

SENATE BILL NO. 327

INTRODUCED BY TAYLOR, JOHNSON, KEENAN, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TELEPHONE SOLICITATION LAWS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AND ENFORCE A TELEPHONE SOLICITATION DO-CALL LIST; PROHIBITING TELEPHONE SOLICITATION OF RESIDENTIAL SUBSCRIBERS WHO ARE NOT ON THE DO-CALL LIST; PROVIDING THAT THE DO-CALL LIST DATABASE IS NOT A PUBLIC RECORD; PROVIDING THAT RESIDENTIAL SUBSCRIBERS MAY BE PLACED ON THE DO-CALL LIST WITHOUT COST; PROHIBITING INTERFERENCE WITH CALLER IDENTIFICATION SERVICES; PROHIBITING THE TRANSFER OF CUSTOMER LISTS FOR TELEPHONE SOLICITATION PURPOSES; PROVIDING FOR CIVIL, CRIMINAL, AND INJUNCTIVE ACTIONS AGAINST PERSONS OR ENTITIES VIOLATING TELEPHONE SOLICITATION DO-CALL PROVISIONS; CREATING A TELEPHONE SOLICITATION DO-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] 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 6 7], the following definitions apply:

(1) "Caller identification service" means a type of telephone service 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.

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

(4) (a) "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.

(b) The term does not include:

(A) phone contacts authorized pursuant to federal law;

(B) COMMUNICATIONS BY OR ON BEHALF OF ANY PERSON OR ENTITY WITH WHOM A RESIDENTIAL SUBSCRIBER HAS HAD A BUSINESS CONTACT WITHIN THE PAST 18 MONTHS OR HAS A CURRENT BUSINESS OR PERSONAL RELATIONSHIP.

THE TERM "BUSINESS CONTACTS" DOES NOT INCLUDE UNSOLICITED:

(I) MAILINGS;

(II) TELEPHONE CALLS MADE IN THE 18 MONTHS PRIOR TO [EFFECTIVE DATE OF THIS ACT]; OR

(III) E-MAILS ORIGINATING FROM A BUSINESS.

NEW SECTION. Section 3. Telephone solicitation of residential subscribers not on do-call list prohibited. A person or entity may not make or cause to be made any telephone solicitation to a telephone number with an area code of 406 of any residential subscriber in this state who has not given notice to the ~~attorney general~~ DEPARTMENT, in accordance with rules promulgated pursuant to [section 3 4], of the residential subscriber's desire to receive telephone solicitations.

NEW SECTION. Section 4. Department to create do-call list database -- rules -- database not public record -- no cost to subscribers. (1) The department shall establish and provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who wish to receive telephone solicitations. The department must have the database in operation no later than January 1, 2004. A residential subscriber may be listed in the database without cost to the subscriber.

(2) No later than January 1, 2004, the department shall promulgate rules and regulations governing the

establishment of a state do-call database that are necessary and appropriate to fully implement the provisions of [sections 1 through 6 7]. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's desire to receive telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice 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 do-call database;

(d) the methods for obtaining access to the do-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 do-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the do-call database; and

(f) other matters relating to the do-call database that the department considers desirable.

(3) Information contained in the do-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.

NEW SECTION. Section 5. Interference with caller identification service prohibited -- TRANSFER OF CUSTOMER LIST FOR TELEPHONE SOLICITATION PROHIBITED. (1) A person or entity who makes a telephone solicitation to the telephone line of a 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 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.

(3) A PERSON OR ENTITY MAY NOT TRANSFER ITS CUSTOMER LISTS TO AN AFFILIATE OR SUBSIDIARY FOR TELEPHONE SOLICITATION PURPOSES.

NEW SECTION. Section 6. Penalties -- department to enforce civil, criminal, and injunctive relief -- defenses -- statute of limitations. (1) (a) The department 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 department 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.

(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) 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.

(5) 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.

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

(7) A provider of 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 7. Telephone solicitation do-call list administration account -- purpose and administration. (1) There is a telephone solicitation do-call list administration account in the state special

revenue fund for administration of [sections 1 through 6 7] by the department.

(2) Revenue generated from fees collected from persons or entities obtaining access to the do-call list database and any civil penalties recovered by the department pursuant to [section 5 6] must be deposited in the telephone solicitation do-call list administration account.

NEW SECTION. Section 8. Codification instruction. [Sections 1 through 6 7] 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 7].

NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2003.

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