicitors for
33 marketing or sales purposes, must exclude the names, addresses and
34 telephone numbers of the consumers whose names appear in the no
35 telephone sales calls list.

36 A violation of the provisions of the bill is deemed an unlawful
37 practice. Anyone who commits an unlawful practice by violating a
38 provision of this bill shall be subject to consumer fraud act penalties
39 of not more than \$7,500 for a first offense and not more than \$15,000
40 for each subsequent offense. As a supplement to the consumer fraud
41 act, the bill makes use of the existing civil suit and enforcement
42 provisions of that act to deter unlawful practices.

SENATE, No. 445

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Mercer)

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

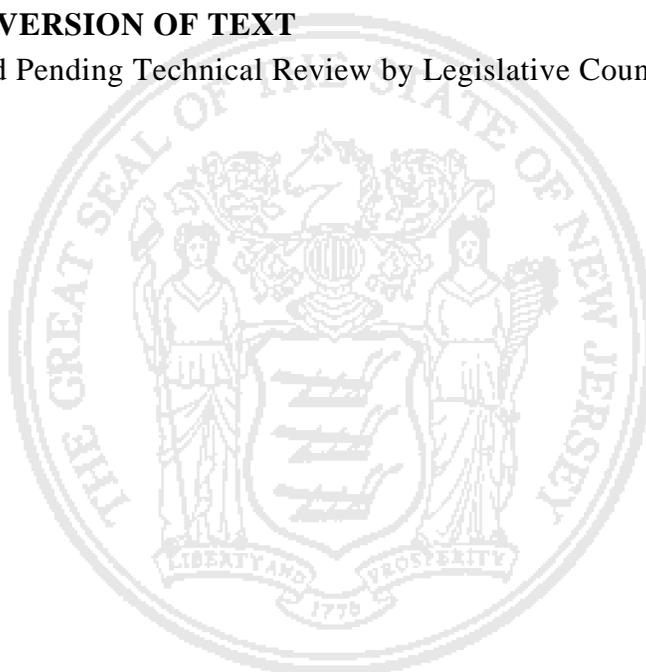
**Senators Buono, Bennett, Adler, Coniglio, Palaia, Sweeney, Gill, Bucco,
B.Smith, Matheussen, Furnari and Singer**

SYNOPSIS

Prohibits unsolicited telemarketing sales calls to certain customers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/27/2002)

1 AN ACT prohibiting unsolicited telemarketing sales calls to certain
2 customers, and supplementing chapter 17B of Title 52 of the
3 Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. As used in this act:

9 "Customer" means an individual who is a resident of this State and
10 and a prospective recipient of consumer goods and services offered
11 through telemarketing.

12 "Division" means the Division of Consumer Affairs in the
13 Department of Law and Public Safety.

14 "Doing business in this State" means conducting telephone sales
15 calls: from a location in this State; or from a location outside of this
16 State to customers residing in this State.

17 "Goods and services" means any goods and services and shall
18 include, but not be limited to, any real property, any tangible personal
19 property, or services of any kind.

20 "Local exchange telephone company" means a telecommunications
21 carrier authorized by the Board of Public Utilities to provide local
22 telecommunications services.

23 "No telemarketing call list" or "no call list" means a list of
24 customers in this State who do not desire to receive unsolicited sales
25 calls.

26 "Telemarketer" means any person who, for financial profit or
27 commercial purposes in connection with telemarketing, makes
28 telemarketing sales calls to a customer when the customer is in this
29 State or any person who directly controls or supervises the conduct of
30 a telemarketer. For the purposes of this section, "commercial
31 purposes" means the sale or offer for sale of goods or services.

32 "Telemarketing" means any plan, program or campaign which is
33 conducted to induce payment, or the exchange of any other
34 consideration, for any goods or services by use of one or more
35 telephones and which involves more than one telephone call by a
36 telemarketer in which the customer is located within the State at the
37 time of the call, but does not include the solicitation of sales through
38 media other than a telephone call.

39 "Telemarketing sales call" means a telephone call made by a
40 telemarketer to a customer for the purpose of inducing payment or the
41 exchange of any other consideration for any goods or services.

