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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - REGULATORY POWERS OF
ADMINISTRATION

Introduced By: Senator John M. Roney

Date Introduced: January 24, 2002

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 39-3 of the General Laws entitled "Regulatory Powers of
2 Administration" is hereby amended by adding thereto the following sections:

3 **39-3-43. Rhode Island do not call registry - Legislative findings and purposes. --**
4 Rhode Islanders have a fundamental right of privacy. That right of privacy, however, has been
5 significantly eroded by the rapid evaluation of information technology, which enables unwanted
6 telephone solicitations targeted to people in their homes. Such unwanted telephone solicitations
7 can be an intrusive and disruptive nuisance, resulting in an invasion of the sanctity of the home,
8 interrupting and disturbing the time individuals spend with their families and friends, and
9 disrupting the lives of persons who work non-standard hours and who care for small children,
10 infants and the sick. A number of states have provided protection to those who do not want
11 unsolicited telephone solicitations by establishing state "Do Not Call Lists," and other states are
12 actively considering such measures. It is the purpose of this Act to establish a Rhode Island Do
13 Not Call Registry, to reduce unsolicited telephone solicitations, which shall be created and
14 maintained by the division.

15 **39-3-44. Definitions. --** As used in the section, the following terms shall have following
16 meanings:

17 (1) "Administrator" shall mean the administrator of the division of public utilities;

18 (2) "Customer" shall mean any natural person who is a resident of this state and who is or
19 may be required to pay for or to exchange consideration for goods and services offered through

1 telemarketing;

2 (3) "Doing Business in this State" shall mean conducting telephonic sales calls:

3 (i) from a location in this state; or

4 (ii) from a location outside of this state to customers residing in this state;

5 (4) "goods and Services" shall mean any goods and services, and shall include any real
6 property or any tangible personal property or services of any kind;

7 (5) "Person" includes any individual natural person, firm, association, corporation, and its
8 affiliates or subsidiaries, partnership, joint venture, or any other business entity;

9 (6) "Telemarketer" shall mean any person who, for financial profit or commercial
10 purposes in connection with telemarketing, makes telemarketing sales calls to a customer when
11 the customer is in this state or any person who directly controls or supervises the conduct of a
12 telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer
13 for sale of goods or services;

14 (7) "Telemarketing" shall mean any plan, program or campaign which is conducted to
15 induce payment or the exchange of any other consideration for any goods or services by use of
16 one or more telephones and which involves more than one telephone call by a telemarketer in
17 which the customer is located within the state at the time of the call. Telemarketing does not
18 include the solicitation of sales through media other than by telephone calls;

19 (8) "Telemarketing sales calls" shall mean a telephone call made by a telemarketer to a
20 customer for the purpose of inducing payment or the exchange of any other consideration for any
21 goods or services;

22 (9) "Unsolicited telemarketing sales call" shall mean any telemarketing sales call other
23 than a call made:

24 (i) in response to an express written or verbal request of the customer called; or

25 (ii) in connection with an established business relationship, which has not been
26 terminated by either party; or

27 (iii) to an existing customer, unless such customer has stated to the telemarketer that such
28 customer no longer wished to receive the telemarketing sales calls of such telemarketer; or

29 (iv) in which the sale of goods and services is not completed, and payment or
30 authorization of payment is not required, until after a face-to-face sales presentation by the
31 telemarketer or a meeting between the telemarketer and customer.

32 **39-3-45. Do not call registry - establishment and maintenance. - - The administrator**
33 **shall establish by October 1, 2002, and maintain a statewide Do Not Call Registry which shall be**
34 **a list of customers who have notified the division that they do not wish to receive unsolicited**

1 telemarketing sales calls, which shall be updated not less than quarterly. Such registry shall be
2 made available to telemarketers for a fee of one hundred twenty-five dollars (\$125) or a pro-rate
3 of cost of establishing and maintaining the registry, whichever amount is the greater.

4 **39-3-46. Customer notice.** -- A customer who wishes to be included in the Do Not Call
5 Registry shall notify the division by calling a toll free number provided by the division or by
6 other means, including the internet, as the administrator may prescribe. A customer on the
7 registry shall be deleted from registry upon the customer's written request, which request for
8 deletion shall be effective for the next registry to be issued by the division forty-five days after
9 the receipt of the request.

10 **39-3-47. Power of administrator to contract.** -- The administrator may contract with a
11 private vendor to establish and maintain such registry.

12 **39-3-48. Notice in local telephone directories.** -- Any company that provides local
13 telephone directories to customers in the state shall inform its customers of the provisions of this
14 section by means of publishing a notice in such local telephone directory in accordance with such
15 rules as the administrator may adopt regarding such notice.

16 **39-3-49. Restriction and telemarketers.** -- No telemarketer, including salesperson or
17 telephonic seller as defined in section 5-61-1, doing business in this state shall make any
18 unsolicited telemarketing call or any unsolicited telephonic sales call to any customer listed on
19 the DO NOT CALL REGISTRY. The provisions of this section shall be enforced as provided in
20 section 5-61-3.5.

