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

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,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA §1499-B, sub-§1, ¶D-1 is enacted to read:

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.

Sec. 2. 10 MRSA §1499-B, sub-§2, as enacted by PL 2007, c. 227, §2, is amended to read:

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;

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; or

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

D. A telephone sales call made to any person with whom the telephone solicitor has an established business relationship.

Sec. 3. 10 MRSA §1499-B, sub-§6, as enacted by PL 2007, c. 227, §2, is amended to read:

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;

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;

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;

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;

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

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

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

Effective March 7, 2008.