42 "Unsolicited telemarketing sales call" means any telemarketing sales
43 call other than a call made:

44 a. in response to an express written or verbal request of the
45 customer called;

46 b. in connection with an established business relationship, which has

1 not been terminated by either party;

2 c. to an existing customer, unless the customer has stated to the
3 telemarketer that the customer no longer desires to receive the
4 telemarketing sales calls of the telemarketer; or

5 d. in which the sale of goods and services is not completed, and
6 payment or authorization of payment is not required until after a sales
7 presentation made in person by the telemarketer or a meeting between
8 the telemarketer and the customer.

9

10 2. The division shall establish and maintain a no telemarketing call
11 list. The division may contract with a private vendor to establish and
12 maintain the no call list, provided the private vendor has maintained a
13 no call list for another state for more than two years and the contract
14 requires the vendor to provide the list in a printed hard copy format,
15 and in any other format, as prescribed by the division.

16

17 3. No telemarketer may make or cause to be made any unsolicited
18 telemarketing sales call to any customer more than 30 days after the
19 customer's name and telephone number appear on the then current
20 quarterly no telemarketing call list established pursuant to section 2 of
21 this act.

22

23 4. a. A customer who desires to be included on the no
24 telemarketing call list shall notify the division by calling a toll-free
25 number provided by the division, or in any other manner and at a time
26 prescribed by the division. A customer who is included on the no call
27 list shall be removed from the no call list upon the customer's written
28 request. The division shall update the no call list not less than
29 quarterly and shall make the no call list available to telemarketers for
30 a fee as the division shall prescribe.

31

32 b. A local exchange telephone company shall include, in every
33 telephone directory published after the effective date of this act, notice
34 concerning the provisions of this act as those provisions relate to the
35 rights of customers with respect to telemarketers and the no
36 telemarketing call list. A local exchange telephone company shall also
37 enclose, at least annually, in every telephone bill, a notice concerning
38 the provisions of this act as those provisions relate to the rights of
39 customers with respect to telemarketers and the no telemarketing call
40 list.

40

41 5. a. After a person has been afforded an opportunity for a hearing
42 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
43 (C.52:14B-1 et seq.) and the division determines that the person has
44 violated one or more provisions of this act, that person shall be liable
45 to a civil administrative penalty not to exceed \$2,000 for each
46 violation.

1 state for more than two years and the contract requires the vendor to
2 provide the list in a printed hard copy format, and in any other format
3 as prescribed by the division.

4 The bill prohibits unsolicited telemarketing sales calls to any
5 customer more than 30 days after the customer's name and telephone
6 number appear on the then current quarterly no telemarketing call list.

7 The bill requires local exchange telephone companies to include in
8 every telephone directory, notice concerning the provisions of the bill,
9 as those provisions relate to the rights of customers with respect to
10 telemarketers and the no telemarketing call list. Local exchange
11 telephone companies are also required to enclose, at least annually, in
12 every telephone bill, a notice concerning the provisions of this act as
13 those provisions relate to the rights of customers with respect to
14 telemarketers and the no telemarketing call list.

15 A telemarketer who violates one or more of the provisions of this
16 bill is liable for a civil administrative penalty not to exceed \$2,000 for
17 each violation.

18 The bill establishes a special dedicated, non-lapsing fund to be
19 known as the "Consumer Protection Fund." All fees and penalties
20 collected pursuant to this bill are to be deposited into the "Consumer
21 Protection Fund." This money is to be used by the Division of
22 Consumer Affairs for the payment of costs of producing and
23 distributing educational materials and conducting educational activities
24 relating to the promotion of the no telemarketing call list and all
25 related costs and expenditures incurred in the administration of the
26 bill.

SENATE, No. 1873

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2002

Sponsored by:
Senator BYRON M. BAER
District 37 (Bergen)

SYNOPSIS

Prohibits unsolicited telemarketing sales calls to certain landline and wireless telephone customers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT prohibiting unsolicited telemarketing sales calls to certain
2 customers, and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6

7 1. As used in this act:

8 "Commercial mobile service" means a type of mobile
9 telecommunications service as defined in section 332(d) of the
10 Communications Act of 1934 (47 U.S.C. s.332(d)).

11 "Commercial mobile service device" or "device" means any
12 equipment used for the purpose of providing commercial mobile
13 service.

14 "Customer" means an individual who is a resident of this State and
15 a prospective recipient of a telemarketing sales call.

16 "Director" means the Director of the Division of Consumer Affairs
17 in the Department of Law and Public Safety.

18 "Division" means the Division of Consumer Affairs in the
19 Department of Law and Public Safety.

