

SENATE BILL NO. 2
INTRODUCED BY D. RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A TELEPHONE SOLICITATION DO NOT CALL PROGRAM TO BE ESTABLISHED AND MONITORED BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR A PRIVATE SECTOR ADMINISTRATOR TO IMPLEMENT AND MAINTAIN THE DO NOT CALL PROGRAM; PROVIDING FOR ENROLLMENT OF RESIDENTIAL TELEPHONE SUBSCRIBERS IN THE DO NOT CALL PROGRAM; PROVIDING FOR A PUBLIC INFORMATION PROGRAM PERTAINING TO THE DO NOT CALL PROGRAM THAT REQUIRES LOCAL EXCHANGE COMPANY COOPERATION; AND PROVIDING CIVIL PENALTIES FOR UNAUTHORIZED TELEPHONE SOLICITATION CALLS AND FOR CIRCUMVENTING CALLER IDENTIFICATION DEVICES OR SERVICES."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

- (1) "Department" means the department of administration created in 2-15-1001.
- (2) "Information about a party" means information specific to a party, including but not limited to the name and residence address of the party and the method by which the party paid the fee required by [section 3].
- (3) "Local exchange company" has the meaning provided in 53-19-302.
- (4) "Party" means a residential telephone customer of a telecommunications company.
- (5) "Predecessor of a business enterprise" means a financial institution, as defined in 15 U.S.C. 6827, that has:
 - (a) merged with or been acquired by the business enterprise for which the person is calling; or
 - (b) sold or assigned an account of a party, who has previously purchased from the business enterprise, to the business enterprise for which the person is calling.
- (6) (a) "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, goods, or services or to make a donation.
 - (b) Telephone solicitation does not include:
 - (i) calls made in response to a request or inquiry by the called party;

(ii) calls made by a bona fide charitable or nonprofit organization, a public agency, or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have donated or expressed an interest in donating goods, services, or real estate;

(iii) calls limited to polling or soliciting the expression of ideas, opinions, or votes;

(iv) calls regarding business-to-business contacts; or

(v) calls made by a person soliciting business from prospective purchasers who have previously purchased from:

(A) the person making the solicitation;

(B) a business enterprise for which the person is calling; or

(C) a predecessor of a business enterprise for which the person is calling.

NEW SECTION. Section 2. Administrator of telephone solicitation program. The department shall advertise for bids and enter into a contract with a person to act as the administrator of the telephone solicitation program described in [section 3]. The contract may include any provision that the department determines is in the public interest.

NEW SECTION. Section 3. List of persons who do not wish to receive telephone solicitations -- fee -- disclosure of list -- complaints. (1) (a) The administrator referred to in [section 2] shall create, maintain, and distribute a database containing a list of names and telephone numbers of parties who do not wish to receive any telephone solicitation at the listed numbers.

(b) Beginning on the date specified in the contract between the administrator and the department and at least once each quarter, the administrator shall update the list by:

(i) adding the names and telephone numbers of parties who have filed notice and paid the fee as required in this section; and

(ii) removing the names and telephone numbers of parties who have requested that they be removed or whose listings have expired without renewal.

(2) A party may file a notice together with a fee of \$10 for each listed number, or a lesser amount as may be specified in the contract between the administrator and the department, with the administrator, indicating the party's desire to place telephone numbers on the list described in subsection (1). The notice must be filed in the form and manner specified in the contract between the administrator and the department. The notice is effective for 1 year from the date on which the party files the notice. The party may renew the notice for additional periods

of 1 year by filing an additional notice and paying an additional fee by the anniversary of the original filing date of the notice. The additional fee may be specified in the contract between the administrator and the department.

(3) Information about a party is confidential. The department may not disclose information about a party.

(4) The administrator may not furnish the list or disclose any information about a party to any person, except as follows:

(a) Upon request of a person engaging or intending to engage in telephone solicitations and after payment of the fees in the amounts specified in the contract between the administrator and the department, the administrator shall furnish to the person the most recent copy of the list described in subsection (1).

(b) (i) Upon request of the department, the administrator shall furnish the department with all requested information about a party or any person who the department believes has engaged in a solicitation prohibited by [sections 1 through 6].

(ii) The administrator may not charge any fee for furnishing the information to the department.

(c) (i) Upon request of any party who has filed a notice and paid the fee as provided in subsection (2), the administrator shall furnish the party with all requested information about the party or any person who the party believes has engaged in a solicitation prohibited by [sections 1 through 6].

(ii) The administrator may not charge any fee for furnishing the information described in subsection (4)(c)(i) to the party.

(d) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(e) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the department. The administrator may not charge any fee for furnishing the information to the successor administrator.

(5) The administrator shall promptly forward any complaints concerning alleged violations of [sections 1 through 6] to the department.

(6) The administrator shall make the list provided for in this section available in printed and electronic form.

NEW SECTION. Section 4. Rulemaking. The department may adopt rules relating to negotiating and monitoring contracts with the do not call program administrator, monitoring the administrator's operation of the do not call program, and carrying out the enforcement provisions provided for in [section 6].

NEW SECTION. Section 5. Public education about do not call program. (1) Local exchange companies, working in cooperation with the administrator and the department, shall place information in their white page telephone directory informing their residential telephone subscribers about how to be included in the do not call register.

(2) As provided in the contract between the administrator and the department, the administrator shall use a portion of party fees and renewal fees provided for in [section 3] and a portion of the fees collected from telephone solicitors pursuant to [section 3] to develop a program to inform the public of the existence of a do not call register and of the procedure for enrolling in the register.

NEW SECTION. Section 6. Violations -- penalties -- attorney fees -- program costs. (1) It is a violation of [sections 1 through 6] for a telephone solicitor to knowingly make or cause to be made a telephone solicitation call to any party enrolled in the do not call register that is current at the time that the telephone solicitation call is made.

(2) A telephone solicitor may not knowingly use any method to block or otherwise circumvent a party's use of a caller identification device or service.

(3) (a) A violator of subsection (1) or (2) is subject to a civil penalty of an amount not to exceed \$2,000 for each violation. A violation of subsection (1) or (2) also constitutes a violation of 30-14-103, and a violator is subject to the penalty provisions of Title 30, chapter 14, part 1.

(b) The department may file an action to recover civil penalties under this section in the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(c) The district court may award reasonable attorney fees and costs to the prevailing party in an action brought under this section.

(d) The department or a party may bring a class action suit, if appropriate, for a violation of this section.

(e) Local exchange companies shall fully cooperate with the department in any investigation of an alleged violation of this section.

(4) The department shall place the fees and penalties collected under [sections 1 through 6] in a special revenue account to be used to pay the cost of implementing and enforcing [sections 1 through 6].

NEW SECTION. Section 7. Codification. [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

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