

1 HOUSE BILL NO. 424

2 INTRODUCED BY JENT

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ~~ATTORNEY GENERAL~~ DEPARTMENT OF
 5 ADMINISTRATION TO ESTABLISH AND ENFORCE A TELEPHONE SOLICITATION NO-CALL LIST;
 6 PROHIBITING TELEPHONE SOLICITATION OF RESIDENTIAL SUBSCRIBERS WHO ARE ON THE NO-CALL
 7 LIST; PROVIDING THAT THE NO-CALL LIST DATABASE IS NOT A PUBLIC RECORD; PROVIDING THAT
 8 RESIDENTIAL SUBSCRIBERS MAY BE PLACED ON THE NO-CALL LIST WITHOUT COST; PROHIBITING
 9 INTERFERENCE WITH CALLER IDENTIFICATION SERVICES; PROVIDING FOR CIVIL, CRIMINAL, AND
 10 INJUNCTIVE ACTIONS AGAINST PERSONS OR ENTITIES VIOLATING TELEPHONE SOLICITATION
 11 NO-CALL PROVISIONS; ~~CREATING AN ADVISORY GROUP FOR CONSUMER PROTECTION WITH~~
 12 ~~RESPECT TO TELEMARKETERS~~; PROVIDING FOR DISSEMINATION OF INFORMATION ON THE NO-CALL
 13 LIST; CREATING A TELEPHONE SOLICITATION NO-CALL LIST ADMINISTRATION ACCOUNT; AND
 14 PROVIDING AN EFFECTIVE DATE."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7 ~~6~~] the following definitions
 19 apply:

20 (1) "Caller identification service" means a type of telephone service which permits telephone subscribers
 21 to see the telephone number of incoming telephone calls.

22 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF ADMINISTRATION PROVIDED FOR IN 2-15-1001.

23 ~~(2)~~(3) "Residential subscriber" means a person who has subscribed to residential telephone service
 24 from a local exchange company and the other persons living or residing with the person.

25 ~~(3)~~(4) "Telephone solicitation" means any voice communication over a telephone line from a live
 26 operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of
 27 encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does
 28 not include communications:

29 (a) to any residential subscriber with that subscriber's prior express invitation or permission;

30 (b) by or on behalf of any person or entity with whom a residential subscriber has had a business

1 contact within the past 180 days or has a current business or personal relationship;

2 (c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal
3 Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the
4 charitable purpose for which the entity was established and provided that a bona fide member of the exempt
5 organization makes the voice communication;

6 (d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

7 (i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or
8 provide the merchandise being offered through telemarketing; and

9 (ii) the entity is required by law or rule to develop and maintain a no-call list;

10 (e) by a natural person responding to a referral or working from the person's primary residence; or

11 (f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is
12 setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession
13 within the state.

14

15 **NEW SECTION. Section 2. Telephone solicitation of residential subscribers on no-call list**
16 **prohibited.** A person or entity may not make or cause to be made any telephone solicitation to the telephone
17 line of any residential subscriber in this state who has given notice to the ~~attorney general~~ DEPARTMENT, in
18 accordance with rules promulgated pursuant to [section 3], of the residential subscriber's objection to receiving
19 telephone solicitations.

20

21 **NEW SECTION. Section 3. ~~Attorney general~~ DEPARTMENT to create no-call list database -- rules**
22 **-- inclusion of national database -- database not public record -- no cost to subscribers.** (1) The ~~attorney~~
23 ~~general~~ DEPARTMENT shall establish and provide for the operation of a database containing a list of names and
24 telephone numbers of residential subscribers who object to receiving telephone solicitations. The ~~attorney~~
25 ~~general~~ DEPARTMENT must have the database in operation no later than January 1, 2004. A residential subscriber
26 may be listed in the data base without cost to the subscriber.

27 (2) Not later than January 1, 2004, the ~~attorney general~~ DEPARTMENT shall promulgate rules and
28 regulations governing the establishment of a state no-call database that are necessary and appropriate to fully
29 implement the provisions of [sections 1 through ~~7~~ 6]. The rules must include but are not limited to rules
30 specifying:

1 (a) the methods by which each residential subscriber may give notice to the ~~attorney general~~
2 DEPARTMENT or a contractor designated by the ~~attorney general~~ DEPARTMENT of the residential subscriber's
3 objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the
4 notice;

5 (b) the length of time for which a notice of objection is effective and the effect of a change of telephone
6 number on the notice;

7 (c) the methods by which pertinent information may be collected and added to the no-call database;

8 (d) the methods for obtaining access to the no-call database by any person or entity desiring to make
9 telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in
10 the no-call database;

11 (e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database;
12 and

13 (f) other matters relating to the no-call database that the ~~attorney general~~ DEPARTMENT considers
14 desirable.

15 (3) If the federal communications commission establishes a single national database of telephone
16 numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C.
17 227(c)(3), the ~~attorney general~~ DEPARTMENT shall include that part of the single national database that relates
18 to Montana in the no-call database established pursuant to this section.