20 "Merchandise" means merchandise as defined in subsection (c) of
21 section 1 of P.L.1960, c.39 (C.56:8-1).

22 "Local exchange telephone company" means a telecommunications
23 carrier authorized by the Board of Public Utilities to provide local
24 telecommunications services.

25 "No telemarketing call list" or "no call list" means a list of
26 customers in this State who desire not to receive unsolicited sales
27 calls.

28 "Telemarketer" means any person who makes telemarketing sales
29 calls to a customer or any person who directly controls or supervises
30 the conduct of a telemarketer.

31 "Telemarketing" means any plan, program or campaign which is
32 conducted by telephone to encourage the purchase or rental of, or
33 investment in, merchandise, but does not include the solicitation of
34 sales through media other than a telephone call.

35 "Telemarketing sales call" means a voice communication via a
36 telephone line to a customer or a voice communication or transmission
37 of text, graphics or images to a commercial mobile service device of
38 a customer made by a telemarketer to encourage the purchase or rental
39 of, or investment in, merchandise.

40 "Unsolicited telemarketing sales call" means any telemarketing sales
41 call other than a call made:

42 a. in response to an express written or verbal request of the
43 customer called;

44 b. in connection with an established business relationship, which
45 has not been terminated by either party;

1 c. to an existing customer, unless the customer has stated to the
2 telemarketer that the customer no longer desires to receive the
3 telemarketing sales calls of the telemarketer; or

4 d. in which the purchase or rental of, or investment in, merchandise
5 is not completed, and payment or authorization of payment is not
6 required until after a sales presentation made in person by the
7 telemarketer or a meeting between the telemarketer and the customer.
8

9 2. a. A person shall not make or cause to be made, or attempt to
10 make or cause to be made, a telemarketing sales call to a customer in
11 the State of New Jersey unless that person is registered with or
12 employed by a person who is registered with the Division of Consumer
13 Affairs in the Department of Law and Public Safety in accordance with
14 the provisions of this act.

15 b. Every telemarketer, including telemarketers whose residence or
16 principal place of business is located outside of the State, shall
17 annually register with the director. Application for registration shall
18 be on a form provided by the director and shall include the name and
19 address of the applicant and any other information which the director
20 shall prescribe by rule. The application shall be accompanied by a
21 reasonable fee, set by the director in an amount sufficient to defray the
22 division's expense incurred in administering and enforcing this act.
23

24 3. In addition to any other procedure, condition or information
25 required by this act:

26 a. Every applicant for registration shall file a disclosure statement
27 with the director stating whether the applicant has been convicted of
28 any crime, which for the purposes of this act shall mean a violation of
29 any of the following provisions of the "New Jersey Code of Criminal
30 Justice," Title 2C of the New Jersey Statutes, or the equivalent under
31 the laws of any other jurisdiction:

32 (1) Any crime of the first degree

33 (2) Any crime which is a second or third degree crime and is a
34 violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes;
35 or

36 (3) Any other crime which is a violation of N.J.S.2C:5-1,
37 N.J.S.2C:5-2, N.J.S.2C:12-3, N.J.S.2C:15-1, N.J.S.2C:18-2,
38 N.J.S.2C:20-4, N.J.S.2C:20-5, N.J.S.2C:20-7, N.J.S.2C:20-9,
39 N.J.S.2C:21-1, N.J.S.2C:21-2, N.J.S.2C:21-2.1, N.J.S.2C:21-2.3,
40 N.J.S.2C:21-3, N.J.S.2C:21-4, N.J.S.2C:21-5, N.J.S.2C:21-6,
41 N.J.S.2C:21-7, N.J.S.2C:21-9 through N.J.S.2C:21-17, N.J.S.2C:21-
42 19, or N.J.S.2C:21-25, chapter 27 or 28 of Title 2C of the New Jersey
43 Statutes, N.J.S.2C:30-2, or N.J.S.2C:30-3.

44 b. Each disclosure statement may be reviewed and used by the
45 director as grounds for denying, suspending or revoking registration,
46 except that in cases in which the provisions of P.L.1968, c.282

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1 (C.2A:168A-1 et seq.) apply, the director shall comply with the
2 requirements of that act.

3 c. An applicant whose registration is denied, suspended or revoked
4 pursuant to this section shall, upon a written request transmitted to the
5 director within 30 calendar days of that action, be afforded an
6 opportunity for a hearing in a manner provided for contested cases
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.).

