

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

123RD LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 783, L.D. 1989, Bill, "An Act To Clarify Maine's "Do Not Call" Laws"

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Maine has adopted legislation to harmonize the state and federal do-not-call lists; and

Whereas, current Maine law does not fully conform to federal regulations regarding telephone solicitations and the do-not-call registry; and

Whereas, significant numbers of Maine employers and their employees depend upon a clear and workable application of the do-not-call laws; and

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,'

Amend the bill in section 1 by striking out all of paragraph D-1 (page 1, lines 3 to 18 in L.D.) and inserting the following:

'D-1. "Established business relationship" means a prior or existing relationship formed by a voluntary 2-way communication between a telephone solicitor and a consumer with or without an exchange of consideration on the basis of the consumer's purchase from or transaction with the telephone solicitor within the 18 months immediately preceding the date of a telephone sales call or on the basis of the consumer's inquiry or application regarding products or services offered by the telephone solicitor within the 3 months immediately preceding the date of the call

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 783, L.D. 1989

1 that has not been previously terminated by the consumer pursuant to subparagraph (1)
2 or by the telephone solicitor.

3 (1) A consumer's request to a particular telephone solicitor not to receive
4 telephone sales calls from that telephone solicitor terminates an established
5 business relationship for purposes of a telephone sales call even if the consumer
6 continues to do business with the telephone solicitor.

7 (2) The consumer's established business relationship with a particular telephone
8 solicitor does not extend to affiliates of the telephone solicitor unless the
9 consumer would reasonably expect them to be included given the nature and type
10 of goods or services offered by the affiliate and the identity of the affiliate.'

11 Amend the bill in section 3 by striking out all of subsection 6 (page 2, lines 3 to 9 in
12 L.D.) and inserting the following:

13 **'6. Telephone solicitation violations.** It is a violation of this section for a telephone
14 solicitor to initiate a telephone sales call to a consumer if that consumer's telephone
15 number has been on the national or state do-not-call registry, established by the Federal
16 Trade Commission, for at least 3 months prior to the date the call is made. A telephone
17 solicitor is not liable for violating this section if the telephone solicitor can demonstrate
18 that:

19 A. As part of the telephone solicitor's routine business practice, the telephone
20 solicitor has established and implemented written procedures to comply with this
21 section;

22 B. As part of the telephone solicitor's routine business practice, the telephone
23 solicitor has trained its personnel, and any entity assisting in its compliance, in the
24 procedures established pursuant to paragraph A;

25 C. As part of the telephone solicitor's routine business practice, the telephone
26 solicitor or another person acting on behalf of the telephone solicitor has recorded
27 and maintained a list of telephone numbers the telephone solicitor may not contact;

28 D. As part of the telephone solicitor's routine business practice, the telephone
29 solicitor uses a process to prevent telemarketing to any telephone number on any list
30 established pursuant to paragraph C or on the national do-not-call registry, employing
31 a version of the national do-not-call registry obtained from the Federal Trade
32 Commission no more than 31 days prior to the date any call is made, and maintains
33 records documenting this process;

34 E. As part of the telephone solicitor's routine business practice, the telephone
35 solicitor or another person acting on behalf of the telephone solicitor monitors and
36 enforces compliance with the procedures established pursuant to paragraph A; and

37 F. Any subsequent call otherwise violating this section is the result of error.'

38 Amend the bill by inserting after section 3 the following:

39 **'Emergency clause.** In view of the emergency cited in the preamble, this
40 legislation takes effect when approved.'

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SUMMARY

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This amendment clarifies the definition of "established business relationship" to bring the definition into conformity with the Federal Communications Commission regulations with respect to how such a relationship is terminated. The amendment also revises the provision in the bill regarding telephone solicitation violations to conform to the language in the federal do-not-call regulations administered by the Federal Trade Commission regarding liability exceptions. The amendment also adds an emergency preamble and emergency clause to the bill.

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FISCAL NOTE REQUIRED

(See attached)



Approved: 01/30/08 *MAC*

123rd MAINE LEGISLATURE

LD 1989

LR 3109(02)

An Act To Clarify Maine's "Do Not Call" Laws

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Minor savings - General Fund

Correctional and Judicial Impact Statements

Decreases the number of civil violations.