

OFFICE OF ATTORNEY GENERAL

COMMONWEALTH OF PENNSYLVANIA

DO NOT CALL REPORT

Fiscal Year 2018-2019



Josh Shapiro
Attorney General

November 2019

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
DO NOT CALL REPORT FOR FISCAL YEAR 2018-2019**

The Office of Attorney General’s Bureau of Consumer Protection (“Bureau”) provides the following report on Pennsylvania’s Do Not Call program for the fiscal year beginning July 1, 2018 and ending June 30, 2019.

I. Pennsylvania’s “Do Not Call” Law

The Commonwealth’s Do Not Call program was established through a 2002 amendment to Pennsylvania’s Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (“Telemarketer Act”). The Telemarketer Act provides legal protections from unwanted telephone solicitations for consumers who place their residential landline and wireless telephone numbers on the statewide Do Not Call list. Under the law, telemarketers are required to obtain copies of the list, which is updated quarterly, or use a service provider who has, and will use, the Do Not Call list when making telephone solicitation calls.

II. Pennsylvania’s “Spam Law”

Pennsylvania’s Unsolicited Telecommunications Advertisement Act, 73 P.S. § 2250, *et seq.* (“Spam Law”), is intended to protect consumers from e-mail or fax messages which:

- contain false or misleading information in the return address;
- contain false or misleading information in the subject line; or
- fail to include a telephone number or return e-mail address to which recipients can notify the sender not to transmit further unsolicited documents.

The prohibitions of the Spam Law cover unsolicited commercial electronic mail messages or faxes transmitted “*from a computer or fax machine located in this Commonwealth . . .*” See, 73 P.S. § 2250.3(a).

III. Do Not Call Enrollment

Consumers can register their residential and/or wireless telephone numbers on Pennsylvania's Do Not Call list by contacting the Office of Attorney General by telephone, mail or online. Over 54,000 telephone numbers were registered with the Bureau during the 2018-19 fiscal year. Consumers may also enroll directly with Direct Marketing Association, which is the administrator of Pennsylvania's Do Not Call list. Registration is free.

The Office of Attorney General's website and toll-free telephone number for registration and filing complaints are:

<https://www.attorneygeneral.gov>

1-888-777-3406

At the close of the fiscal year, there were 2,963,077 residential landline and wireless telephone numbers enrolled on Pennsylvania's Do Not Call registry.

IV. Enforcement

A. General

Violations of the Telemarketer Act and the Spam Law constitute violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("Consumer Protection Law"). *See* 73 P.S. § 2246(a) and 73 P.S. § 2250.5(a). Under the Consumer Protection Law, the Attorney General may bring an action to stop unlawful acts or practices by filing a civil law enforcement action, whenever he has reason to believe a person has engaged in business practices which violate the law. The Consumer Protection Law also permits the Attorney General to enter into agreements, known as Assurances of Voluntary Compliance ("AVC"), to end unlawful activity and obtain restitution and other relief in connection with violations of the law.

The Consumer Protection Law provides for penalties of up to \$1,000 for each violation and up to \$3,000 per violation involving a consumer who is age 60 or older. The Telemarketer Act and Spam Law state that 10% of any civil penalty collected for violations,

up to \$100 per person, is to be remitted to consumers whose complaints led to the imposition of the penalty. *See*, 73 P.S. § 2245.2(k)(2) and 73 P.S. § 2250.8(a)(2).

B. Do Not Call Law

During the 2018-2019 fiscal year, the Bureau received more than 4,300 Do Not Call complaints from consumers¹. More than 3,200 consumers reported that the caller's telephone number or identification was indicated as "unknown" on their caller ID devices. In the past, the telephone number and information displayed on these devices could be relied upon to identify the person who was calling; however, more than 1,000 telephone numbers reported in consumer complaints as displaying on caller ID devices were actually found to be "spoofed." This means that most of the callers relating to these complaints (more than 97%²) are not able to be identified through ordinary investigative means for enforcement action. Also important to note is that the number of complaints filed against legitimate telemarketers decreased significantly, which could indicate that our enforcement efforts in the telemarketing space is deterring violations appropriately. Nevertheless, we are still faced with the scammers using the telephone and email to harm Pennsylvania consumers.

Scammers utilize voice-over internet protocol (VoIP) to modify caller ID fields and set up messaging to appear to be someone else, passing the information through numerous networks to appear, eventually, on the consumer's caller ID display. Many times this caller ID displays telephone numbers that are in the same area code and local exchange of the targeted victim. That prompts consumers to answer their phones because they think the call "must-be" from someone nearby, like a neighbor. In many cases, the spoofed number is the same number of the targeted victim. All too often the 'spoofed' caller ID is that of a well-known agency like the IRS, FBI or the customer service departments of well-known corporations.

