

LC00545

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- UNSOLICITED TELEPHONE SALES CALLS

Introduced By: Senators Felag, Sosnowski, and Connors

Date Introduced: February 11, 2004

Referred To: Senate Commerce, Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "Bus inesses and Professions" is hereby
2 amended by adding thereto the following chapter:

CHAPTER 61.1

UNSOLICITED TELEPHONE SALES CALLS

5 **5-61.1-1. Definitions. --** As used in this chapter:

6 (1) "Consumer" means any individual who is a resident of this state and a prospective
7 recipient of consumer goods or services;

8 (2) "Consumer goods or services" means any article or service that is purchased, leased,
9 exchanged or received primarily for personal, family or household purposes, and includes, but is
10 not limited to, stocks, bonds, mutual funds, annuities and other financial products;

11 (3) "Department" means the department of attorney general;

12 (4) "Doing business in this state" means conducting telephonic sales calls: (i) from a
13 location in this state; or (ii) from a location outside of this state to consumers residing in this state
14 or any person or entity required to register pursuant to section 5-61-3;

15 (5) "Marketing or sales solicitation" means the initiation of a telephone call or message to
16 encourage the purchase or rental of, or investment in, property, goods or services, that is
17 transmitted to any consumer, but does not include a telephone call or message: (i) to any
18 consumer with that consumer's prior express written or verbal invitation or permission; (ii) to any

1 consumer with whom there is a documented prior business relationship. To demonstrate said
2 relationship, the business must have documented evidence of a prior sales transaction that has
3 occurred within the most recent six (6) month period; or (iii) to a consumer in response to a visit
4 made by such consumer to an establishment selling, leasing or exchanging consumer goods or
5 services at a fixed location; or (iv) by, or on behalf of, a nonprofit organization.

6 (6) “Telephonic sales call” means a call made by a telephone solicitor to a consumer for
7 the purpose of: (i) engaging in a marketing or sales solicitation; (ii) soliciting an extension of
8 credit for consumer goods or services; or (iii) obtaining information that will or may be used for
9 marketing or sales solicitation or exchange of or extension of credit for consumer goods or
10 services;

11 (7) “Telephone solicitor” means any individual, association, corporation, partnership,
12 limited partnership, limited liability company or other business entity, or a subsidiary or affiliate
13 thereof, doing business in this state that makes or causes to be made a telephonic sales call;

14 (8) “Unsolicited telephonic sales call” means any telephonic sales call other than a call
15 made: (i) in response to an express written or verbal request of the consumer called; (ii) primarily
16 in connection with an existing debt or contract, payment or performance of which has not been
17 completed at the time of the call; or (iii) to an existing customer, unless such customer has stated
18 to the telephone solicitor that such customer no longer wishes to receive the telephonic sales calls
19 of such telephone solicitor; and

20 (9) “Caller identification service or device” means any telephone service or device that
21 permits a consumer to see the telephone number of incoming calls.

22 **5-61.1-2. No sales solicitation call list.** – (a) The department shall establish and maintain
23 a “no sales solicitation call” listing of consumers who do not wish to receive unsolicited
24 telephonic sales calls. The department may contract with a private vendor to establish and
25 maintain such listing provided the private vendor has maintained national “no sales solicitation
26 call” listings for more than two (2) years, and the contract requires the vendor to provide the “no
27 sales solicitation call” listing in a printed hard copy format and in any other format required by
28 the department. The listing shall be at no cost to the consumer and shall be updated quarterly. The
29 consumer may indicate any exclusion for their listing on a form provided by the department.

30 (b) The list shall be purchased by every telephone solicitor doing business in this state
31 and registered pursuant to section 5-61-3 for a fee determined by the department. The list shall be
32 updated within thirty (30) days of the end of each quarter.

33 (c) The department shall provide notice to consumers of the establishment of a “no sales
34 solicitation call” listing. Any consumer who wishes to be included on such listing shall notify the

1 department in such a manner and such times as the department may prescribe.

