

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1317

H.P. 971

House of Representatives, March 11, 2003

An Act To Strengthen Maine's "Do Not Call" List

(EMERGENCY)

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SULLIVAN of Biddeford.
Cosponsored by Representative HATCH of Skowhegan, Senator BROMLEY of Cumberland and Representatives: AUSTIN of Gray, BERUBE of Lisbon, BREault of Buxton, CROSTHWAITE of Ellsworth, DUPREY of Medway, JACOBSEN of Waterboro, PELLON of Machias, SMITH of Monmouth.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4

6 Whereas, this Act provides for a more thorough regulation of
telemarketers and the practices of those telemarketers; and

8

10 Whereas, this regulation is necessary for the protection of
Maine residents; and

12

14 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

16

18 **Be it enacted by the People of the State of Maine as follows:**

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Sec. 1. 10 MRSA c. 225, as amended, is repealed.

22

Sec. 2. 32 MRSA §14716, sub-§3, as enacted by PL 2001, c. 324,
§12, is repealed.

24

Sec. 3. 32 MRSA c. 128, sub-c. 3 is enacted to read:

26

SUBCHAPTER 3

28

TELEMARKETING REGULATION

30

§14751. Definitions

32

As used in this subchapter, unless the context otherwise
indicates, the following terms have the following meanings.

34

36 1. Automated telephone calling device. "Automated
telephone calling device" means any system or equipment that
selects, dials or calls telephone numbers and plays recorded
messages.

38

40 2. Caller identification service. "Caller identification
service" means a service or device designed to provide the user
of the service or device with the telephone number of an incoming
telephone call.

42

44 3. Consumer good or service. "Consumer good or service"
means property of any kind that is normally used for personal,
family or household purposes. "Consumer good or service" does
not include a security as defined in Title 11, section 8-1102.

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2 4. Established business relationship. "Established
4 business relationship" means a prior or existing relationship of
6 a person formed by a voluntary 2-way communication between a
person and a consumer, regardless of whether consideration is
exchanged, regarding consumer goods or services offered by the
person that has not been terminated by either party.

8 5. Facsimile recording device. "Facsimile recording
10 device" means any device capable of receiving a facsimile
transmission.

12 6. Facsimile solicitation. "Facsimile solicitation" means
14 a telemarketing call made by a transmission to a facsimile
recording device.

16 7. Maine do-not-call list. "Maine do-not-call list" means
18 the list compiled pursuant to section 14755 by the Attorney
General of names, addresses and telephone numbers of consumers in
20 this State who object to receiving unsolicited telemarketing
calls.

22 8. State licensee. "State licensee" means a person
24 licensed by a state agency under a law of this State that
requires the person to obtain a license as a condition of
26 engaging in a profession or business.

28 9. Telemarketer. "Telemarketer" means a person who makes
or causes to be made a telemarketing call.

30 10. Telemarketing call. "Telemarketing call" means an
32 unsolicited telephone call made to solicit a sale of a consumer
good or service, solicit an extension of credit for a consumer
34 good or service, or obtain information that may be used to
solicit a sale of a consumer good or service or to extend credit
36 for the sale. "Telemarketing call" does not include a call made:

38 A. By a consumer that is the result of a solicitation by a
seller or telemarketer or in response to general media
40 advertising by direct mail solicitations that clearly,
conspicuously and truthfully make all disclosures required
42 by federal or state law;

44 B. In connection with:

46 (1) An established business relationship; or

48 (2) A business relationship that has been terminated,
if the call is made before the later of the date the
first Maine do-not-call list in which the consumer's

2 telephone number appears is published and one year
3 after the date of termination;

4 C. Between a telemarketer and a business, other than by a
5 facsimile solicitation, unless the business informed the
6 telemarketer that the business does not wish to receive
7 telemarketing calls from the telemarketer;

8 D. To collect a debt;

9 E. By a state licensee if:

10 (1) The call is not made by an automated telephone
11 dialing system;

12 (2) The solicited transaction is not completed until
13 after a face-to-face sales presentation by the seller
14 and the consumer is not required to pay or authorize
15 payment until after the presentation; and

16 (3) The consumer has not informed the telemarketer
17 that the consumer does not wish to receive
18 telemarketing calls from the telemarketer;

19 F. By a bona fide nonprofit charitable organization, exempt
20 from taxation under Section 501(c)(3) of the Internal
21 Revenue Code, to solicit contributions or donations; or

22 G. By a person for the purpose of endorsing a candidate for
23 a political office.

24 11. Telephone call. "Telephone call" means a call or other
25 transmission that is made to or received at a telephone number,
26 including:

27 A. A call made by an automated telephone dialing system; and

28 B. A transmission to a facsimile recording device.

29 **§14752. Automated telemarketing calls prohibited**

30 1. Prohibited use. A person may not use an automated
31 telephone calling device to make telemarketing calls to:

32 A. Any emergency telephone numbers in this State,
33 including, but not limited to, the emergency telephone
34 numbers of any hospital, physician, health care facility,
35 ambulance service or fire or law enforcement officer or
36 facility;

37

2 B. Any paging or cellular phone within the State; or

4 C. Any unlisted, unpublished, toll-free long distance
telephone number within the State.

6 2. Restriction. A person may not use an automated
8 telephone calling device to make telemarketing calls to any
telephone number in the State except weekdays between 9 a.m. and
10 5 p.m., according to the time in this State, and may not complete
12 more than one telemarketing call to any telephone number during
each 8-hour period. In addition, the person using the device to
14 place the call shall ensure that the device disconnects no more
than 5 seconds following the disconnection of the telephone
number called.

16 3. Caller identification. Persons making telemarketing
18 calls restricted under the provisions of subsection 2 shall,
within the first minute of the call, identify the name, address
20 and telephone number of the organization for whom the call is
being made.

22 4. Prima facie violation. Use of any automated telephone
24 calling device that calls telephone numbers sequentially and can
not distinguish the telephone numbers of those authorized to be
26 contacted from those it is unlawful to contact is prima facie
evidence of intent to violate this section.

28 5. Exceptions. This section does not prohibit the use of
30 an automated telephone calling device to:

32 A. Inform purchasers of the receipt, availability or
34 delivery of goods or services or any other pertinent
information on the status of any purchased goods or services;

36 B. Respond to a telephone inquiry initiated by the person
to whom the automated call is directed; or

38 C. Carry out the duties of any state or local governmental
40 unit.

42 6. Failure to produce transcript. A person using an
automated telephone calling device for making telemarketing calls
44 shall maintain a full transcript of each telemarketing call
message that the person has transmitted to consumers during the
46 previous 24 months. A copy of the transcript must be made
available to the Attorney General upon request. Failure to
48 provide a copy of a requested transcript is a violation of this
section.

50 §14753. Interference with caller identification service

prohibited

2 A telemarketer may not, in making a telemarketing call,
4 block the identity of the telephone number from which the
6 telephone call is made to evade devices designed to identify
telephone callers. A telemarketer may not:

8 1. Interfere or circumvent. Interfere with or circumvent
10 the capability of a caller identification service to access or
12 provide to the recipient of the telemarketing call any
information regarding the call that the service is capable of
providing; or

14 2. Fail to provide information. Fail to provide caller
16 identification information in a manner that is accessible by a
18 caller identification service, if the person has capability to
provide the information in that manner.

20 For purposes of this section, the use of telecommunications
22 service or equipment that is incapable of transmitting caller
24 identification information does not of itself constitute
interference with or circumvention of the capability of a caller
identification service to access or provide the information.

§14754. Facsimile transmissions

26 1. Notice in facsimile solicitation. In addition to the
28 technical and procedural standards of federal statutes or
30 regulations regarding telephone facsimile machines and
32 transmissions, a person in this State who makes or causes to be
made a facsimile solicitation shall include in the document
transmitted or on a cover page to the document a statement, in at
least 12-point type, stating:

34 A. The correct and complete name of the person making the
36 facsimile solicitation and street address of the location of
38 the person's place of business; and

40 B. A toll-free or local exchange-accessible telephone
number of the person that:

42 (1) Is answered in the order in which calls are
44 received by an individual capable of responding to
46 inquiries from recipients of facsimile solicitations at
all times after 9 a.m. and before 5 p.m. on each day
except Saturday and Sunday; or

48 (2) Automatically and immediately deletes the
50 specified telephone number of the recipient.

2 2. Acknowledgment required; transmission prohibited. On
3 receipt of oral or written notification from a recipient of a
4 facsimile solicitation not to send any further facsimile
5 transmissions to one or more telephone numbers specified by the
6 recipient, the person making the facsimile solicitation:

7 A. Shall within 24 hours send the recipient a written
8 acknowledgment of the recipient's notification; and

9 B. May not make or cause to be made a transmission to a
10 telephone number specified by the recipient, except for a
11 single transmission to comply with paragraph A.

