

§1499-B. Telephone solicitation

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

- A. "Consumer" means a resident of this State who is a residential telephone subscriber and an actual or prospective:
- (1) Purchaser, lessee or recipient of consumer goods or services; or
 - (2) Donor or contributor to an organization. [PL 2007, c. 227, §2 (NEW).]
- B. "Consumer goods or services" means:
- (1) Tangible or intangible personal property or real property that is normally used for personal, family or household purposes;
 - (2) Property intended to be attached to or installed on real property without regard to whether it is actually attached or installed;
 - (3) Services related to the property described in subparagraph (1) or (2);
 - (4) Credit cards or the extension of credit; or
 - (5) Professional services. [PL 2007, c. 227, §2 (NEW).]
- C. "Division" means the Department of the Attorney General, Consumer Protection Division. [PL 2007, c. 227, §2 (NEW).]
- D. "Doing business in Maine" means making telephone sales calls to consumers located in this State whether the telephone sales calls originate in the State or outside the State. [PL 2007, c. 227, §2 (NEW).]
- 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 that has not been previously terminated by the consumer pursuant to subparagraph (1) or by the telephone solicitor.
- (1) A consumer's request to a particular telephone solicitor not to receive telephone sales calls from that telephone solicitor terminates an established business relationship for purposes of a telephone sales call even if the consumer continues to do business with the telephone solicitor.
 - (2) The consumer's established business relationship with a particular telephone solicitor does not extend to affiliates of the telephone solicitor unless the consumer would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate. [PL 2007, c. 489, §1 (NEW).]
- E. "Registry" means the do-not-call registry maintained by the division that lists the names of persons who do not wish to receive telephone sales calls. [PL 2007, c. 227, §2 (NEW).]
- F. "Resident" means a resident of this State. [PL 2007, c. 227, §2 (NEW).]
- G. "Telephone number" means a residential telephone number. [PL 2007, c. 227, §2 (NEW).]
- H. "Telephone sales call" means a solicitation call made to a consumer for:
- (1) Solicitation of a sale of consumer goods or services; or

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

"Telephone sales call" includes a call made by use of automated dialing or recorded message devices. [PL 2007, c. 227, §2 (NEW).]

I. "Telephone solicitor" means an individual, firm, organization, partnership, association or corporation, including affiliates and subsidiaries, doing business in Maine. [PL 2007, c. 227, §2 (NEW).]

[PL 2007, c. 489, §1 (AMD).]

2. Application. This section does not apply to:

A. A telephone sales call made in response to and at the express request of the person called; [PL 2007, c. 227, §2 (NEW).]

B. A telephone sales call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call; [PL 2007, c. 489, §2 (AMD).]

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

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

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

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

(b) The name, address and telephone number of the soliciting organization; or [PL 2007, c. 489, §2 (AMD).]

D. A telephone sales call made to any person with whom the telephone solicitor has an established business relationship. [PL 2007, c. 489, §2 (NEW).]

[PL 2007, c. 489, §2 (AMD).]

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

[PL 2007, c. 227, §2 (NEW).]

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

[PL 2007, c. 227, §2 (NEW).]

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

[PL 2007, c. 227, §2 (NEW).]

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

A. As part of the telephone solicitor's routine business practice, the telephone solicitor has established and implemented written procedures to comply with this section; [PL 2007, c. 489, §3 (NEW).]

B. As part of the telephone solicitor's routine business practice, the telephone solicitor has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to paragraph A; [PL 2007, c. 489, §3 (NEW).]

C. As part of the telephone solicitor's routine business practice, the telephone solicitor or another person acting on behalf of the telephone solicitor has recorded and maintained a list of telephone numbers the telephone solicitor may not contact; [PL 2007, c. 489, §3 (NEW).]

D. As part of the telephone solicitor's routine business practice, the telephone solicitor uses a process to prevent telemarketing to any telephone number on any list established pursuant to paragraph C or on the national do-not-call registry, employing a version of the national do-not-call registry obtained from the Federal Trade Commission no more than 31 days prior to the date any call is made, and maintains records documenting this process; [PL 2007, c. 489, §3 (NEW).]

E. As part of the telephone solicitor's routine business practice, the telephone solicitor or another person acting on behalf of the telephone solicitor monitors and enforces compliance with the procedures established pursuant to paragraph A; and [PL 2007, c. 489, §3 (NEW).]

F. Any subsequent call otherwise violating this section is the result of error. [PL 2007, c. 489, §3 (NEW).]

[PL 2007, c. 489, §3 (AMD).]

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

A. The solicitor's real first and last name; and [PL 2007, c. 227, §2 (NEW).]

B. The name of the business on whose behalf the telephone solicitor is soliciting. [PL 2007, c. 227, §2 (NEW).]

[PL 2007, c. 227, §2 (NEW).]

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

[PL 2007, c. 227, §2 (NEW).]

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

[PL 2007, c. 227, §2 (NEW).]

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

[PL 2007, c. 227, §2 (NEW).]

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

A. An injunction to enjoin future violations of this section; [PL 2007, c. 227, §2 (NEW).]

B. A civil penalty of not more than:

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

- (2) Twenty-five thousand dollars for each subsequent violation; [PL 2007, c. 227, §2 (NEW).]
- C. All money the defendant obtained through violation of this section; [PL 2007, c. 227, §2 (NEW).]
- D. The Attorney General's reasonable cost in:
- (1) The investigation of the deceptive act; and
 - (2) Maintaining the action under this subsection; and [PL 2007, c. 227, §2 (NEW).]
- E. Reasonable attorney's fees. [PL 2007, c. 227, §2 (NEW).]
[PL 2007, c. 227, §2 (NEW).]

12. Voidable contracts. In an action under this section, the court may void or limit the application of contracts or clauses resulting from a violation of this section and order restitution to be paid to an aggrieved consumer.
[PL 2007, c. 227, §2 (NEW).]

13. Jurisdiction. An action under this section may be brought in the District Court or Superior Court of the jurisdiction in which an aggrieved consumer resides or in Kennebec County.
[PL 2007, c. 227, §2 (NEW).]

SECTION HISTORY

PL 2007, c. 227, §2 (NEW). PL 2007, c. 489, §§1-3 (AMD).

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