2 **5-61.1-3. Directories.** – (a) Any person who obtains the name, residential address or
3 telephone number of any consumer from published telephone directories or from any other source
4 and republishes or compiles such information, electronically or otherwise, and sells or offers to
5 sell such publication or compilation to telephone solicitors for marketing or sales solicitation
6 purposes, shall exclude from any such publication or compilation, and from the database used to
7 prepare such publication or compilation, the name, address and telephone number or numbers of
8 any consumer if the consumer’s name and telephone number or numbers appear in the then
9 current quarterly “no sales solicitation call” listing made available by the department under
10 section 5-61.1-2.

11 (b) This section does not apply to any telephone company or its affiliates for the sole
12 purpose of compiling, publishing or distributing telephone directories or causing the compilation,
13 publication or distribution of telephone directories or providing directory assistance for the sole
14 purpose of compiling, publishing or distributing telephone directories for such telephone
15 company pursuant to an agreement or other arrangement with such telephone company.

16 **5-61.1-4. Prohibitions – Penalties.** – (a) No telephone solicitor shall make or cause to be
17 made any unsolicited telephonic sales calls to any consumer if the consumer’s name and
18 telephone number or numbers appear on the then current “no sales solicitation call” listing made
19 available by the department.

20 (b) Any violation of the provisions of subsection (a) shall be deemed an unfair or
21 deceptive trade practice under chapter 6-13.1 of the general laws and shall be subject to the
22 penalties therein and/or a fine not to exceed five hundred dollars (\$500) for a first violation and
23 not to exceed one thousand dollars (\$1,000) for a second or subsequent violation except that no
24 liability shall be incurred under this section if:

25 (1) such telephone solicitor established and implemented written procedures and trained
26 its employees to follow such procedures to comply with subsection (a);

27 (2) such telephone solicitor deleted from its call list any listing of a consumer on the then
28 current quarterly “no sales solicitation call” listing; and

29 (3) such call was made inadvertently.

30 (c) No telephone solicitor shall intentionally cause to be installed or shall intentionally
31 use any blocking device or service to circumvent a consumer’s use of a caller identification
32 service or device, or use any phone number that will not receive an incoming call.

33 (d) The provisions in subsections (a) and (b) shall not apply to any of the following:

34 (1) telephone calls made in response to the express request of, or an advertisement by the

1 person called;

2 (2) telephone calls made in connection with the collection of a debt or the offer by a
3 creditor to the person called of an extension of credit to pay a delinquent obligation owed by the
4 person called to the creditor;

5 (3) telephone calls that the telephone subscriber exempted from the coverage of the “do
6 not call” list as provided in subsection 5-61.1-2(a);

7 (4) for purposes of this section, “telephone solicitor” does not include any of the
8 following:

9 (i) Any supervised financial institution or parent, subsidiary, or affiliate. As used in this
10 paragraph, “supervised financial institution” means any commercial bank, trust company, savings
11 and loan association, credit union, industrial loan company, personal property broker, consumer
12 finance lender, commercial finance lender, or insurer; provided, that the institution is subject to
13 supervision by an official or agency of this state or of the United States;

14 (ii) A person or affiliate of a person whose business is regulated by the public utilities
15 commission.

16 **5-61.1-5. Civil actions. --** (a) Notwithstanding the provisions of section 5-61.1-4, any
17 person who has received a telephone solicitation that is prohibited by section 5-61.1-4 may bring
18 a civil action in any court of competent jurisdiction against a telephonic solicitor to recover or
19 obtain any one (1) or more of the following remedies:

20 (1) an order to enjoin the violation;

21 (2) a civil penalty of up to five hundred dollars (\$500) for the first violation and up to one
22 thousand dollars (\$1,000) for a second and each subsequent violation;

23 (3) court costs, including reasonable attorney’s fees; and

24 (4) any other relief that the court deems proper.

25 **5-61.1-6. Rules. --** The department may adopt rules and regulations to carry out the
26 provisions of this chapter. Such rules and regulations may include, but shall not be limited to, all
27 requests relating to the procedures used by any vendor, provisions governing the availability and
28 distribution of the listing established under section 5-61.1-2 and notice requirements for
29 consumers wishing to be included on the listing established under section 5-61.1-2 of this chapter.

30 SECTION 2. This act shall take effect on January 15, 2005.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS – UNSOLICITED TELEPHONE
SALES CALLS

- 1 This act would require the attorney general to establish and maintain a registry which
2 would contain a list of customers who do not wish to receive unsolicited telephone sales calls.
3 This act would take effect on January 15, 2005.

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