9 d. An applicant shall have the continuing duty to provide any
10 assistance or information requested by the director, and to cooperate
11 in any inquiry, investigation or hearing conducted by the director.

12 e. If any of the information required to be included in the
13 disclosure statement changes, or if additional information should be
14 added after the filing of the statement, the applicant shall provide that
15 information to the director, in writing, within 30 calendar days of the
16 change or addition.

17

18 4. a. The director may refuse to issue or renew, and may revoke,
19 any registration for failure to comply with, or violation of, the
20 provisions of this act or for any other good cause shown within the
21 meaning and purpose of this act. A refusal or revocation shall not be
22 made except upon reasonable notice to, and opportunity to be heard
23 by, the applicant or registrant.

24 b. The director, in lieu of revoking a registration, may suspend the
25 registration for a reasonable period of time, or assess a penalty in lieu
26 of suspension, or both, and may issue a new registration,
27 notwithstanding the revocation of a prior registration, if the applicant
28 is found to have become entitled to the new registration.

29

30 5. All registrants shall prominently display their registration
31 numbers within their places of business, and in all advertisements,
32 business documents and correspondence.

33

34 6. a. Any registration number issued by the director shall remain
35 the property of the State and shall be immediately returned to the
36 director upon its suspension, non-renewal or revocation pursuant to
37 this act.

38 b. The issuance of a registration to an applicant who is a
39 nonresident of this State shall be deemed to be the applicant's
40 irrevocable consent that service of process in any action or proceeding
41 may be made upon the applicant by service upon the director.

42

43 7. Any material change in any information filed with the director
44 pursuant to this act shall be reported in writing to the director within
45 30 business days of the change.

1 8. a. Any person required to be registered pursuant to this act shall
2 maintain a bond issued by a surety authorized to transact business in
3 this State. The principal sum of the bond shall not be less than
4 \$25,000, which amount the director may adjust by regulation. The
5 bond shall be filed or deposited with the director for the use of any
6 person who is damaged or suffers any loss for any violation of this act.
7 Any person claiming against the bond may maintain an action at law
8 against the surety or director, as the case may be. The aggregate
9 liability of the surety or director to all persons for all breaches of the
10 conditions of the bond held by the director shall not exceed the
11 amount of the bond held by the director.

12 b. Any person required to be registered pursuant to this act shall
13 file a copy of the bond with the director and a certificate by the surety
14 that the surety will notify the director at least 10 days in advance of
15 the date of any cancellation or material change in the bond.

16

17 9. The division shall establish and maintain a no telemarketing call
18 list. The division may contract with a private vendor to establish and
19 maintain the no call list, provided the private vendor has proper
20 qualifications and experience as determined by the division, and the
21 contract requires the vendor to provide the list in a printed hard copy
22 format, and in any other format, as prescribed by the division.

23

24 10. a. A telemarketer shall not make or cause to be made any
25 unsolicited telemarketing sales call to any customer more than 45 days
26 after the customer's telephone number appears on the no telemarketing
27 call list established pursuant to section 9 of this act.

28 b. A telemarketer making a telemarketing sales call shall, within the
29 first 30 seconds of the call, identify the telemarketer's name, the
30 person on whose behalf the call is being made, and the purpose of the
31 call.

32 c. A telemarketer shall not make or cause to be made any
33 unsolicited telemarketing sales call to any customer between the hours
34 of 9 p.m. and 8 a.m. local time, at the customer's location.

35 d. A telemarketer shall not use any method that blocks a caller
36 identification service from displaying caller identification information
37 or otherwise circumvents a customer's use of a telephone caller
38 identification service.

39

40 11. a. A customer who desires to be included on the no
41 telemarketing call list shall notify the division by calling a toll-free
42 number provided by the division, or in any other manner and at a time
43 prescribed by the division. A customer who is included on the no call
44 list shall be removed from the no call list upon the customer's written
45 request. The division shall update the no call list not less than
46 quarterly and shall make the no call list available to telemarketers for

1 a fee as the division shall prescribe.

2 b. A local exchange telephone company shall include, in every
3 telephone directory published after the effective date of this act, notice
4 concerning the provisions of this act as those provisions relate to the
5 rights of customers with respect to telemarketers and the no
6 telemarketing call list. A local exchange telephone company shall also
7 enclose, at least semiannually, in every telephone bill, a notice
8 concerning the provisions of this act as those provisions relate to the
9 rights of customers with respect to telemarketers and the no
10 telemarketing call list.

