

(Corrected Copy)

CHAPTER 76

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

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

C.56:8-119 Findings, declarations relative to telemarketing calls.

1. a. The Legislature finds and declares that telemarketing calls:

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

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

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

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

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

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

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

(8) Have been increasing in number, causing increased inconvenience, widespread public outrage and urgent appeals to protect the public from such calls;

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

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

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

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

C.56:8-120 Definitions relative to telemarketing calls.

2. As used in this act:

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

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

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

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

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

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

"Telemarketer" means any entity, whether an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, whether on behalf of itself or others, who makes residential telemarketing sales calls to a customer when the customer is in this State or any person who directly controls or supervises the conduct of a telemarketer.

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

"Telemarketing sales call" means a telephone call made by a telemarketer to a customer to encourage the purchase or rental of, or investment in, merchandise, except for continuing services.

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

- (1) in response to an express written request of the customer called;
- or
- (2) to an existing customer, which shall include the ability to collect on accounts and follow up on contractual obligations, unless the customer has stated to the telemarketer that the customer no longer desires to receive the telemarketing sales calls of the telemarketer.

C.56:8-121 Unsolicited telemarketing calls prohibited, telemarketer registration required; fee.

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

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

C.56:8-122 Additional requirements for registration.

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

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

- (1) Any crime of the first degree;
- (2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or
- (3) Any other crime which is a violation of N.J.S.2C:5-1, N.J.S.2C:5-2, N.J.S.2C:12-3, N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:20-4, N.J.S.2C:20-5, N.J.S.2C:20-7, N.J.S.2C:20-9, N.J.S.2C:21-1, N.J.S.2C:21-2, section 1 of P.L.1983, c.565 (C.2C:21-2.1), section 2 of P.L.1997, c.385 (C.2C:21-2.3), N.J.S.2C:21-3, N.J.S.2C:21-4, 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 N.J.S.2C:21-17, N.J.S.2C:21-19, or section 3 of P.L.1994, c.121 (C.2C:21-25), chapter 27 or 28 of Title 2C of the New Jersey Statutes, N.J.S.2C:30-2, or N.J.S.2C:30-3.

b. Each disclosure statement may be reviewed and used by the director as grounds for denying, suspending or revoking registration, except that in cases in which the provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.) apply, the director shall comply with the requirements of that act.

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

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

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

C.56:8-123 Refusal to issue, renew; revocation of license.

5. a. The director may refuse to issue or renew, and may revoke, any registration for failure to comply with, or violation of, the provisions of this act or any regulation promulgated pursuant to this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant.

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

C.56:8-124 Registration number to remain property of State.

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

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

C.56:8-125 Reporting of change in information.

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

C.56:8-126 Maintenance of bond by registrant.

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

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

C.56:8-127 Establishment, maintenance of no telemarketing call list.

9. The division shall establish and maintain a no telemarketing call list. The division may contract with a private vendor to establish and maintain the no call list, provided:

a. the private vendor meets standards established by the division by regulation that require that the vendor:

- (1) is financially sound;
- (2) has the capacity to perform the service required;
- (3) has a record of past performance; and
- (4) does not have a conflict of interest with a telemarketer or an association thereof; and

b. 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.

C.56:8-128 Requirements relative to telemarketing sales calls.

10. a. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any customer more than 45 days after the customer's telephone number appears on the no telemarketing call list established pursuant to section 9 of this act.

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

c. A telemarketer shall not 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.

d. A telemarketer shall not intentionally 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.

C.56:8-129 Inclusion on list, notice to customers of existence of list; directory information.

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

b. A local exchange telephone company shall include, in every telephone directory published after the effective date of this act, 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 local exchange telephone company shall also enclose, at least semiannually, 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.

C.56:8-130 Prohibited practices; "commercial mobile service", "commercial mobile service device" defined.

12. a. No telemarketer shall make or cause to be made any telemarketing sales call to a commercial mobile service device of any customer, except that a telemarketer that is a commercial mobile services company may call its customer using its commercial mobile services if its customer will not incur telecommunication charges or a usage allocation deduction as a result of such call and the call is directly related to the commercial mobile services of the commercial mobile services company, unless the customer has stated to the commercial mobile services company that the customer no longer desires to receive these calls.

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

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

C.56:8-131 Construction of act.

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

C.56:8-132 Violations, penalties; exceptions.

14. A violation of any provision of this act shall be an unlawful practice subject to the penalties applicable pursuant to section 1 of P.L.1966, c.39 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3), except that a person may not be held liable for violating this act if:

a. the person has obtained a copy of, and updated quarterly, the no call list and has

established and implemented written policies and procedures related to the requirements of this act;

- b. the person has trained telemarketers in the person's employ in the requirements of this act;
- c. the person maintains records demonstrating compliance with subsections a. and b. of this section and the requirements of this act; and
- d. any unsolicited telemarketing sales call is an isolated call made no more than one time in a 12-month period.

C.56:8-133 "Consumer Protection Fund."

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

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 telemarketing call list and all related costs and expenditures incurred in the administration of this act.

C.56:8-134 Rules, regulations.

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

- a. provisions governing the availability and distribution of the no call list established pursuant to section 9 of this act;
- b. any other matters relating to the no call list established pursuant to section 9 of this act that the division deems necessary; and
- c. such procedures as may be most effective to ensure that the no call list is up-to-date and accurately reflects the names and telephone numbers of persons wishing to be on the no call list and procedures to identify telephone numbers that have been reallocated to persons other than those who have indicated that they wish to be on the no call list. Such procedures may include, but not be limited to, establishing a means of matching the no call list with the names and numbers of persons with current listings supplied by the local exchange telephone companies, or establishing a requirement for re-enrollment to the list from time to time.

C.56:8-135 Information not considered government record.

17. Information submitted to the division by a customer pursuant to the provisions of this act shall not be a government record under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning access to government records except as provided in this act.

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

Approved May 21, 2003.