

HOUSE BILL NO. 718
INTRODUCED BY F. WILMER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION BY THE ATTORNEY GENERAL OF A STATE DO NOT MAIL LIST; PROHIBITING CERTAIN MAILINGS AND PROVIDING FOR THE ENFORCEMENT OF THE PROHIBITION BY THE ATTORNEY GENERAL AND BY PRIVATE RIGHT OF ACTION; REQUIRING THE ATTORNEY GENERAL TO ADOPT RULES; AND PROVIDING A PENALTY."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Do Not Mail Act".

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

(1) "Entity" means an individual, corporation, partnership, sole proprietorship, or other business organization, but does not include an agency, office, or organization of state government, a political subdivision of this state, or any other government agency, office, or organization.

(2) "Resident" means an entity that has a mailing address in the state.

(3) "Solicitation" means a communication by mail for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include a communication:

(a) to a resident with that resident's prior express invitation or permission;

(b) by or on behalf of an entity with whom a resident has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized under chapter 501(c)(3) of the Internal Revenue Code while that entity is engaged in fundraising to support the charitable purpose for which the entity was established if a bona fide member of the exempt organization makes the solicitation;

(d) by or on behalf of a bona fide religious or political organization not organized as provided in subsection (3)(c);

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

- (i) the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through correspondence; and
- (ii) the entity is required by law or rule to develop and maintain a do not mail list; or
- (f) by an individual:
 - (i) responding to a referral;
 - (ii) working from the individual's primary residence; or
 - (iii) licensed by this state to carry out a trade, occupation, or profession, who is setting or attempting to set an appointment for action relating to that licensed trade, occupation, or profession within this state or counties contiguous to this state.

NEW SECTION. Section 3. Certain mailings prohibited. An entity may not mail or cause to be mailed a solicitation to the Montana mailing address of a resident of this state who has given notice to the attorney general, in accordance with rules adopted by the attorney general, of the resident's objection to receiving a solicitation.

NEW SECTION. Section 4. Attorney general to establish do not mail list -- rulemaking. (1) The attorney general shall adopt rules to establish and administer a database containing a list of mailing addresses of residents who object to receiving solicitations. The attorney general must have the database in operation no later than July 1, 2008.

(2) No later than January 1, 2008, the attorney general shall adopt rules implementing the provisions of [sections 1 through 7]. The rules must provide:

- (a) the method by which a resident may, at no cost to the resident, give notice, or revocation of that notice, to the attorney general of the resident's objection to receiving solicitations;
- (b) the length of time for which a notice of objection by a resident is effective and the effect of a change of mailing address on the notice;
- (c) the method by which an objection, or revocation of an objection, may be collected and added to the database;
- (d) the method by which an entity desiring to make solicitations may obtain access to the database as required to avoid sending mail to a resident whose address is included in the database, including the cost assessed to that entity for access to the database; and
- (e) other matters relating to the database that the attorney general determines necessary or desirable.

(3) Information contained in the attorney general's database established pursuant to this section may be used only for the purpose of compliance with [sections 1 through 7] or in a proceeding or action pursuant to [section 5 or 6]. The information contained in the database is not a public document or record because the demands of individual privacy of those residents in the database clearly exceed the merits of public disclosure.

(4) In January, April, July, and October of each year, the attorney general shall obtain listings of residents of this state whose names and addresses are included on any national do not mail list and add those names and addresses to the state database created by the attorney general pursuant to this section.

NEW SECTION. Section 5. Attorney general's powers and duties -- civil penalty. (1) The attorney general may initiate a civil proceeding regarding a violation of [section 3]. A proceeding may be initiated for the purpose of injunctive relief pursuant to Title 27, chapter 19, for the collection of a civil penalty up to a maximum of \$5,000 for a violation of [section 3] or for additional relief as the attorney general may request and as a court may provide.

(2) For the purposes of the civil penalty provided for in subsection (1) and for the purposes of [section 6(1)(c)], each solicitation by an entity to a resident in violation of [section 3] constitutes a separate violation.

(3) The attorney general may, in connection with a violation of [section 3], use any of the methods of investigation provided for in this chapter.

NEW SECTION. Section 6. Right of civil action. (1) A resident who has received more than one solicitation within a 12-month period by or on behalf of the same entity in violation of [section 3] may bring an action:

(a) pursuant to Title 27, chapter 19, to enjoin the violation;

(b) to recover actual damages, as provided for in Title 27, chapter 1, parts 2 and 3, caused by the violation;

(c) to recover up to \$5,000 in damages for each violation; or

(d) pursuant to subsections (1)(a) through (1)(c), including costs and attorney fees.

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

(3) An action or proceeding may not be brought pursuant to this section more than 2 years after the later of the following occurs:

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

or

(b) the termination of a proceeding or action, arising out of the same violation, brought by the attorney general.

(4) A court of this state may exercise personal jurisdiction over a nonresident, or the nonresident's executor or administrator, as to an action or proceeding authorized by [section 5] or this section, in the manner otherwise provided by law.

NEW SECTION. **Section 7. Cumulative remedies, duties, prohibitions, and penalties.** The remedies, duties, prohibitions, and penalties provided for in [sections 1 through 7] are not exclusive and are in addition to other remedies, duties, prohibitions, and penalties provided by law.

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

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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