11

12 12. Nothing in this act shall be construed to restrict any right which
13 a person may have under any other statute or at common law.

14

15 13. A violation of any provision of this act shall be an unlawful
16 practice subject to the penalties applicable pursuant to P.L.1966 c.39
17 (C.56:8-13) and section 2 of P.L.1999 c.129 (C.56:8-14.3), except
18 that a person may not be held liable for violating this act if:

19 a. the person has obtained a copy of, and updated quarterly, the
20 no call list and has established and implemented written policies and
21 procedures related to the requirements of this section;

22 b. the person has trained telemarketers in the person's employ in
23 the requirements of this act;

24 c. the person maintains records demonstrating compliance with
25 subsections a. and b. of this section and the requirements of this act;

26 and

27 d. any subsequent unsolicited telemarketing sales call is an isolated
28 call made no more than one time in a 12-month period and was the
29 result of error.

30

31 14. There is hereby established in the General Fund a special
32 dedicated, non-lapsing fund to be known as the "Consumer Protection
33 Fund," which shall be administered by the State Treasurer. The State
34 Treasurer shall deposit into the "Consumer Protection Fund" all fees
35 and penalties collected pursuant to this act.

36 The Legislature shall annually appropriate from the fund monies to
37 the division for the payment of costs of producing and distributing
38 educational materials and conducting educational activities relating to
39 the promotion of the no telemarketing call list and all related costs and
40 expenditures incurred in the administration of this act.

41

42 15. The division, pursuant to the provisions of the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall
44 promulgate rules and regulations necessary to implement this act,
45 which shall include, but not be limited to:

46 a. provisions governing the availability and distribution of the no

1 call list established in section 9 of this act; and
2 b. any other matters relating to the no call list established in section
3 9 of this act that the division deems necessary.

4
5 16. This act shall take effect immediately but shall remain
6 inoperative until the Director of the Division of Consumer Affairs in
7 the Department of Law and Public Safety certifies to the Attorney
8 General that the division is prepared to establish and maintain a no
9 telemarketing call list, but such operative date shall be no later than
10 the 365th day following enactment, except that the division may take
11 such anticipatory action as shall be necessary to implement the
12 provisions of the act in advance of the operative date.

13
14
15 STATEMENT

16
17 This bill requires the Division of Consumer Affairs in the
18 Department of Law and Public Safety ("division") to establish a no
19 telemarketing call list. This list shall contain the names of customers
20 in this State who do not desire to receive unsolicited sales calls. The
21 division may contract with a private vendor to establish and maintain
22 the no call list, provided the private vendor has proper qualifications
23 and experience as determined by the division and the contract requires
24 the vendor to provide the list in a printed hard copy format, and in any
25 other format as prescribed by the division.

26 The bill prohibits unsolicited telemarketing sales calls to any
27 customer more than 45 days after the customer's name and telephone
28 number appear on the no telemarketing call list. A telemarketing sales
29 call includes a voice communication via a telephone line to a customer
30 or a voice communication or transmission of text, graphics or images
31 to a commercial mobile service device of a customer made by a
32 telemarketer to encourage the purchase or rental of, or investment in,
33 merchandise.

34 The bill requires a telemarketer making a telemarketing sales call
35 to, within the first 30 seconds of the call, identify himself by stating his
36 name, the person on whose behalf the call is being made, and the
37 purpose of the call. A telemarketer shall not make or cause to be
38 made any unsolicited telemarketing sales call to any customer between
39 the hours of 9 p.m. and 8 a.m. local time, at the customer's location.
40 A telemarketer shall not use any method that blocks a caller
41 identification service from displaying caller identification information
42 or otherwise circumvents a customer's use of a telephone caller
43 identification service.

44 The bill requires local exchange telephone companies to include in
45 every telephone directory, notice concerning the provisions of the bill,
46 as those provisions relate to the rights of customers with respect to

1 telemarketers and the no telemarketing call list. Local exchange
2 telephone companies are also required to enclose, at least
3 semiannually, in every telephone bill, a notice concerning the
4 provisions of the bill as those provisions relate to the rights of
5 customers with respect to telemarketers and the no telemarketing call
6 list.

