ASSEMBLY, No. 3515

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED JULY 11, 2014

Sponsored by:
Assemblyman BOB ANDRZECZAK
District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS
Concerns recorded telephone messages.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning recorded telephone messages, amending P.L.1993, c.252, and amending and supplementing P.L.2003, c.76.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1993, c.252 (C.48:17-28) is amended to read as follows:

   2. A caller [within the State] shall not use a telephone or telephone line to contact a subscriber within the State to deliver a recorded message other than for emergency purposes, [unless the recorded message is introduced by an operator who shall obtain the subscriber's consent before playing the recorded message, or] unless a [prior or] current relationship exists between the caller and the subscriber.

   As used in this section, "emergency purposes" means calls made necessary in any situation affecting the immediate health and safety of consumers; "current relationship" shall not be deemed to exist based upon a subscriber's political party affiliation for the purpose of determining whether the delivery of a recorded message to a subscriber is exempt from the prohibition set forth in this section; and "recorded message" shall not include automated recorded telephone operator introductions for the purposes of accepting a call or message. (cf: P.L.1997, c.345, s.1)

2. Section 5 of P.L.1993, c.252 (C.48:17-31) is amended to read as follows:

   5. A person who violates the provisions of this act shall be subject to a penalty of not [less than $300 or more than $800] more than $10,000 for the first offense and not more than $20,000 for the second and each subsequent offense. In addition, a person shall be subject to a penalty of not more than $30,000 if the violation was part of a scheme, plan, or course of conduct directed at senior citizens or persons with disabilities. Every superior court and municipal court shall have jurisdiction of proceedings for the collection and enforcement of a penalty imposed because of the violation, within the territorial jurisdiction of the court, of any provision of this act. The penalty shall be collected and enforced in a summary proceeding pursuant to [the "penalty enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process may be either in the nature of a summons or warrant and shall issue in the name of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
State, upon the complaint of the Attorney General or any other person.

(cf: P.L.1993, c.252, s.5)

3. Section 2 of P.L.2003, c.76 (C.56:8-120) is amended to read as follows:

2. As used in this act:

"Customer" means an individual who is a resident of this State and a prospective recipient of a telemarketing sales call or a recorded message call.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Local exchange telephone company" means a telecommunications carrier authorized by the Board of Public Utilities to provide local telecommunications services.

"Merchandise" means merchandise as defined in subsection (c) of section 1 of P.L.1960, c.39 (C.56:8-1), including an extension of credit.

"No telemarketing call list" or "no call list" means a list of telephone numbers of customers in this State who desire not to receive unsolicited telemarketing sales calls or recorded message calls.

"Recorded message call" means a telephone call made to deliver a recorded or artificial voice message, but does not include automated recorded telephone operator introductions for the purposes of accepting a call or message.

"Telemarketer" means any entity, whether an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, whether on behalf of itself or others, who makes residential telemarketing sales calls to a customer when the customer is in this State, or any person who directly controls or supervises the conduct of a telemarketer.

"Telemarketing" means any plan, program, or campaign which is conducted by telephone to encourage the purchase or rental of, or investment in, merchandise, but does not include the solicitation of sales through media other than a telephone call.

"Telemarketing sales call” means a telephone call made by a telemarketer to a customer as part of a plan, program or campaign to encourage the purchase or rental of, or investment in, merchandise, except for continuing services. A telephone call made to an existing customer for the sole purpose of collecting on accounts or following up on contractual obligations shall not be deemed a telemarketing sales call.

"Unsolicited telemarketing sales call” means any telemarketing sales call other than a call made:
(1) in response to an express written request of the customer called; or
(2) to an existing customer, which shall include the ability to collect on accounts and follow up on contractual obligations, unless the customer has stated to the telemarketer that the customer no longer desires to receive the telemarketing sales calls of the telemarketer.
(cf: P.L.2003, c.208, s.1)

4. (New section) No person shall make or cause to be made a telephone call to deliver a recorded message to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of P.L.2003, c. 76 (C.56:8-127), unless:
   a. The message is sent for emergency purposes in any situation affecting the immediate health and safety of the customer or the customer’s family;
   b. A current relationship exists between the caller and the customer;
   c. The message is sent for the purpose of advising customers concerning merchandise or goods or services previously ordered or purchased, including the collection of lawful debts; or
   d. The message is sent as part of a service utilized for the relaying of messages for private purposes, such as a message delivery service.

As used in subsection b. of this section, "current relationship" shall not be deemed to exist based upon a subscriber's political party affiliation for the purpose of determining whether the delivery of a recorded message to a subscriber is exempt from the prohibition set forth in this section.

5. This act shall take effect immediately.

STATEMENT

This bill expands New Jersey’s current prohibition on recorded telephone messages. Under N.J.S.A.48:17-27 et seq., a person in New Jersey is prohibited from calling a subscriber in this State to deliver a recorded message, other than for emergency purposes, unless the recorded message is introduced by an operator who first obtains the subscriber’s consent before playing the recorded message, or unless a prior or current relationship exists between the caller and the subscriber. The prohibition against recorded message calls under current law does not apply to recorded messages concerning merchandise, goods, or services previously ordered or purchased or to a telephone company service for relaying private messages.
This bill amends N.J.S.A.48:17-27 et seq. to extend the current prohibition against recorded message calls to make it applicable to all calls placed to subscribers in this State regardless of whether the call is made from within or from outside of this State. The bill removes the exceptions for a recorded message introduced by a live operator and for a recorded message made by someone with a prior relationship with the subscriber. The bill also amends the penalty provisions of N.J.S.A.48:17-27 et seq. to make that law consistent with the exceptions and penalty provisions in N.J.S.A.56:8-119 et seq. (the “telemarketing law”).

In addition, the bill amends and supplements the telemarketing law to prohibit persons from making calls to any customer whose telephone number is on the “no telemarketing call list” established pursuant to section 9 of the telemarketing law, to deliver a recorded message, unless:

1. the message is sent for emergency purposes in any situation affecting the immediate health and safety of the customer or the customer’s family;
2. a current relationship exists between the caller and the customer;
3. the message is sent for the purpose of advising customers concerning merchandise or goods or services previously ordered or purchased, including the collection of lawful debts; or
4. the message is sent as part of a service utilized for the relaying of messages for private purposes, such as a message delivery service.

Upon enactment, this bill will allow New Jersey residents whose telephone numbers are on the “no telemarketing call list” to have recourse to the enforcement provisions of the telemarketing law if they receive a prohibited recorded message. Residents whose numbers are not on the “no telemarketing call list” will continue to have recourse under the enforcement provisions of N.J.S.A.48:17-27 et seq.