19 (4) Information contained in the no-call database established pursuant to this section may be used only
20 for the purpose of compliance with [section 2] and this section or in a proceeding or action pursuant to [section
21 5]. The information may not be considered a public record pursuant to Title 2, chapter 6.

22 (5) In April, July, October, and January of each year, the ~~attorney general~~ DEPARTMENT shall make a
23 reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to
24 be included on any national no-call list and add those names to the state no-call list.

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26 **NEW SECTION. Section 4. Interference with caller identification service prohibited.** (1) Any
27 person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this
28 state shall, at the beginning of the call, state clearly the identity of the person or entity initiating the call.

29 (2) A person or entity who makes a telephone solicitation to the telephone line of a residential subscriber
30 in this state may not knowingly use any method to block or otherwise circumvent the residential subscriber's use

1 of a caller identification service.

2

3 **NEW SECTION. Section 5. Penalties -- attorney general DEPARTMENT to enforce civil, criminal, and**
4 **injunctive relief -- private actions -- defenses -- statute of limitations.** (1) (a) The ~~attorney general~~
5 DEPARTMENT or a county attorney may initiate proceedings relating to a knowing violation or threatened knowing
6 violation of [section 2 or 4].

7 (b) The proceedings may include a request for any of the following:

8 (i) an injunction;

9 (ii) a civil penalty up to a maximum of \$5,000 for each knowing violation;

10 (iii) additional relief that a court of competent jurisdiction may order.

11 (c) The ~~attorney general~~ DEPARTMENT may issue investigative demands, issue subpoenas, administer
12 oaths, and conduct hearings in the course of investigating a violation of [section 2 or 4].

13 (2) In addition to the penalties provided in subsection (1), any person or entity that violates [section 4]
14 is subject to all penalties, including criminal penalties, remedies, and procedures provided in the unfair trade
15 practices and consumer protection laws, as provided for in Title 30, chapter 14, parts 1 and 2. The remedies
16 available in this section are cumulative and in addition to any other remedies available by law.

17 (3) Any residential subscriber who has received more than one telephone solicitation within any
18 12-month period by or on behalf of the same person or entity in violation of [section 2 or 4] may bring an action
19 to:

20 (a) enjoin the violation; and

21 (b) recover the greater of:

22 (i) the actual monetary loss from a knowing violation; or

23 (ii) \$5,000 in damages for each knowing violation.

24 (4) It is a defense in any action or proceeding brought pursuant to this section that the defendant has
25 established and implemented, with due care, reasonable practices and procedures to effectively prevent
26 telephone solicitations in violation of [section 2 or 4].

27 (5) An action or proceeding may not be brought pursuant to this section more than 2 years after:

28 (a) the person bringing the action knew or should have known of the occurrence of the alleged violation;

29 or

30 (b) the termination of any proceeding or action arising out of the same violation or violations by the state

1 of Montana.

2 (6) A court of this state may exercise personal jurisdiction, in the manner provided by law, over any
3 nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this
4 section.

5 (7) The remedies, duties, prohibitions, and penalties provided in [sections 1 through 7 6] are not
6 exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

7 (8) A provider of telephone caller identification service may not be held liable for violations of [section
8 2 or 4] that are committed by other persons or entities.

9

10 ~~NEW SECTION. Section 6. Advisory group for consumer protection from telemarketers --~~

11 ~~publication of information on consumer rights. (1) The attorney general shall establish an advisory group~~
12 ~~composed of government entities, local exchange telecommunications companies, businesses, senior citizens,~~
13 ~~and other community advocates to compile and promote a list of educational literature to help consumers~~
14 ~~understand their options with regard to telephone solicitations and telemarketers, as defined in 30-14-1403.~~

15 ~~———— (2) The attorney general shall work with local exchange telecommunications companies to disseminate~~
16 ~~to their residential subscribers information about the availability of educational literature and instructions about~~
17 ~~how to request educational literature from the attorney general. The attorney general may enter into agreements~~
18 ~~with those companies for the purpose of dissemination of the educational literature.~~

19 ~~———— (3) The attorney general shall include on the attorney general's internet website information that informs~~
20 ~~residential subscribers of their rights to be placed on a no-call list and the various methods, including notice to~~
21 ~~the attorney general, of placing their names on the no-call list.~~

22 ~~———— (4) The attorney general shall have any literature developed for dissemination to the public pursuant~~
23 ~~to this section ready for dissemination no later than January 1, 2004.~~

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25 NEW SECTION. Section 6. Telephone solicitation no-call list administration account -- purpose

26 and administration. (1) There is a telephone solicitation no-call list administration account in the state special
27 revenue fund for administration of [sections 1 through 7 6] by the office of the attorney general DEPARTMENT.

28 (2) Revenue generated from fees collected from persons or entities obtaining access to the no-call list
29 database and any civil penalties recovered by the attorney general DEPARTMENT pursuant to [section 5] must be
30 deposited into the telephone solicitation no-call list administration account.

