

SENATE BILL NO. 62
INTRODUCED BY D. RYAN

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

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

NEW SECTION. SECTION 1. FINDINGS AND PURPOSE. (1) THE LEGISLATURE FINDS THAT THERE IS A COMPELLING STATE INTEREST IN LIMITING COMMERCIAL TELEPHONE SOLICITATION BECAUSE:

(A) COMMERCIAL TELEPHONE SOLICITATION INVADES AND DISRUPTS THE PRIVACY AND TRANQUILITY OF MONTANA RESIDENCES;

(B) MONTANANS DEPEND ON THEIR TELEPHONES TO ACCESS ESSENTIAL EMERGENCY SERVICES, AND MONTANANS CANNOT REALISTICALLY GIVE UP THEIR TELEPHONES IN ORDER TO PREVENT COMMERCIAL TELEPHONE SOLICITATION CALLS;

(C) COMMERCIAL TELEPHONE SOLICITATION CALLS OFTEN SCARE MONTANA RESIDENTS AND CAN ENDANGER THE WELL-BEING OF INFIRM RESIDENTS WHO OFTEN HURT THEMSELVES IN THE ATTEMPT TO ANSWER TELEPHONE SOLICITATION CALLS;

(D) EVERY YEAR MONTANANS FALL VICTIM TO TELEPHONE SOLICITATION FRAUD AND ABUSE; AND

(E) MONTANANS PAY FOR THEIR OWN TELEPHONES, AND MONTANANS SHOULD HAVE THE ABILITY TO DECIDE WHO

USES THOSE TELEPHONES.

(2) THE PURPOSE OF [SECTIONS 1 THROUGH 7 8] IS TO PROTECT MONTANANS' HEALTH, SAFETY, AND WELFARE BY LIMITING COMMERCIAL TELEPHONE SOLICITATION CALLS.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7 8] the following definitions apply:

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

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

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

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

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

(b) by or on behalf of any person or entity with whom a residential subscriber has ~~had a business contact~~ AN EXISTING BUSINESS RELATIONSHIP WITH OR HAS PREVIOUSLY PURCHASED FROM within the past ~~180 days~~ or has ~~a current business or personal relationship~~ 18 MONTHS;

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

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

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

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

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

(f) by a person OR AN EMPLOYEE OF THAT PERSON licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state.

NEW SECTION. Section 3. Telephone solicitation of residential subscribers on no-call list prohibited. A person or entity may not make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL, in accordance with rules promulgated pursuant to [section ~~3~~ 4], of the residential subscriber's objection to receiving telephone solicitations.

NEW SECTION. Section 4. ~~Attorney general~~ DEPARTMENT ATTORNEY GENERAL to create no-call list database -- rules -- inclusion of national database -- database not public record -- no cost to subscribers.

(1) The ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL shall establish and provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. The ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL must have the database in operation no later than January 1, 2004. A residential subscriber may be listed in the ~~data base~~ DATABASE without cost to the subscriber.

(2) Not later than January 1, 2004, the ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL shall promulgate rules and regulations governing the establishment of a state no-call database that are necessary and appropriate to fully implement the provisions of [sections 1 through ~~7~~ 8]. The rules must include but are not limited to rules specifying:

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

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

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

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

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

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

(3) If ~~the federal communications commission~~ AN AGENCY OF THE UNITED STATES GOVERNMENT establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations ~~pursuant to 47 U.S.C. 227(c)(3)~~, the ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with [section ~~2~~ 3] and this section or in a proceeding or action pursuant to [section ~~5~~ 6]. The information may not be considered a public record pursuant to Title 2, chapter 6.

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

NEW SECTION. Section 5. Interference with caller identification service prohibited IDENTITY OF PERSON INITIATING TELEPHONE SOLICITATION CALL REQUIRED. (1) Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of the call, state clearly the identity of the person or entity initiating the call.

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

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

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

- (i) an injunction;
- (ii) a civil penalty up to a maximum of \$5,000 for each knowing violation;
- (iii) additional relief that a court of competent jurisdiction may order.

(c) The attorney general may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of [section ~~2 or 4~~ 3 OR 5].

