

HOUSE BILL 612

Introduced by Dolezal

2/13	Introduced
2/13	Referred to Business & Economic Development
2/13	First Reading
2/13	Fiscal Note Requested
2/17	Hearing
2/18	Tabled in Committee
2/19	Fiscal Note Received
2/20	Fiscal Note Printed

1 House BILL NO. 612  
2 INTRODUCED BY Delegal  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING CONSUMERS  
5 FROM TELEPHONE SOLICITATION FRAUD AND UNDUE PRESSURE;  
6 ESTABLISHING DUTIES AND PROHIBITED PRACTICES FOR TELEPHONE  
7 SOLICITORS; EMPOWERING THE ATTORNEY GENERAL AND COUNTY  
8 ATTORNEY TO ENFORCE TELEPHONE SOLICITATION LAWS; CREATING  
9 PRIVATE CAUSES OF ACTION AND REMEDIES FOR BUYERS; PROVIDING  
10 A REASONABLE PERIOD FOR A MINOR TO DISAFFIRM A PURCHASE;  
11 REQUIRING LOCAL TELEPHONE EXCHANGE SERVICE PROVIDERS TO  
12 NOTIFY CUSTOMERS OF THE TELEPHONE SOLICITATION LAWS;  
13 CREATING A STATUTE OF LIMITATIONS FOR ACTIONS; AND AMENDING  
14 SECTIONS 30-14-501, 30-14-502, 30-14-504, 30-14-506, AND  
15 30-14-507, MCA."

16  
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because  
19 it requires the public service commission to adopt rules  
20 governing the content of the notification to customers. The  
21 rules should be based upon the notification requirement used  
22 in Idaho.

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 Section 1. Section 30-14-501, MCA, is amended to read:

1 "30-14-501. Purpose. The purpose of this part is to  
2 ~~afford consumers subjected to high pressure~~ protect the  
3 public from possible deceit or financial hardship resulting  
4 from personal solicitation ~~sales tactics a cooling-off~~  
5 period or telephone solicitation and to encourage  
6 competition and fair dealing by personal solicitors and  
7 telephone solicitors by requiring adequate disclosure to  
8 prevent any misrepresentation that may mislead the  
9 consumer."

10 Section 2. Section 30-14-502, MCA, is amended to read:

11 "30-14-502. Definitions. As used in this part, the  
12 following definitions apply:

13 (1) "Buyer" means anyone who gives a consideration for  
14 the purchase or use of goods or services.

15 (2) "Personal solicitation" means any attempt by a  
16 seller who regularly engages in transactions of the same  
17 kind to sell goods or services which that are primarily for  
18 personal, family, or household purposes, when either the  
19 seller or a person acting for him the seller contacts the  
20 buyer ~~by telephone or consumer~~ in person other than at the  
21 place of business of the seller, except an attempted sale:

22 (a) ~~an attempted sale~~ in which the buyer consumer  
23 personally knows the identity of the seller; the name of  
24 the business, firm, or organization he the seller  
25 represents; and the identity or kinds of goods or services

1 offered for sale;

2 (b) ~~an-attempted-sale~~ in which the buyer consumer has  
3 initiated the contact with the seller;

4 (c) ~~an--attempted--sale~~ of a newspaper subscription in  
5 which the seller is a minor engaged in both the delivery and  
6 the sale of the newspaper; or

7 (d) ~~an-attempted-sale~~ of an insurance policy.

8 (3) "Personal solicitation sale" or "telephone  
9 solicitation sale" means the purchase, lease, or rental of  
10 any goods or services following a personal solicitation or  
11 telephone solicitation by the seller or a person acting for  
12 him the seller, provided the buyer is required to give  
13 consideration in excess of \$25 in cash or credit therefor  
14 for the goods or services.

15 (4) "Seller" means a lessor, renter, or anyone offering  
16 goods or services for consideration, including an assignee  
17 of a seller.

18 (5) (a) "Telephone solicitation", subject to 45-8-216,  
19 means:

20 (i) any unsolicited telephone call or facsimile  
21 transmission to a consumer for the purpose of asking,  
22 inducing, inviting, requesting, or encouraging the consumer  
23 to purchase or invest in goods or services; or

24 (ii) any communication in which:

25 (A) a free gift, award, or prize is offered or in which

1 it is represented or implied that goods or services are  
2 offered below the regular price of the goods or services;

3 (B) a return telephone call is invited or the  
4 communication is followed up by a call to the consumer by  
5 the telephone solicitor; and

6 (C) it is intended during the course of the return or  
7 followup call with the consumer that an agreement to  
8 purchase or a purchase be made.