21 SECTION 2. Sections 5-61-2 and 5-61-3.5 of the General Laws in Chapter 5-61 entitled
22 "Telephone Sales Solicitation Act" are hereby amended to read as follows:

23 **5-61-2. Definitions.** -- As used in this chapter:

24 (1) "Department" means the department of attorney general.

25 (2) "Item" means any goods and services and includes coupon books which are to be
26 used with businesses other than the seller's business.

27 (3) "Owner" means a person who owns or controls ten percent (10%) or more of the
28 equity of, or otherwise has claim to ten percent (10%) or more of the net income of, a telephonic
29 seller.

30 (4) "Person" includes ~~an individual~~ any natural person, firm, association, corporation,
31 and its affiliates or subsidiaries, partnership, joint venture, or any other business entity.

32 (5) "Principal" means an owner, an executive officer of a corporation, a general partner
33 of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust or any other
34 individual with similar supervisory functions with respect to any person.

1 (6) "Purchaser" or "prospective purchaser" means a person who is solicited to become or
2 does become obligated to a telephonic seller.

3 (7) "Salesperson" means any individual employed, appointed or authorized by a
4 telephonic seller, whether referred to by the telephonic seller as an agent, representative, or
5 independent contractor who attempts to solicit or solicits a sale on behalf of the telephonic seller.
6 The principals of a seller are themselves salespersons if they solicit sales on behalf of the
7 telephonic seller.

8 (8) "Telephonic seller" or "seller" means a person who, on his or her own behalf or
9 through salespersons or through the use of an automatic dialing-announcing device, causes a
10 telephone solicitation or attempted telephone solicitation to occur which meets the criteria
11 specified as follows:

12 (i) A telephone solicitation or attempted telephone solicitation where the telephonic
13 seller initiates or engages in telephonic contact with a prospective purchaser and represents or
14 implies one or more of the following:

15 (A) That a prospective purchaser who buys one or more items will also receive
16 additional or other items, whether or not of the same type as purchased, without "further cost".
17 For the purposes of this subdivision, "further cost" does not include actual postage or common
18 carrier delivery charges, if any;

19 (B) That a prospective purchaser will receive a prize or gift, if the person also
20 encourages the prospective purchaser to purchase or rent any goods or services or pay any money,
21 including, but not limited to, a delivery or handling charge;

22 (C) That a prospective purchaser who buys office equipment or supplies will, because of
23 some unusual event or imminent price increase, be able to buy these items at prices which are
24 below those that are usually charged or will be charged for the items;

25 (D) That the seller is a person other than the person he or she is;

26 (E) That the items for sale are manufactured or supplied by a person other than the actual
27 manufacturer or supplier;

28 (F) That the seller is offering to sell the prospective purchaser any gold, silver, or other
29 minerals, or any interest in oil, gas, or mineral field, wells, or exploration sites.

30 (ii) Solicitation or attempted solicitation which is made by telephone in response to
31 inquiries generated by advertisements or other form of mail or any types of unrequested mailing
32 or advertisement sent by the seller which requires a consumer to respond telephonically for
33 further information where it is revealed that the seller is offering to sell to the prospective
34 purchaser on behalf of the telephonic seller where it is represented or implied that the seller is

1 offering to sell to the prospective purchaser any gold, silver, or other metals, diamonds, rubies,
2 sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields,
3 wells, or exploration sites; or that the seller is offering to sell any goods or services not
4 specifically exempted in subsection (10).

5 (9) "Hours of operation" means Monday through Friday, except a state or federal
6 holiday, nine o'clock (9:00 am) to six o'clock (6:00 pm), Saturday ten o'clock (10:00 am) to five
7 o'clock (5:00 pm).

8 (10) For purposes of this section, "telephonic seller" or "seller" does not include any of
9 the following:

10 (i) A person selling a security which has been qualified for sale by the director of
11 business regulation pursuant to section 7-11-301 et seq., or which is exempt under section 7-11-
12 401 et seq. from the necessity to qualify.

13 (ii) A person licensed pursuant to section 520.5-6 when the solicited transaction is
14 governed by that law.

15 (iii) A person licensed pursuant to chapter 1.1 of title 7, when the solicited transaction is
16 governed by that law.

17 (iv) A person soliciting the sale of a franchise which is registered pursuant to section 19-
18 28.1-5, or is exempt under section 19-28.1-6 from the necessity of registering.

