

# STATE OF RHODE ISLAND

## IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

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### 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 "Businesses and Professions" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 61.1

4 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 complies 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 613.1 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

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- 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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LC00545  
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