

ASSEMBLY, No. 3515

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JULY 11, 2014

Sponsored by:

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Concerns recorded telephone messages.

CURRENT VERSION OF TEXT

As introduced.



A3515 ANDRZEJCZAK

2

1 AN ACT concerning recorded telephone messages, amending
2 P.L.1993, c.252, and amending and supplementing P.L.2003,
3 c.76.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1993, c.252 (C.48:17-28) is amended to
9 read as follows:

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

17 As used in this section, "emergency purposes" means calls made
18 necessary in any situation affecting the immediate health and safety
19 of consumers; "current relationship" shall not be deemed to exist
20 based upon a subscriber's political party affiliation for the purpose
21 of determining whether the delivery of a recorded message to a
22 subscriber is exempt from the prohibition set forth in this section;
23 and "recorded message" shall not include automated recorded
24 telephone operator introductions for the purposes of accepting a call
25 or message.

26 (cf: P.L.1997, c.345, s.1)

27
28 2. Section 5 of P.L.1993, c.252 (C.48:17-31) is amended to
29 read as follows:

30 5. A person who violates the provisions of this act shall be
31 subject to a penalty of not **[less than \$300 or more than \$800]** more
32 than \$10,000 for the first offense and not more than \$20,000 for the
33 second and each subsequent offense. In addition, a person shall be
34 subject to a penalty of not more than \$30,000 if the violation was
35 part of a scheme, plan, or course of conduct directed at senior
36 citizens or persons with disabilities. Every superior court and
37 municipal court shall have jurisdiction of proceedings for the
38 collection and enforcement of a penalty imposed because of the
39 violation, within the territorial jurisdiction of the court, of any
40 provision of this act. The penalty shall be collected and enforced in
41 a summary proceeding pursuant to **[the "penalty enforcement law"**
42 **(N.J.S.2A:58-1 et seq.)]** the "Penalty Enforcement Law of 1999,"
43 P.L.1999, c.274 (C.2A:58-10 et seq.). Process may be either in the
44 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.

1 State, upon the complaint of the Attorney General or any other
2 person.

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

4

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

7 2. As used in this act:

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

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

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

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

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

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

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

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

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

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

46 "Unsolicited telemarketing sales call" means any telemarketing
47 sales call other than a call made:

1 (1) in response to an express written request of the customer
2 called; or

3 (2) to an existing customer, which shall include the ability to
4 collect on accounts and follow up on contractual obligations, unless
5 the customer has stated to the telemarketer that the customer no
6 longer desires to receive the telemarketing sales calls of the
7 telemarketer.

8 (cf: P.L.2003, c.208, s.1)

9
10 4. (New section) No person shall make or cause to be made a
11 telephone call to deliver a recorded message to any customer whose
12 telephone number is included on the no telemarketing call list
13 established pursuant to section 9 of P.L.2003, c. 76 (C.56:8-127),
14 unless:

15 a. The message is sent for emergency purposes in any situation
16 affecting the immediate health and safety of the customer or the
17 customer's family;

18 b. A current relationship exists between the caller and the
19 customer;

20 c. The message is sent for the purpose of advising customers
21 concerning merchandise or goods or services previously ordered or
22 purchased, including the collection of lawful debts; or

23 d. The message is sent as part of a service utilized for the
24 relaying of messages for private purposes, such as a message
25 delivery service.

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

31
32 5. This act shall take effect immediately.

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STATEMENT

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37 This bill expands New Jersey's current prohibition on recorded
38 telephone messages. Under N.J.S.A.48:17-27 et seq., a person in
39 New Jersey is prohibited from calling a subscriber in this State to
40 deliver a recorded message, other than for emergency purposes,
41 unless the recorded message is introduced by an operator who first
42 obtains the subscriber's consent before playing the recorded
43 message, or unless a prior or current relationship exists between the
44 caller and the subscriber. The prohibition against recorded message
45 calls under current law does not apply to recorded messages
46 concerning merchandise, goods, or services previously ordered or
47 purchased or to a telephone company service for relaying private
48 messages.

1 This bill amends N.J.S.A.48:17-27 et seq. to extend the current
2 prohibition against recorded message calls to make it applicable to
3 all calls placed to subscribers in this State regardless of whether the
4 call is made from within or from outside of this State. The bill
5 removes the exceptions for a recorded message introduced by a live
6 operator and for a recorded message made by someone with a prior
7 relationship with the subscriber. The bill also amends the penalty
8 provisions of N.J.S.A.48:17-27 et seq. to make that law consistent
9 with the exceptions and penalty provisions in N.J.S.A.56:8-119 et
10 seq. (the “telemarketing law”).

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

16 1. the message is sent for emergency purposes in any situation
17 affecting the immediate health and safety of the customer or the
18 customer’s family;

19 2. a current relationship exists between the caller and the
20 customer;

21 3. the message is sent for the purpose of advising customers
22 concerning merchandise or goods or services previously ordered or
23 purchased, including the collection of lawful debts; or

24 4. the message is sent as part of a service utilized for the
25 relaying of messages for private purposes, such as a message
26 delivery service.

27 Upon enactment, this bill will allow New Jersey residents whose
28 telephone numbers are on the “no telemarketing call list” to have
29 recourse to the enforcement provisions of the telemarketing law if
30 they receive a prohibited recorded message. Residents whose
31 numbers are not on the “no telemarketing call list” will continue to
32 have recourse under the enforcement provisions of N.J.S.A.48:17-
33 27 et seq.