12 §14755. Maine do-not-call list

13 1. Attorney General to establish Maine do-not-call list.
14 The Attorney General shall establish and provide for the
15 operation of a database to compile a list of names, addresses and
16 telephone numbers of consumers in this State who object to
17 receiving unsolicited telemarketing calls.

18 2. Contract. The Attorney General may contract with a
19 private vendor to maintain the Maine do-not-call list if:

20 A. The private vendor has maintained a national do-not-call
21 list database for more than 2 years containing the names,
22 addresses and telephone numbers of consumers in this State
23 who have previously requested to be added to the vendor's
24 national do-not-call list; and

25 B. The contract requires the private vendor to publish the
26 Maine portion of the national do-not-call list in an
27 electronic format to any telemarketer who agrees to use the
28 Maine do-not-call list only for the purposes of updating the
29 do-not-call list of that telemarketer by including in its
30 list persons with whom the telemarketer does not have an
31 established business relationship.

32 3. Contents of Maine do-not-call list. The Maine
33 do-not-call list must contain the name, address and telephone
34 number of each consumer in this State who has requested to be on
35 that list. The Maine do-not-call list must be updated and
36 published monthly. An entry on the Maine do-not-call list
37 expires on the 3rd anniversary of the date the entry is first
38 published on the list. An entry may be renewed for successive
39 3-year periods, without limitation. The telephone number of the
40 consumer on the Maine do-not-call list may be deleted from the
41 list on the consumer's written request or if the telephone number
42 of the consumer is changed.

2 4. Fee; fund. The Attorney General may charge a person a
4 reasonable amount not to exceed \$3 for a request to place a
6 telephone number on the Maine do-not-call list or to renew an
8 entry on the list. Fees collected under this subsection must be
 deposited into a fund maintained in the Department of the
 Attorney General for use by the Attorney General for enforcement
 and administration of this subchapter.

10 5. Request form. The Attorney General shall develop and
12 make available a form to be used by consumers to request to be on
14 the Maine do-not-call list and shall provide a toll-free
16 telephone number and Internet e-mail address that persons may use
18 to order a copy of the form. A private for-profit publisher of a
 residential telephone directory that is distributed to the public
 at minimal or no cost must include in the directory a prominently
 displayed toll-free number and Internet e-mail address
 established by the Attorney General through which a person may
 order a copy of the form.

20 §14756. Telemarketing calls to persons on Maine do-not-call list

22 A telemarketer may not make a telemarketing call to a
24 telephone number that has been published on the Maine do-not-call
26 list more than 60 days after the telephone number appears on the
 Maine do-not-call list.

28 §14757. Penalties

30 1. Presumption of adverse effect. For purposes of this
32 section, a consumer on the Maine do-not-call list is presumed to
 be adversely affected by a telemarketer who calls the consumer
 more than once.

34 2. Attorney General's duties. Except as provided in
36 subsection 3, the Attorney General shall receive and investigate
38 complaints concerning violations of this subchapter and file
40 civil enforcement actions seeking injunctive relief, attorney's
42 fees and civil penalties in an amount not to exceed \$1,000 for
44 each violation. If the court finds the defendant willfully or
46 knowingly violated this subchapter, the court may increase the
48 amount of the civil penalties to an amount not to exceed \$3,000
 for each violation. A violation of this subchapter is subject to
 enforcement action by the Attorney General's consumer protection
 division. If the complaint alleges that the person violating
 this subchapter is a telecommunications provider, the Attorney
 General has exclusive jurisdiction, notwithstanding subsection 3,
 over the violation alleged in the complaint, except that this
 does not affect the right of a consumer to bring an action under
 subsection 4.

2 For purposes of this subsection, "telecommunications provider"
3 means a local exchange carrier, a commercial mobile radio service
4 provider, as defined in 47 United States Code, Section 332(d), an
5 employee of a local exchange carrier or commercial mobile radio
6 service provider acting within the scope of the employee's
7 employment or an agent of a local exchange carrier or commercial
8 mobile radio service provider acting within the scope of the
9 agent's agency.

10 3. State agency duties. A state agency that issues a
11 license to a state licensee shall receive and investigate
12 complaints concerning violations of this subchapter by the
13 licensee, may assess an administrative penalty not to exceed
14 \$1,000 for each violation and may order restitution of any
15 monetary damages of the complainant. In addition, if the agency
16 finds that the licensee willfully or knowingly violated this
17 subchapter, the agency may suspend or revoke the licensee's
18 license. All administrative fees collected pursuant to this
19 subsection accrue to the Department of the Attorney General for
20 use by the Attorney General for enforcement and administration of
21 this subchapter.