9 (b) For purposes of this subsection (5),  
10 "communication" means a written or oral statement,  
11 notification, or advertisement transmitted to the consumer  
12 through any means, except an attempted sale;

13 (i) in which the consumer personally knows the identity  
14 of the seller; the name of the business, firm, or  
15 organization the seller represents; and the identity or  
16 kinds of goods or services offered for sale;

17 (ii) in which the consumer has initiated the contact  
18 with the seller;

19 (iii) of a newspaper subscription in which the seller is  
20 a minor engaged in both the delivery and the sale of the  
21 newspaper; or

22 (iv) of an insurance policy.

23 (6) "Telephone solicitor" means any person who, on the  
24 person's own behalf or through other persons, engages in a  
25 telephone solicitation.

1        (7) "Written confirmation" means a writing that  
 2        includes the following information:

3        (a) the date of purchase;

4        (b) the telephone solicitor's complete address and  
 5        registration number;

6        (c) a listing of the price of each good or service  
 7        purchased;

8        (d) the total obligation incurred by the buyer; and

9        (e) the notice of the right to cancel as set forth in  
 10       30-14-505."

11       NEW SECTION. Section 3. Unlawful acts. (1) It is an  
 12       unlawful act for a telephone solicitor to:

13       (a) intimidate or harass any consumer of normal and  
 14       reasonable sensitivities in connection with any  
 15       solicitation;

16       (b) refuse to hang up and free the consumer's telephone  
 17       line or refuse to leave the consumer's premises immediately  
 18       once requested to do so by the consumer;

19       (c) misrepresent the price, quality, or availability of  
 20       the goods or services being offered to the consumer or to  
 21       not disclose all material matters relating directly or  
 22       indirectly to the offered goods or services;

23       (d) advertise, represent, or imply that the telephone  
 24       solicitor has the approval or endorsement of any government,  
 25       governmental office, or agency, unless this is in fact true;

1       (e) advertise, represent, or imply that the telephone  
 2       solicitor has a valid registration number when the telephone  
 3       solicitor does not; or

4       (f) violate any applicable provision or requirement of  
 5       Title 30, chapter 14, part 1.

6       (2) Any violation of [sections 3 through 10] is an  
 7       unlawful, unfair, and deceptive act or practice in trade or  
 8       commerce for the purpose of applying Title 30, chapter 14,  
 9       part 1.

10       NEW SECTION. Section 4. Telephone solicitors --  
 11       duties. A telephone solicitor shall:

12       (1) apply for registration with the department of  
 13       commerce at least 10 days prior to conducting business in  
 14       Montana and pay a registration fee of \$50. The registration  
 15       is valid for 1 year from the date of registration. Within 2  
 16       weeks of a change in the information provided in the  
 17       application, the telephone solicitor shall report the change  
 18       to the department. The registration must be renewed annually  
 19       by applying to the department and paying a registration  
 20       renewal fee of \$25.

21       (2) file with the department an irrevocable consent  
 22       appointing the department as an agent to receive civil  
 23       process in any action, suit, or proceeding brought under  
 24       [sections 3 through 10];

25       (3) provide the telephone solicitor's registration

number to any consumer who requests the information;

(4) inform each buyer orally at the time a purchase is completed of the right to cancel as provided in 30-14-505 and of the telephone solicitor's registration number; and

(5) inform each buyer in writing at the time a purchase is completed of the telephone solicitor's full street address and telephone number.

**NEW SECTION. Section 5. Exemptions.** (1) The following telephone solicitors are exempt from the requirements of [sections 3 and 4]:

(a) a person making a telephone solicitation when:

(i) the solicitation is an isolated transaction and not done in the course of a pattern of repeated similar transactions; or

(ii) less than 60% of the telephone solicitor's prior year's sales were made as a result of telephone solicitations;

(b) a person making a telephone solicitation to a consumer who has previously purchased goods or services from the telephone solicitor or the business entity for which the telephone solicitor is calling;

(c) a person making a telephone solicitation:

(i) without the intent to make or obtain provisional acceptance of a purchase during the telephone solicitation; and

(ii) who only arranges for the major sales presentation to be made at a later face-to-face meeting between the person and the consumer and the later meeting is not for the purpose of collecting the payment or delivering any item purchased;