(2) In addition to the penalties provided in subsection (1), any person or entity that violates [section ~~4~~

5] is subject to all penalties, including criminal penalties, remedies, and procedures provided in the unfair trade practices and consumer protection laws, as provided for in Title 30, chapter 14, parts 1 and 2. The remedies available in this section are cumulative and in addition to any other remedies available by law.

(3) Any residential subscriber who has received more than one telephone solicitation within any 12-month period by or on behalf of the same person or entity in violation of [section 2 ~~or~~ 4 3 OR 5] may bring an action to:

- (a) enjoin the violation; and
- (b) recover the greater of:
 - (i) the actual monetary loss from a knowing violation; or
 - (ii) \$5,000 in damages for each knowing violation.

(4) It is a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of [section 2 ~~or~~ 4 3 OR 5].

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

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

or

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

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

(7) The remedies, duties, prohibitions, and penalties provided in [sections 1 through 7 8] are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(8) A provider of telephone caller identification service may not be held liable for violations of [section 2 ~~or~~ 4 3 OR 5] that are committed by other persons or entities.

~~NEW SECTION. Section 6. Advisory group for consumer protection from telemarketers -- publication of information on consumer rights. (1) The attorney general shall establish an advisory group composed of government entities, local exchange telecommunications companies, businesses, senior citizens, and other community advocates to compile and promote a list of educational literature to help consumers understand their options with regard to telephone solicitations and telemarketers, as defined in 30-14-1403.~~

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

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

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

NEW SECTION. SECTION 7. ADVISORY GROUP FOR CONSUMER PROTECTION FROM TELEMARKETERS -- PUBLICATION OF INFORMATION ON CONSUMER RIGHTS. (1) THE ATTORNEY GENERAL SHALL ESTABLISH AN ADVISORY GROUP COMPOSED OF GOVERNMENT ENTITIES, LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES, BUSINESSES, SENIOR CITIZENS, AND OTHER COMMUNITY ADVOCATES TO COMPILE AND PROMOTE A LIST OF EDUCATIONAL LITERATURE TO HELP CONSUMERS UNDERSTAND THEIR OPTIONS WITH REGARD TO TELEPHONE SOLICITATIONS AND TELEMARKETERS, AS DEFINED IN 30-14-1403.

(2) THE ATTORNEY GENERAL SHALL WORK WITH LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES TO DISSEMINATE TO THEIR RESIDENTIAL SUBSCRIBERS INFORMATION ABOUT THE AVAILABILITY OF EDUCATIONAL LITERATURE AND INSTRUCTIONS ABOUT HOW TO REQUEST EDUCATIONAL LITERATURE FROM THE ATTORNEY GENERAL. THE ATTORNEY GENERAL MAY ENTER INTO AGREEMENTS WITH THOSE COMPANIES FOR THE PURPOSE OF DISSEMINATION OF THE EDUCATIONAL LITERATURE.

(3) THE ATTORNEY GENERAL SHALL INCLUDE ON THE ATTORNEY GENERAL'S INTERNET WEBSITE INFORMATION THAT INFORMS RESIDENTIAL SUBSCRIBERS OF THEIR RIGHTS TO BE PLACED ON A NO-CALL LIST AND THE VARIOUS METHODS, INCLUDING NOTICE TO THE ATTORNEY GENERAL, OF PLACING THEIR NAMES ON THE NO-CALL LIST.

(4) THE ATTORNEY GENERAL SHALL HAVE ANY LITERATURE DEVELOPED FOR DISSEMINATION TO THE PUBLIC PURSUANT TO THIS SECTION READY FOR DISSEMINATION NO LATER THAN JANUARY 1, 2004.

NEW SECTION. Section 8. Telephone solicitation no-call list administration account -- purpose and administration. (1) There is a telephone solicitation no-call list administration account in the state special revenue fund for administration of [sections 1 through 7 8] by the ~~office of the attorney general~~ DEPARTMENT ATTORNEY GENERAL.

(2) Revenue generated from fees collected from persons or entities obtaining access to the no-call list database and any civil penalties recovered by the ~~attorney general~~ DEPARTMENT ATTORNEY GENERAL pursuant to [section 5 6] must be deposited into the telephone solicitation no-call list administration account.

NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7 8] 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 7 8].

NEW SECTION. SECTION 10. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 424 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN HOUSE BILL NO. 424 IS VOID.

NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2003.

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