7 The bill establishes a special dedicated, non-lapsing fund to be
8 known as the "Consumer Protection Fund." All fees and penalties
9 collected pursuant to this bill are to be deposited into the "Consumer
10 Protection Fund." This money is to be used by the division for the
11 payment of costs of producing and distributing educational materials
12 and conducting educational activities relating to the promotion of the
13 no telemarketing call list and all related costs and expenditures
14 incurred in the administration of the bill.

15 The bill requires a telemarketer who makes telemarketing calls to
16 customers in New Jersey to annually register with the director of the
17 division and pay a reasonable fee to defray the division's expense
18 incurred in administering the bill. As part of the registration, a
19 disclosure statement must be filed concerning the conviction for
20 certain crimes. There is a continuing duty to provide information
21 requested by the director and to update information. The disclosure
22 statement may be used by the director as grounds for denying,
23 suspending or revoking registration. If registration is denied,
24 suspended or revoked, an opportunity shall be provided for a hearing
25 in a manner provided by the "Administrative Procedure Act."

26 The bill provides time for the division to take the necessary steps
27 to prepare for the establishment of the no telemarketing call list and
28 others steps to implement the bill by amending the effective date to
29 provide that the bill is inoperative until the 365th day after enactment
30 and that during that time the division may take anticipatory action as
31 shall be necessary to implement the bill.

SENATE, No. 1881

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 26, 2002

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

SYNOPSIS

Prohibits unsolicited telemarketing sales communications to certain wireless telephones and pagers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT prohibiting unsolicited telemarketing sales calls to certain
2 customers, and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6

7 1. The provisions of P.L. , c. (C.) (now before the
8 Legislature as the Senate Committee Substitute for Senate, Nos. 153,
9 197 and 445 of 2002 or Assembly, No. 727 (2R) of 2002) shall apply
10 to an unsolicited telemarketing sales call made to a commercial mobile
11 service device or pager of a customer.

12 As used in this section, "commercial mobile service device" means
13 any equipment used for the purpose of providing commercial mobile
14 service as that term is defined in section 332(d) of the
15 Communications Act of 1934 (47 U.S.C. s.332(d)).
16

17 2. This act shall take effect on the effective date upon the
18 enactment into law of P.L. , c. (C.) (now before the
19 Legislature as the Senate Committee Substitute for Senate, Nos. 153,
20 197 and 445 of 2002 or Assembly, No. 727 (2R) of 2002).
21

22
23 STATEMENT
24

25 This bill requires that the provisions of P.L. , c. (C.)
26 (now before the Legislature as the Senate Committee Substitute for
27 Senate, Nos. 153, 197 and 445 of 2002 or Assembly, No. 727 (2R) of
28 2002) which prohibit unsolicited telemarketing sales calls to customers
29 who are residents of New Jersey and whose names appear on the no
30 telemarketing call list shall also apply to unsolicited telemarketing
31 sales calls made to wireless telephones or pagers of such customers.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE Nos. 153, 197, 445, 1873 and 1881**

STATE OF NEW JERSEY

DATED: SEPTEMBER 26, 2002

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 153, 197, 445, 1873 and 1881.

This bill, a Senate Committee Substitute for Senate Bill Nos. 153, 197, 445, 1873 and 1881, supplements the consumer fraud act; provides for the registration of telemarketers who make unsolicited telemarketing sales calls with the Division of Consumer Affairs for a graduated annual fee; requires registrants to disclose any crimes they were convicted of; and requires the division to establish a no telemarketing call list. This no call list shall contain the telephone numbers of customers in this State who do not desire to receive unsolicited telemarketing sales calls. A customer who desires to be included on the no call list may be included on the list by calling a toll-free number provided by the division. A customer may be removed from the list upon the customer's written request. The division may contract with a private vendor to establish and maintain the no call list, provided the private vendor meets standards established by the division by regulation for financial soundness, the capacity to perform the service required, a record of past performance, and prohibiting conflicts of interest and requiring arms-length transactions, and the contract requires the vendor to provide the list in a printed hard copy format, and in any other format as prescribed by the division. The director of the division may refuse to issue or renew and may revoke any registration for violating the provisions of this bill.

The bill prohibits unsolicited telemarketing sales calls to any customer more than 45 days after the customer's telephone number appears on the no call list. A telemarketer is prohibited from making unsolicited telemarketing sales calls between the hours of 9 p.m. and 8 a.m. local time, at the customer's location, and requires a telemarketer to identify himself, within the first 30 seconds, by stating his name, the person on whose behalf he is calling, and the merchandise being sold. A telemarketer is prohibited from intentionally using any method that blocks or circumvents a caller identification service from displaying caller identification information.