19 (v) A person primarily soliciting the sale of a newspaper of general circulation, as
20 defined in section 9-19.1-1, a magazine or periodical, or contractual plans, including book and
21 record clubs, (A) under which the seller provides the consumer with a form which the consumer
22 may use to instruct the seller not to ship the offered merchandise, and which is regulated by the
23 federal trade commission trade regulation rule concerning "Use of Negative Option Plans by
24 Sellers in Commerce," or (B) not covered under subdivision (A), such as continuity plans,
25 subscription arrangements, standing order arrangements, supplements, and series arrangements
26 under which the seller periodically ships merchandise to a consumer who has consented in
27 advance to receive the merchandise on a periodic basis.

28 (vi) A person soliciting business from prospective purchasers who have previously
29 purchased from the person making the solicitation or the business enterprise for which the person
30 is calling.

31 (vii) Any supervised financial institution or parent, subsidiary, or affiliate. As used in
32 this paragraph, "supervised financial institution" means any commercial bank, trust company,
33 savings and loan association, credit union, industrial loan company, personal property broker,
34 consumer finance lender, commercial finance lender, or insurer; provided, that the institution is

1 subject to supervision by an official or agency of this state or of the United States.

2 (viii) A person soliciting the sale of services provided by a cable television system
3 licensed or franchised pursuant to chapter 19 of title 39.

4 (ix) A person or affiliate of a person whose business is regulated by the public utilities
5 commission.

6 (x) A person soliciting the sale of a farm product, as defined in section 43-3-18, if the
7 solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of
8 one hundred dollars (\$100).

9 (xi) An issuer or subsidiary of an issuer that has a class of securities which is subject to
10 section 12 of the Securities Exchange Act of 1934 (15 USC section 78l) and which is either
11 registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G), or (H) of
12 subsection (g) of that section.

13 (xii) A person soliciting sales which are exempted under section 6-13-5 (Unfair Sales
14 Practices) or section 6-13.1-4 (Deceptive Trade Practices).

15 (xiii) A person soliciting exclusively the sale of telephone answering services to be
16 provided by that person or that person's employer.

17 (11) "Customer" shall mean any natural person who is a resident of this state and who is
18 or may be required to pay for or to exchange consideration for goods and services offered through
19 telemarketing;

20 (12) "Do Not Call List" means the Rhode Island Do Not Call List established and
21 maintained by the Administrator of Public Utilities pursuant to section 39-3-44 of the general
22 laws;

23 (13) "Doing business in this state" shall mean conducting telephonic sales calls:

24 (i) from a location in this state; or

25 (ii) from a location outside of this state to customers residing in this state;

26 (14) Goods and services" shall mean any goods and services, and shall include any real
27 property or any tangible personal property or services of any kind;

28 (15) "Telemarketer" shall mean any person who, for financial profit or commercial
29 purposes in connection with telemarketing, makes telemarketing sales calls to a customer when
30 the customer when the customer is in this state or any person who directly controls or supervises
31 the conduct of a telemarketer. For the purposes of this section, "commercial purposes" shall mean
32 the sale or offer for sale of goods or services;

33 (16) "Telemarketing" shall mean any plan, program or campaign which is conducted to
34 induce payment or the exchange of any other consideration for any goods or services by use of

1 one or more telephones and which involves more than one telephone call by a telemarketer in
2 which the customer is located within the state at the time of the call. Telemarketing does not
3 include the solicitation of sales through media other than by telephone calls;

4 (17) "Telemarketing sales call" means a telephone call made by a telemarketer to a
5 customer for the purpose of inducing payment or the exchange of any other consideration for
6 goods and services;

7 (18) "Unsolicited telemarketing sales call" shall mean any telemarketing sales call other
8 than a call made:

9 (i) in response to an express written or verbal request of the customer called; or

10 (ii) in connection with an established business relationship, which has not been
11 terminated by either party; or

12 (iii) to an existing customer, unless such customer has stated to the telemarketer that such
13 customer no longer wished to receive the telemarketing sales call of such telemarketer; or

14 (iv) in which the sale of goods and services is not completed, and payment or
15 authorization of payment is not required, until after a face-to-face sales presentation by the
16 telemarketer or a meeting between the telemarketer and customer.

17 **5-61-3.5. Do not call lists.** -- (a) No telemarketer salesperson or telephonic seller shall
18 make or cause to be made any unsolicited telephonic sales calls or any unsolicited telemarketing
19 calls to any residential, mobile or telephonic paging device telephone number unless the
20 telemarketer salesperson or telephonic seller has instituted procedures for maintaining a list of
21 persons who do not wish to receive telephonic sales calls made by or on behalf of that person and
22 who are listed on the most recent Do Not Call List or, in compliance with 47 CFR 64 or 16 CFR
23 310 as applicable.

24 (b) Any person who violates any provision of this section is guilty of a misdemeanor,
25 and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) per
26 violation.

27 SECTION 3. This act shall take effect on October 1, 2002.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - REGULATORY POWERS OF
ADMINISTRATION

- 1 This act would create and define a do not call registry and would establish guidelines for
2 telemarketers.
3 This act would take effect upon passage. Section 3 will take effect on October 1, 2002.

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