(d) a telephone solicitor whose business is licensed by a federal or state governmental agency that has the power to revoke a license issued by the agency;

(e) a person making a telephone solicitation solely for the purpose of selling a subscription to or advertising in a newspaper or telephone directory of general circulation;

(f) a person making a telephone solicitation solely for the purpose of selling a magazine, periodical, book, or musical or video recording;

(i) under which the telephone solicitor provides the consumer with a form that the consumer may use to instruct the telephone solicitor not to ship the merchandise; and

(ii) that complies with the federal trade commission rule governing the use of negative option plans by sellers in commerce or that complies with a continuity plan, subscription arrangement, series arrangement, or single purchase agreement under which the telephone solicitor ships goods and the buyer is given the opportunity to review goods for at least 7 days and to receive a full refund for return of undamaged goods;

(g) a telephone solicitor who has at least one business location in the state under the same name as that used in connection with telephone solicitations and 90% of the telephone solicitor's business involves the buyer obtaining services and products at the telephone solicitor's business location;

(h) a person who solicits sales by periodically publishing and delivering a catalog of the person's merchandise to consumers if the catalog:

(i) contains a written description or illustrations of each item offered for sale;

(ii) includes the business address or home office address of the telephone solicitor;

(iii) includes at least 24 pages of written material and illustrations and is distributed in more than one state; and

(iv) has an annual circulation by mailing of not less than 250,000.

(2) In any action or proceeding to enforce the provisions of [sections 3 through 10], the person claiming an exemption has the burden of proof.

**NEW SECTION. Section 6.** Authority of department of commerce, attorney general, and county attorney. (1) The department of commerce, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of [sections 3 through 10] as they have

under Title 30, chapter 14, part 1.

(2) All penalties, costs, and fees received or recovered by the department of commerce or the attorney general must be paid to the state for deposit in the general fund.

(3) The department of commerce also has the authority to:

(a) require the registering telephone solicitor to submit information necessary to assist the department in enforcing the provisions of [sections 3 through 10];

(b) send each registrant a certificate or other document demonstrating registration that must be prominently posted in a publicly accessible place at the telephone solicitor's principal business location; and

(c) accept service for those telephone solicitors who are required to register and appoint the department as their agent to accept civil process. Service may be effected by leaving a copy of the summons and complaint in the office of the director of the department but is not effective until 5 days after:

(i) the plaintiff sends notice of the service and a copy of the summons and complaint by certified mail to the telephone solicitor at the last address on file with the attorney general; and

(ii) the plaintiff files an affidavit of compliance with

the provisions of this section with the district court.

**NEW SECTION. Section 7. Private causes of action -- remedies.** (1) A person who purchases goods or services pursuant to a telephone solicitation and suffers damages as a result of any act, conduct, or practice declared unlawful under [sections 3 through 10] has the same rights and remedies under [sections 3 through 10] as those granted under Title 30, chapter 14, part 1.

(2) If a telephone solicitor violates any applicable provision of [sections 3 through 10], a contract of sale or purchase is void and unenforceable.

(3) If a telephone solicitor fails to deliver the goods or services contracted for, the contract to purchase is void.

(4) A contract, agreement to purchase, or written confirmation executed by a buyer that purports to waive any of the buyer's rights under [sections 3 through 10] is against public policy and is void and unenforceable.

(5) The remedies provided for in [sections 3 through 10] are not exclusive and are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

**NEW SECTION. Section 8. Liability of minors.** (1) A minor who purchases goods or services pursuant to a telephone solicitation may disaffirm the purchase within 3

days after the purchase is made.

(2) A parent or legal guardian having legal custody of a minor who is a buyer pursuant to a telephone solicitation is not liable to a telephone solicitor for the purchase of goods or services by the minor pursuant to a telephone solicitation.

**NEW SECTION. Section 9. Consumer notification -- rulemaking by public service commission.** (1) A telephone corporation that is a local exchange company, as defined in 53-19-302, shall inform customers of the provisions of [sections 3 through 10]. Publication of the notification in an annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer information pages of local telephone directories relieves a telephone corporation of any liability under [sections 3 through 10] to buyers or others claiming to have suffered harm from telephone solicitors or by the operation of the provisions of [sections 3 through 10].

(2) The public service commission shall by rule prescribe the form of the notice provided for in subsection (1).

**NEW SECTION. Section 10. Limitation of action.** (1) A private action may not be brought under the provisions of [sections 3 through 10] more than 2 years after the cause of action accrues.

