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Bill 137

**An Act to prohibit unsolicited phone calls for the purpose of selling,
leasing, renting or advertising prescribed products or services**

Mr. Y. Baker

Private Member's Bill

1st Reading May 29, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Stop the Calls Act, 2017*.

The Act establishes a prohibition for unsolicited phone calls for the purpose of selling, leasing, renting or advertising prescribed products or services, subject to certain qualifications.

Contravention of this prohibition is an offence. In addition, any contract entered into as a result of such a contravention is void. If a contract is deemed to be void, the consumer is entitled to repayment for the product or service and, if applicable, to the payment of any reasonable costs incurred in uninstalling and returning the product and, if appropriate, in obtaining and installing a replacement.

If the refund is not paid, the consumer may commence an action in the Superior Court of Justice. The consumer is entitled, if successful, to twice the money paid under the contract, in addition to the reasonable costs referred to above. A consumer who obtains an award of legal costs is entitled to recover any additional actual legal costs incurred in obtaining the order.

Consumers are protected from liability if a contract is deemed void, and no cause of action against them arises as a result of the contract being deemed void.

The Minister of Government and Consumer Services is given the power to make regulations dealing with a broad range of matters under the Act, including prescribing the products or services to which the prohibition in the Act applies.

**An Act to prohibit unsolicited phone calls for the purpose of selling, leasing,
renting or advertising prescribed products or services**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION AND ADMINISTRATION

Definitions

1 In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; (“consommateur”)

“Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act. (“règlements”)

Administration

2 The Minister is responsible for the administration of this Act.

UNSOLICITED TELEMARKETING

Unsolicited telemarketing

3 (1) No person shall,

- (a) make an unsolicited phone call to a consumer for the purpose of,
 - (i) selling, leasing, renting or offering to sell, lease or rent a prescribed product,
 - (ii) selling or offering to sell a prescribed service, or
 - (iii) advertising a prescribed product or service; or
- (b) cause a person to make a phone call described in clause (a).

Meaning of “unsolicited”

(2) For the purposes of subsection (1), a phone call is unsolicited if a person in the consumer’s household did not provide their consent to be contacted regarding the product or service in advance of the phone call.

Form of consent

(3) The following rules apply to the consent referred to in subsection (2):

1. The consent may be made orally, in writing or by other affirmative action.
2. The consent is not valid if it was obtained through an unsolicited phone call.
3. The person making the phone call shall bear the onus of proving the consumer's consent.

Exception

(4) Subsection (1) does not apply in respect of a phone call that is,

- (a) made by or on behalf of a registered charity within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada);
- (b) made by or on behalf of a not-for-profit corporation;
- (c) made by or on behalf of a federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party;
- (d) made by or on behalf of a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*;
- (e) made by or on behalf of a candidate nominated under the *Municipal Elections Act, 1996*;
- (f) made to a person with whom the person making the phone call, or the person or organization on whose behalf the phone call is made, has an existing business relationship.

Existing business relationship

(5) For the purposes of clause (4) (f), an existing business relationship exists if,

- (a) the person to whom the phone call is made purchased services or purchased, leased or rented products from the person or organization on whose behalf the phone call is made within the eighteen-month period immediately preceding the date of the phone call;
- (b) the person to whom the phone call is made submitted an inquiry or application to the person or organization in respect of whom the phone call is made regarding one of their products or services within the six-month period immediately preceding the date of the phone call; or
- (c) there is a written contract between the person to whom the phone call is made and the person or organization on whose behalf the phone call is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the phone call.

Offence and penalty

(6) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction,

- (a) in the case of a first offence under this Act,
 - (i) to a fine of not more than \$500, in the case of an individual, or
 - (ii) to a fine of not more than \$5,000, in the case of a corporation;
- (b) in the case of a second offence under this Act,
 - (i) to a fine of not more than \$1,000, in the case of an individual, or
 - (ii) to a fine of not more than \$10,000, in the case of a corporation; and
- (c) in the case of a third or subsequent offence under this Act,
 - (i) to a fine of not more than \$2,000, in the case of an individual, or
 - (ii) to a fine of not more than \$25,000, in the case of a corporation.

Contract void

4 (1) A contract that is entered into as the result of a contravention of subsection 3 (1) is deemed to be void.

Same

(2) For greater certainty, a contract may be deemed to be void under subsection (1) even if,

- (a) the consumer has already paid for the product or service; or
- (b) the product or service has already been delivered or provided to the consumer.

Right to payment

5 (1) If a contract between a person and a consumer to provide a product or service to the consumer is deemed to be void under subsection 4 (1), the person who provided the product or service shall, in accordance with the regulations, pay to the consumer,

- (a) the money paid by the consumer under the contract; and
- (b) if applicable, any additional reasonable costs the consumer incurred in uninstalling and returning the product and, if appropriate, in obtaining and installing a replacement.

Right of action if no payment

(2) If the consumer has not received payment as required by subsection (1), he or she may commence an action in the Superior Court of Justice to recover the amounts referred to in subsection (3).

Judgment

(3) If the consumer is successful in the action, unless in the circumstances it would be inequitable to do so, the court shall order that the consumer recover,

- (a) twice the amount of the money referred to in clause (1) (a); and
- (b) the costs, if any, referred to in clause (1) (b).

Legal costs

(4) If the consumer obtains an award of legal costs in an order made under subsection (3), the consumer is entitled to recover any additional actual legal costs incurred in obtaining the order.

Protection from liability

6 (1) If a contract is deemed to be void under subsection 4 (1), the consumer shall not be liable for any obligations under the contract or a related agreement, including obligations purporting to be incurred as cancellation charges, administration charges or any other charges or penalties.

Same

(2) No cause of action against the consumer arises as a result of a contract being deemed to be void under subsection 4 (1) or as a result of the operation of subsection (1).

REGULATIONS**Regulations**

7 The Minister may make regulations,

- (a) prescribing a product or service for the purposes of clause 3 (1) (a);
- (b) exempting any person or class of persons from any provision of this Act, subject to such conditions or restrictions as may be prescribed;
- (c) governing payments to consumers under subsection 5 (1).

COMMENCEMENT AND SHORT TITLE**Commencement**

8 This Act comes into force two months after the day it receives Royal Assent.

Short title

9 The short title of this Act is the *Stop the Calls Act, 2017*.