

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1837

S.P. 655

April 5, 2007

### An Act To Harmonize State and Federal Laws on Do-not-call Lists

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Submitted by the Department of the Attorney General pursuant to Joint Rule 204.  
Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BARTLETT of Cumberland.  
Cosponsored by Representative BLISS of South Portland and Representatives: BERRY of Bowdoinham, BLANCHARD of Old Town, CURTIS of Madison, FITTS of Pittsfield, FLETCHER of Winslow, RINES of Wiscasset, THIBODEAU of Winterport.

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

2 **Sec. 1. 10 MRSA §1499**, as repealed and replaced by PL 1995, c. 334, §2, is  
3 repealed.

4 **Sec. 2. 10 MRSA §1499-B** is enacted to read:

5 **§1499-B. Telephone solicitation**

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
7 following terms have the following meanings.

8 A. "Consumer" means a resident of this State who is a residential telephone  
9 subscriber and an actual or prospective:

10 (1) Purchaser, lessee or recipient of consumer goods or services; or

11 (2) Donor or contributor to an organization.

12 B. "Consumer goods or services" means:

13 (1) Tangible or intangible personal property or real property that is normally  
14 used for personal, family or household purposes;

15 (2) Property intended to be attached to or installed on real property without  
16 regard to whether it is actually attached or installed;

17 (3) Services related to the property described in subparagraph (1) or (2);

18 (4) Credit cards or the extension of credit; or

19 (5) Professional services.

20 C. "Division" means the Department of the Attorney General, Consumer Protection  
21 Division.

22 D. "Doing business in Maine" means making telephone sales calls to consumers  
23 located in this State whether the telephone sales calls originate in the State or outside  
24 the State.

25 E. "Registry" means the do-not-call registry maintained by the division that lists the  
26 names of persons who do not wish to receive telephone sales calls.

27 F. "Resident" means a resident of this State.

28 G. "Telephone number" means a residential telephone number.

29 H. "Telephone sales call" means a solicitation call made to a consumer for:

30 (1) Solicitation of a sale of consumer goods or services; or

31 (2) Obtaining information that will or may be used for the direct solicitation of a  
32 sale of consumer goods or services or an extension of credit for such purposes.

33 "Telephone sales call" includes a call made by use of automated dialing or recorded  
34 message devices.

1 I. "Telephone solicitor" means an individual, firm, organization, partnership,  
2 association or corporation, including affiliates and subsidiaries, doing business in  
3 Maine.

4 **2. Application.** This section does not apply to:

5 A. A telephone sales call made in response to and at the express request of the  
6 person called;

7 B. A telephone sales call made primarily in connection with an existing debt or  
8 contract for which payment or performance has not been completed at the time of the  
9 call; or

10 C. A telephone sales call for a solicitation other than a commercial solicitation, but  
11 only if:

12 (1) The telephone call is made by a volunteer or an employee of the soliciting  
13 organization; and

14 (2) The telephone solicitor who makes the telephone call immediately discloses  
15 all of the following information:

16 (a) The solicitor's true first and last name; and

17 (b) The name, address and telephone number of the soliciting organization.

18 **3. Compliance with law.** This section does not relieve a person from complying  
19 with any other applicable law.

20 **4. Duties of division.** The division shall establish and maintain a do-not-call registry  
21 of telephone numbers of consumers who request not to be solicited by telephone. The  
22 national "do-not-call" registry established and maintained by the Federal Trade  
23 Commission, pursuant to the 16 Code of Federal Regulations, Section 310.4(b)(1)(iii)(B),  
24 may serve as the Maine do-not-call registry required by this subsection. The division  
25 may provide the telephone numbers of residents that are in the state registry to the  
26 Federal Trade Commission for inclusion in the national registry.

27 **5. Adoption of rules.** The division may adopt rules consistent with Title 5, section  
28 207, subsection 2 to implement this section. Rules adopted pursuant to this subsection  
29 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

30 **6. Telephone solicitation violations.** It is a violation of this section for a telephone  
31 solicitor to initiate a telephone sales call to a consumer if that consumer's telephone  
32 number has been on the national or state do-not-call registry, established by the Federal  
33 Trade Commission, for at least 3 months prior to the date the call is made.

34 **7. Telephone solicitation disclosure.** A telephone solicitor who makes a telephone  
35 sales call to a consumer must immediately disclose the following information upon  
36 making contact with that consumer:

37 A. The solicitor's real first and last name; and

38 B. The name of the business on whose behalf the telephone solicitor is soliciting.

1 **8. Directories exemption.** This section does not apply to a person obtaining  
2 consumer information for inclusion in a directory assistance database or a telephone  
3 directory sold by a telephone company.

4 **9. Exclusion of a telephone number.** A telephone solicitor or person who obtains  
5 consumer information that includes telephone numbers shall exclude the telephone  
6 numbers that appear on the most current federal or state do-not-call registry.

7 **10. Unfair trade practice violations.** A telephone solicitor who fails to comply with  
8 any provision of this section commits an unfair and deceptive act that is a violation of the  
9 Maine Unfair Trade Practices Act.

10 **11. Attorney General remedies.** In an action under this section, the Attorney  
11 General may obtain any or all of the following:

12 A. An injunction to enjoin future violations of this section;

13 B. A civil penalty of not more than:

14 (1) Ten thousand dollars for the first violation; and

15 (2) Twenty-five thousand dollars for each subsequent violation;

16 C. All money the defendant obtained through violation of this section;

17 D. The Attorney General's reasonable cost in:

18 (1) The investigation of the deceptive act; and

19 (2) Maintaining the action under this subsection; and

20 E. Reasonable attorney's fees.

21 **12. Voidable contracts.** In an action under this section, the court may void or limit  
22 the application of contracts or clauses resulting from a violation of this section and order  
23 restitution to be paid to an aggrieved consumer.

24 **13. Jurisdiction.** An action under this section may be brought in the District Court  
25 or Superior Court of the jurisdiction in which an aggrieved consumer resides or in  
26 Kennebec County.

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

29 **SUMMARY**

30 This bill is intended to conform state law to federal law regarding the establishment  
31 and enforcement of a do-not-call list that allows resident consumers to opt out of being  
32 solicited by telephone.