A recent trend seen during the past fiscal year and continuing this fiscal year is businesses and/or telemarketing service providers' use of a technology that is commonly called "ringless voicemail," or "voicemail drops." Using software provided by different tech

¹ The total number of complaints received by the Bureau increased from last fiscal year to this fiscal year, but the number of Do Not Call complaints decreased by 15%.

² An increase from last year.

companies, a business or telemarketer can utilize a computer to make contact with the voicemail server of mobile and internet phone providers. The business or telemarketer can then directly place a voicemail message into the voicemail box of the subscriber without placing an outbound call.

During this past fiscal year, the calls where consumers identified the caller or subject matter about which they complained most covered a range of goods and services. They include motor vehicle warranties or service contracts, telecommunications & broadcast, home improvement services, consumer credit & money handling solicitations, real estate & residential construction and contest promotions and prizes. However, most of the calls were purely scams, aimed at obtaining personal financial information from consumers. Prominent among these scams were:

- Advance Payment/Wire Transfer Scams - in which they instruct the victim to cash the check or money order and send them a portion of the money by wire.
- Contest, Promotions & Prizes Scams - they will instruct the victim to pay a fee or buy something, asked to wire money, deposit a check they've sent, they are told they are from the government or another organization with a name that sounds official.
- Counterfeit Check Scams - the scammer may ask the victim to send a wire transfer for a portion of the check amount. The scam exploits the rule that a wire transfer cannot be rescinded, so when the check is returned as counterfeit, it is debited from the victim's bank account, leaving him responsible for the loss.
- Grants Scams - telephone solicitors call out of the blue looking to give you thousands of dollars worth of government grants they say you are eligible for.
- Inheritance Scams - advance fee scam where the victim is asked for money before they can collect the money. Usually a letter or email is sent to a group of people with the same last name, or those on a list of email addresses purchased by the scammers.

Not every complaint presents a violation of the Telemarketer Act or is actionable under the law. For instance, only residential landline and wireless telephone numbers may be included on the list: businesses are ineligible for the protections of the statute. Additionally, some complaints contain insufficient information to identify the caller, or may have been filed by a consumer who was not enrolled on the list at the time of the call.

Some calls are still permitted under the Telemarketer Act, including:

- Calls made in response to an express request of the consumer;
- Debt collection calls (legitimate);
- Calls made by a telemarketer which has had an established business relationship with the consumer within 12 months prior to the call;
- Calls made on behalf of the following organizations: charities, fraternal benefit societies, and federally chartered veterans organizations; and
- Calls from political candidates and parties.

In the 2018-19 fiscal year, the Bureau opened 9 investigations related to violations of the Telemarketer Act, filed 5 legal actions during the fiscal year. The legal actions that were resolved via an AVC obtained injunctive relief to prevent further violations of the Telemarketer Act and Consumer Protection Law, among other things. Where the Bureau filed a complaint, it is seeking all appropriate relief under the law. The legal action activity is as follows:

Breathe Easy Ventilation, Inc.

A complaint was filed on April 9, 2019, in Chester County, against New York based home improvement business, Breathe Easy Ventilation, Inc. (“Breathe Easy”). In the eleven (11) count complaint, which includes other consumer protection violations, the Bureau alleges Breathe Easy violated the Telemarketer Act and Consumer Protection Law by (1) failing to register as telemarketer, (2) calling consumers on the PA Do Not Call list, (3) failing to disclose the name of its business during solicitation calls, and (4) failing to obtain the PA Do Not Call list on a quarterly basis.

National Choice Energy, LLC

An AVC was filed on August 13, 2018, in Allegheny County, to resolve violations of the Telemarketer Act and Consumer Protection Law by National Choice Energy, LLC (“National Choice”), a Nevada based energy supplier registered with the Pennsylvania Public Utilities Commission (“PUC”). National Choice and/or its third party vendor initiated or caused to be initiated telephone solicitation calls by way of

‘ringless voicemail drops’ to consumers on the Do Not Call list, as well as initiated outbound calls to persons who previously stated they did not wish to receive such calls. National Choice was required to pay \$40,000, of which \$26,300 was distributed to the Treasury, \$1,700 was distributed to 17 consumer complainants for remittance pursuant to the Telemarketer Act, and \$12,000 was distributed to the Office of Attorney General for costs of the investigation.