22 4. Consumer cause of action. A consumer may bring a cause
23 of action against a telemarketer as provided in this subsection.

24 A. A consumer on the Maine do-not-call list may bring a
25 civil action based on the 2nd or a subsequent violation of
26 section 14756 if:

27 (1) The consumer has notified the telemarketer of the
28 alleged violation and, not later than the 30th day
29 after the date of the call, files a verified complaint
30 setting forth the relevant facts surrounding the
31 violation with the Attorney General or a state agency
32 that licenses the person making the call; and

33 (2) The Attorney General or a state agency receiving
34 the complaint fails to initiate an administrative
35 action or a civil enforcement action, as appropriate,
36 against the telemarketer named in the complaint before
37 the 121st day after the date the complaint is filed.

38 If the consumer brings an action based on a violation of
39 section 14756 and the court finds that the defendant
40 willfully or knowingly violated section 14756, the court may
41 award damages in an amount not to exceed \$500 for each
42 violation.

43 B. Notwithstanding this subsection or subsection 2 or 3, a
44 consumer may bring a private right of action based on a
45 violation of section 14752, 14753 or 14754:

2 (1) To enjoin the violation; or

4 (2) For damages in an amount equal to the person's
6 actual monetary loss from the violation or \$500 for
 each violation, whichever is greater.

8 If the court finds that the defendant willfully or knowingly
10 violated section 14752, 14753 or 14754, the court may
12 increase the amount of the award to an amount equal to not
 more than 3 times the amount available under subparagraph
 (2).

14 5. Venue. Venue for an action based on a violation of this
16 subchapter is in the county where the telemarketing call was made
 or received or, if brought by the Attorney General or a state
 agency, in Kennebec County.

18 6. Determination of penalties. The amount of a civil or
20 administrative penalty imposed under this section must be based
22 on:

24 A. The seriousness of the violation, including the nature,
 circumstances, extent and gravity of the violation;

26 B. The history of previous violations;

28 C. The amount necessary to deter a future violation;

30 D. Efforts to correct the violation; and

32 E. Any other matter that justice may require.

34 **§14758. Rulemaking**

36 The Attorney General shall adopt rules to administer this
38 subchapter. Rules adopted pursuant to this section are major
 substantive rules as defined in Title 5, chapter 375, subchapter
 2-A. The rules must:

40 1. Information dissemination. Require each local exchange
42 telephone company to inform its customers of the requirements of
44 this subchapter by annual inserts in billing statements mailed to
46 customers or conspicuous publication of the notice in the
 consumer information pages of local telephone directories or
 other appropriate notice to consumers. The Attorney General may
48 conduct educational programs designed to inform the public of
 their rights and telemarketers of their obligations under this
 subchapter;

50

1. It changes the scope of the application to telemarketers to include all telemarketers, regardless of their place of business. Calls made by nonprofit charitable organizations and political organizations are exempt.

2. It prohibits a telemarketer from blocking the display of its phone number from the consumer being called.

3. It continues the current restrictions on the use of automated telephone calling devices to make telemarketing calls.

4. It requires telemarketers making solicitations via facsimile to provide the name and address of the person making the solicitation, as well as a toll-free telephone number that must be answered by an individual on weekdays between the hours of 9 a.m. and 5 p.m. or that automatically deletes the specified telephone number of the caller from the telemarketer's database.

5. It requires the Attorney General to establish, either in-house or through a contract with a private vendor, the Maine do-not-call list, a database of names, addresses and telephone numbers of consumers in this State who object to receiving unsolicited telemarketing or telephone calls. Although a do-not-call list is required now by law and maintained by the Attorney General, this bill places responsibility for the do-not-call list with the Attorney General. The Attorney General is required to provide information about the list and forms for enrolling on the list. The Attorney General may charge a fee of no more than \$3 for inclusion on the list; a consumer remains on the list for 3 years or until the consumer is assigned a new number. The list must be updated every month.

6. It allows telemarketers to purchase the Maine do-not-call list from the Attorney General for a fee not to exceed \$75 and prohibits telemarketers from calling consumers listed on the Maine do-not-call list.

7. It allows an action to be brought against a telemarketer by the Attorney General, by a state agency that licenses the telemarketer or by the affected consumer. A violation is punishable by a civil penalty or administrative penalty of up to \$3,000 for each violation.

8. It requires the Attorney General to report to the Legislature every 2 years regarding the Maine do-not-call list, complaints and enforcement actions and any suggested changes for improving the regulation of telemarketing.