Telemarketing includes the sale of merchandise (as defined in the consumer fraud act), including the extension of credit. Telemarketers in and outside the State are covered under the bill.

An unsolicited telemarketing sales call does not include a call made

in response to an express written or verbal request of the customer called; to a person with whom the caller has an existing business relationship (which is a prior or existing relationship formed by a voluntary two-way communication between a person and a customer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction initiated by the customer regarding merchandise offered by that person within the preceding four years, which relationship has not been previously terminated by either party); or to an existing customer unless the customer has indicated a desire not to receive such calls.

The bill requires local exchange telephone companies to include in every telephone directory notice concerning the provisions of the bill, as those provisions relate to the rights of customers with respect to telemarketers and the no call list, and to enclose, at least semiannually, in every telephone bill, a notice concerning the provisions of this bill as those provisions relate to the rights of customers with respect to telemarketers and the no call list.

The bill prohibits telemarketing sales calls to some or all cell phones of customers when the cell phone numbers can be identified as such.

A telemarketer who violates one or more of the provisions of this bill is liable under the consumer fraud act for a civil penalty of not more than \$10,000 for a first violation and not more than \$20,000 for each subsequent violation. However, a telemarketer is not subject to this penalty if he obtained a copy of, and updated quarterly, the no call list; established and implemented written policies and procedures related to the requirements of this bill; trained telemarketers in his employ in the requirements of this bill; maintains records demonstrating compliance with the provisions of this bill; and any subsequent unsolicited telemarketing sales call was the result of error, which was not the result of a pattern and practice of errors.

The bill establishes a special dedicated, non-lapsing fund to be known as the "Consumer Protection Fund." All fees and penalties collected pursuant to this bill are to be deposited into the "Consumer Protection Fund." The Legislature shall annually appropriate from the fund monies to the division for the payment of costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the no call list and all related costs and expenditures incurred in the administration of the bill.

The bill provides that information submitted to the division by customers pursuant to the provisions of this bill are not public records.

The provisions of the bill are effective immediately but remain inoperative until the division certifies it is prepared to establish and maintain a no call list, but the operative date shall be no later than the 365th day following enactment.

This bill is identical to A727 (1R) with committee amendments.

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RELEASE: May 21, 2003

[Previous Screen](#)**McGreevey Signs Legislation Regulating Telemarketers*****New Jersey's "Do Not Call" List Will be the Strongest in the Nation***

(HAMILTON) – Governor James E. McGreevey today signed legislation that protects New Jersey's families and safeguards their privacy by aggressively regulating telemarketers with the strongest "Do Not Call" list in the nation.

"Telemarketing calls interrupt our lives and deprive us of valuable time with our families and loved ones," said Governor McGreevey. "More and more often, telemarketers are leaving hang-ups on answering machines and sparking dinner-hour outrage among people fed up with unwanted calls. At the end of a long day, hard-working New Jerseyans shouldn't have to compete with telemarketers at the dinner table. People shouldn't have to cringe every time the phone rings, thinking it might be yet another annoying call from a telemarketer."

As telemarketing has become big business with powerful corporate backing, it has also grown increasingly aggressive and intrusive. Techniques - such as "call pacing" and "pre-calling" - force consumers to deal with telephone solicitations, as well as hang-ups, computerized "filters" and other inconveniences.

For some – especially senior citizens – telemarketing can be a prelude to fraud. Each year, Americans are scammed out of nearly \$40 billion by criminals posing as telemarketers.

"New Jerseyans will now be able to simply 'hang up' on telemarketers by

registering on an 800 number,” said Governor McGreevey. “Our ‘Do Not Call’ list will be the strongest in the nation. I am proud to say that we are once again leading the country when it comes to protecting consumers and hard-working families.”

“State action is needed because federal legislation is simply lacking,” said Governor McGreevey. “The recent Federal Trade Commission’s telemarketing rule is filled with loopholes.” The FTC does not apply to calls originated within New Jersey. It fails to cover entire industries, including airlines, banks, credit unions and long distance telephone companies. Under the federal rule, someone who merely fills out an application or makes an inquiry to a company would not be protected by the “Do Not Call” list.