Astral Energy, LLC

An AVC was filed on June 14, 2019, in Dauphin County, to resolve violations of the Telemarketer Act and Consumer Protection Law by Astral Energy, LLC (“Astral”), a New Jersey based energy supplier registered with the PUC. Astral and/or its third party vendor initiated or caused to be initiated telephone solicitation calls to consumers on the Do Not Call list, as well as failed to purchase or utilize the PA Do Not Call list from the list administrator. Astral was required to pay \$12,000, of which \$6,300 was distributed to the Treasury, \$700 was distributed to 7 consumer complainants for remittance pursuant to the Telemarketer Act, and \$5,000 was distributed to the Office of Attorney General for costs of the investigation.

LifeEnergy, LLC

An AVC was filed on June 21, 2019, in Erie County, to resolve violations of the Telemarketer Act and Consumer Protection Law by LifeEnergy, LLC (“LifeEnergy”), a Texas based energy supplier registered with the PUC. LifeEnergy and/or its third party vendor initiated or caused to be initiated telephone solicitation calls by way of prerecorded messages (‘robocalls’) in violation of the federal Telemarketing Sales Rule, which in turn is a violation of the Telemarketer Act. LifeEnergy was required to pay \$40,000, of which \$27,600 was distributed to the Treasury, \$2,400 was distributed to 24 consumer complainants for remittance pursuant to the Telemarketer Act, and \$10,000 was distributed to the Office of Attorney General for costs of the investigation.

Yodel Technologies, LLC

An AVC was filed on June 25, 2019, in Allegheny County, to resolve violations of the Telemarketer Act and Consumer Protection Law by Yodel

Technologies, LLC (“Yodel”), a telemarketing service provider in Florida. Yodel initiated or telephone solicitation calls to consumers on the Do Not Call list, as well as initiated outbound calls by way of prerecorded messages (‘robocalls’) in violation of the federal Telemarketing Sales Rule. Yodel also failed to purchase or utilize the PA Do Not Call list from the list administrator. Yodel was required to pay \$70,000, of which \$30,000 in civil penalties was suspended, \$4,000 was distributed to 40 consumer complainants for remittance pursuant to the Telemarketer Act, and \$36,000 was distributed to the Office of Attorney General for costs of the investigation.

C. Spam Law

In fiscal year 2018-2019, the Bureau received 25 complaints involving unsolicited faxes and spam. Consumer complaints regarding unsolicited e-mails and faxes involved a variety of issues, such as online shopping solicitations, phishing schemes, and solicitations for prescription medications and other medical and health-related goods and services.

As with the Do Not Call law, not every complaint presents a violation of the Spam Law or is actionable under the law. For instance, the statute does not: (1) restrict messages and advertisements that an e-mail user agreed to receive in exchange for free use of an e-mail account or (2) restrict transmissions sent as a result of an established business relationship. Additionally, a significant amount of spam and unsolicited faxes originate from outside Pennsylvania and the United States, creating enforcement and prosecution issues.

The Office of Attorney General continues to educate consumers about the protections these laws afford and will take action, as appropriate, to protect consumers in cases where it finds violations of these laws.

V. Other Activity

On October 8, 2018, in response to the FCC’s request for comments on the robocall epidemic in general, Pennsylvania led a bipartisan coalition of 38 State Attorneys General in filing comments with the FCC. In these comments, we urged the FCC to adopt broader call blocking rules to give voice service providers the power to block more calls that they identify and confirm are using spoofed caller ID information.

On November 5, 2018, the FCC issued a press release announcing that it was taking steps to address the very issues raised in the October comments. The FCC, in contemporaneously-issued letters, expected 14 voice service providers to implement the SHAKEN/STIR caller ID authentication system by the end of 2019. Those providers who fall behind in implementing the system could face future action by the FCC. Lastly, the FCC stated it was considering additional actions, such as authorizing voice service providers to block the delivery of calls that could not be authenticated, further stemming the flow of illegally spoofed robocalls to consumers.

Urging action for robust caller ID authentication and broader provider call blocking has not been limited to the FCC. Earlier this year, the U.S. Senate introduced the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (“TRACED Act”). This bill, if passed into law, would require, among other items, a requirement on the FCC to ensure all voice service providers to implement SHAKEN/STIR, and to adopt rules regarding increased call blocking.

On March 5, 2019, the Office of Attorney General joined a bipartisan coalition of Attorneys General from all 50 States, the District of Columbia, and the U.S. territories of Guam, Puerto Rico, and the Virgin Islands, in submitting a letter to the U.S. Senate Committee on Commerce, Science, & Transportation expressing our support for the passing of this important piece of legislation.

This government and industry collaboration on the robocall problem has the potential to develop tools that will allow the industry to address illegal traffic on its own and to facilitate government efforts to investigate and shut down the illegal robocall operations that are the root cause of the problem. The Bureau appreciates your interest in and consideration of its efforts in these important areas.