(2) A cause of action accrues when the party bringing an action under the provisions of [sections 3 through 10] knows or in the exercise of reasonable care should have known about the violation of the provisions of [sections 3 through 10].

**Section 11.** Section 30-14-504, MCA, is amended to read:

"30-14-504. Buyer's right to cancel -- time allowed -- notice -- return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such the sale, ~~provided-that~~ in In the case of a personal telephone solicitation sale ~~made-by-telephone~~, the buyer may cancel at any time prior to ~~his~~ the signing of an agreement or offer to purchase relating to such the sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox, properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and ~~shall--be~~ is sufficient if it indicates the

intention of the buyer not to be bound.

(5) A personal solicitation sale or telephone solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer."

**Section 12.** Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer -- retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale or telephone solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods ~~shall~~ must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, ~~he-shall-be~~ the seller is liable to the buyer for the entire down payment, and if the buyer is successful in his an action therefor for recovery, the



1 court shall also award ~~him~~ the buyer \$100 plus reasonable  
2 attorneys' attorney fees and costs.

3 (4) Until the seller has complied with this section,  
4 the buyer may retain possession of goods delivered to ~~him~~  
5 the buyer by the seller and ~~shall have~~ has a lien on the  
6 goods in ~~his~~ the buyer's possession or control for any  
7 recovery to which ~~he~~ the buyer may be entitled."

8 **Section 13.** Section 30-14-507, MCA, is amended to read:

9 "30-14-507. Redelivery of goods. (1) Except as provided  
10 by 30-14-506(4), within a reasonable time after a personal  
11 solicitation sale or telephone solicitation sale has been  
12 canceled or an offer to purchase revoked, the buyer upon  
13 demand shall tender to the seller any goods delivered by the  
14 seller pursuant to the sale but need not tender at any place  
15 other than ~~his~~ the buyer's residence. If the seller fails to  
16 demand possession of ~~such~~ the goods within a reasonable time  
17 after cancellation or revocation, the goods ~~shall~~ become the  
18 property of the buyer without obligation to pay for them.  
19 For the purpose of this section, 40 days ~~shall be~~ is  
20 presumed to be a reasonable time.

21 (2) The buyer shall take reasonable care of the goods  
22 in ~~his~~ the buyer's possession both before cancellation or  
23 revocation and for a reasonable time ~~thereafter~~ after  
24 cancellation, during which time the goods are otherwise at  
25 the seller's risk, and ~~such~~ the goods must be returned in

1 substantially the same condition as received."

2 **NEW SECTION. Section 14.** Codification instruction.  
3 [Sections 3 through 10] are intended to be codified as an  
4 integral part of Title 30, chapter 14, part 5, and the  
5 provisions of Title 30, chapter 14, part 5, apply to  
6 [sections 3 through 10].

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0612, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill would protect consumers from telephone solicitation fraud.

ASSUMPTIONS:

Department of Commerce:

1. 300 telephone solicitors will want to conduct business in Montana.
2. These 300 solicitors will register with the Department of Commerce and require annual renewal.
3. 150 separate complaints will be brought by consumers for violation of the requirements of law which will require a Department of Commerce investigation and civil enforcement. This will require 1.00 FTE clerk, 0.50 FTE attorney and 0.50 FTE investigator, plus related operating expenses.

Public Service Commission:

1. The Public Service Commission (PSC) would be required to promulgate rules whereby local exchange companies would inform customers of the proposed provision. PSC calculates that such a rule could be quite short and, therefore, its cost would be minimal. PSC estimates the cost of promulgating and publishing rules to be \$280.

FISCAL IMPACT:

Department of Commerce:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	9,904	39,490	29,586	9,904	39,490	29,586
Operating Expenses	7,237	18,930	11,693	7,237	18,930	11,693
Total	17,141	58,420	41,279	17,141	58,420	41,279


Funding:

General Fund	17,141	58,420	41,279	17,141	58,420	41,279
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Public Service Commission:

Expenditures: \$280 in FY94 to promulgate and publish rules.

Revenues: The PSC tax will be set, collected, and deposited in the general fund; in an amount equal to the total appropriation authorized by the legislature for a zero net impact on the general fund.

 2-18-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

2/20/93  
EDWARD J. DOLEZAL, PRIMARY SPONSOR      DATE

Fiscal Note for HB0612, as introduced

HB 612