“Today, Governor McGreevey signs the nation’s best ‘Do Not-Call’ list legislation into law,” said Dorothy Dowling AARP New Jersey Consumer Protection Taskforce Coordinator. “AARP New Jersey thanks Governor McGreevey, the New Jersey State Legislature and all of our volunteers who worked so hard to achieve this new law, which will restore our privacy by ending the endless telemarketing calls that interrupt our lives.”

Violators are subject to a \$10,000 fine for a first violation and \$20,000 for each subsequent violation. The Division of Consumer Affairs has the authority to enforce the law against both telemarketers in and outside the state. While companies can call their existing customers or people from whom they have express written permission, telemarketers are prohibited from calling if the individual indicates a desire not to receive such calls. The creation of the list will be financed through registration fees - including the cost of obtaining the “Do Not Call” list - and penalties.

In addition to establishing New Jersey’s “Do Not Call” list, the bill also contains many other consumer protections. Telemarketers making unsolicited sales calls will have to register with the Division of Consumer Affairs. They are required to identify themselves and the company they are calling on behalf of within the first 30 seconds and are prohibited from making unsolicited calls between the hours of 9 p.m. and 8 a.m. Telemarketers are also prohibited from intentionally using any method that blocks or circumvents a caller identification service.

"Today is a great day for New Jersey consumers, seniors and residents seeking an end to the barrage of telemarketing calls placed to their home at all hours of the day and night," said Assemblywoman Linda Greenstein, (D-Middlesex). "Our state's 'no-call' registry will set a new standard for what states can do to prevent annoying and potentially fraudulent telemarketing calls. Once the list is up and

running, New Jersey residents will see relief from overbearing telemarketers pitching window replacements, kitchen cabinets and extravagant credit card services. These intrusive, annoying calls, will be brought under control.”

“By placing your name on the 'no call' list, New Jerseyans will effectively hang up the receiver on telemarketers," said Assemblyman Jeff Van Drew, (D-Cape May). "Whether you live in north, south or central New Jersey, residents will now have an opportunity to 'just say no' to telemarketers and control the calls coming into their home. These calls are an absolute aggravation, the telecommunications equivalent of a root canal. This is a victory for consumers, seniors and every resident who has had to endure the indignity of having a meal or quality family time interrupted by an aggressive and inconsiderate telemarketer."

"Finally, New Jersey families will get a little peace and quiet at the dinner table," said Senator Shirley K. Turner, (D-Mercer). "The 'New Jersey Do Not Call' List is the long-awaited end to intrusive unwanted sales calls."

"This bill goes far beyond simply ending annoying interruptions during the dinner hour. It sets up a toll-free hotline that allows residents to join the 'no-call' list quickly and without hassle," said Senator Barbara Buono, (D-Middlesex). "Equally as important, it sets up heavy penalties for companies that do not follow the law."

"Telemarketers, please listen closely: 'Click,'" said Democratic Senate President Richard J. Codey, (D-Essex). "That is the sound of the adoption of the New Jersey 'Do Not Call' list. We have your number, and we've decided that it's time to hang up on telemarketing once and for all in New Jersey."

"The crafting of this bill came from people on both sides of the aisle with very different points of view," said Senator Byron M. Baer, (D-Bergen). "However, our success has resulted from our ability to put partisanship aside and agree on key values we both could understand."

"This bill is the strongest of its kind in the nation," said Senator Joseph Coniglio, (D-Bergen). "Today, New Jersey sets the bar for protecting consumers from annoying telemarketing calls. We can now turn the ringers back on and still enjoy our days and evenings at home."

Over the past year and a half, the McGreevey Administration has been proactive in its efforts to fight for New Jersey's seniors and consumers. Despite difficult fiscal times, the budget dedicates more than \$28.6 million towards cancer care and research. The administration expanded Telephone Lifeline eligibility, increased

the maximum benefit by nearly 40% and added an automatic enrollment component to the program.

Regulations were also proposed to improve the overall quality of customer service to New Jersey's 2.5 million cable subscribers. The Universal Service Fund – which had been languishing for years – was made a reality. USF will ensure that fixed income seniors do not pay more than 6% of their income on heating and electricity. And, earlier this month, Governor McGreevey signed strong and effective legislation that will – once and for all - stamp out predatory lending in New Jersey.

Photos and audio and video clips from Governor McGreevey's press conferences are available on the Governor's web page at <http://www.state.nj.us/governor/>. Links are located in the Governor's Newsroom section of the page.

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