

1 ~~or household purposes~~, when either the seller or a person acting for ~~him~~ the seller contacts the potential
 2 buyer by telephone, facsimile transmission, or in person other than at the place of business of the seller,
 3 except:

4 (a) an attempted sale in which the buyer personally knows the identity of the seller, knows the
 5 name of the business, firm, or organization ~~he~~ that the seller represents, has an existing business
 6 relationship with the seller, and knows the identity or kinds of goods or services offered for sale;

7 (b) an attempted sale in which the buyer has initiated the contact with the seller;

8 (c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both
 9 the delivery and the sale of the newspaper; or

10 (d) an attempted sale of an insurance policy.

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

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

17 (5) "Telephone solicitation" means a plan, program, or campaign that is conducted by telephone
 18 or by facsimile or electronic transmission to induce, invite, request, or encourage a customer to purchase,
 19 lease, rent, or invest in goods or services. The term includes but is not limited to a communication in
 20 which:

21 (a) a gift, award, or prize of goods or services is offered that is represented or implied to be offered
 22 below the retail price of the goods or services; or

23 (b) a return telephone call is invited from the potential buyer or a followup call is made to the
 24 potential buyer by the solicitor for the purpose of closing a sale.

25 (6) "Telephone solicitor" means a person who, on the person's own behalf or through another
 26 person, engages in a telephone solicitation."

27
 28 **NEW SECTION. Section 3. Exemptions.** (1) The provisions of this part are not applicable to
 29 personal solicitations in which:

30 (a) the buyer is personally acquainted with the seller, knows the name of the business, firm, or

1 organization that the seller represents, has an existing business relationship with the seller, and knows the
2 identity or types of goods or services offered for sale;

3 (b) the buyer has initiated the contact with the seller;

4 (c) the seller is a minor engaged in both the delivery and sale of a newspaper;

5 (d) an insurance policy is being sold by an insurance producer licensed under 33-17-201 and is
6 subject to enforcement by the commissioner of insurance pursuant to Title 33, chapter 17, part 10;

7 (e) the solicitation is an isolated transaction and is not part of a pattern of repeated transactions
8 of a similar nature;

9 (f) the solicitation is made by or on behalf of a nonprofit organization; or

10 (g) the seller is subject to the jurisdiction of the public service commission or the federal
11 communications commission.

12 (2) In an action to enforce the provisions of this section, the individual or organization claiming an
13 exemption from the provisions of this part has the burden of proof.

14

15 **NEW SECTION. Section 4. Special revenue fund.** There is a state special revenue fund established
16 under the provisions of 17-2-102 for the administration and enforcement of this part.

17

18 **NEW SECTION. Section 5. No solicitation calls list -- penalty.** (1) A person who chooses to be
19 placed on a list indicating that the person does not wish to receive telephone solicitation calls may notify
20 the department of commerce and be placed on a "no solicitation calls" list upon payment of a \$10 fee to
21 the department. A person who wishes to remain on the list after the first year may renew the person's
22 status annually by submitting \$5 to the department.

23 (2) The department shall update the no solicitation calls list on receipt of a fee from a consumer and
24 provide the updated list to telephone solicitors upon request.

25 (3) A telephone solicitor may not make or cause to be made any unsolicited sales call to a
26 residential, mobile, or telephone paging device telephone number if the number appears on the no
27 solicitation calls list maintained by the department.

28 (4) A telephone solicitor may not sell or offer to sell information that includes a person's telephone,
29 facsimile, or paging device number if the number is on the no solicitation calls list.

30 (5) The no solicitation calls list provided for in subsections (1) and (2) is not a mailing list and is not

1 subject to 2-6-109.

2 (6) The penalty for noncompliance with subsections (3) and (4) is \$500, to be collected by the
3 department. The funds collected from violators must be deposited in the state special revenue fund
4 established in [section 4].

5

6 **Section 6.** Section 30-14-503, MCA, is amended to read:

7 "**30-14-503. Disclosure obligation.** (1) Before any personal or telephone solicitation, ~~each~~ a seller
8 shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose:

9 (a) the individual seller's name;

10 (b) the name of the business, firm, or organization ~~he represents~~ represented;

11 (c) the identity or kinds of goods or services ~~he wishes to demonstrate or sell~~ to be demonstrated
12 or sold; and ~~that he wishes~~

13 (d) the seller's desire to demonstrate or sell the identified goods or services.

14 (2) At the potential buyer's request, the seller shall provide the business telephone or facsimile
15 number from which the call is being made and the telephone number of the seller's business organization.

16 When the initial contact is made in person, the seller shall also show the potential buyer an identification
17 card ~~which~~ that clearly states the seller's name and the name of the business or organization ~~he represents~~
18 represented.

19 (3) The disclosures required by this section ~~shall~~ must be made before ~~asking~~ the seller asks any
20 questions or ~~making~~ makes any statements, except an initial greeting.

21 (4) Nonprofit organizations are exempt from the requirements of this section.

22 (5) The seller shall inform the buyer in writing at the time that a purchase agreement is completed
23 of the buyer's right to cancel as provided in 30-14-505."

24

25 **NEW SECTION.** **Section 7. Credit card transactions -- penalty.** (1) A merchant who engages a
26 telephone solicitor to make or cause to be made a telephone sales call may not make or submit a charge
27 to a consumer's credit card account until the merchant has received from the consumer a written
28 verification of the consumer's agreement to purchase the item offered for sale by the telephone solicitor.

29 (2) A person who purposely or knowingly violates the requirements of this section is guilty of theft
30 by deception and is subject to criminal prosecution and penalties under 45-6-301.

1 **Section 8.** Section 30-14-504, MCA, is amended to read:

2 "**30-14-504. Buyer's right to cancel -- time allowed -- notice -- return of goods.** (1) Except as
3 provided in subsection (5), in addition to any right ~~otherwise~~ to revoke an offer, the buyer or any other
4 person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight
5 of the third business day after the day on which the buyer has signed an agreement or offer to purchase
6 relating to ~~such the sale. sale, provided that in~~ In the case of a personal solicitation sale ~~made by telephone,~~
7 the buyer may cancel at any time prior to ~~his~~ the signing of an agreement or offer, or contract to purchase
8 relating to ~~such the sale.~~

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

10 (3) Notice of cancellation, if given by mail or facsimile transmission, is considered given when
11 properly addressed and deposited in a mailbox properly addressed and, postage prepaid, or when sent by
12 facsimile transmission.

13 (4) Notice of cancellation need not take the form prescribed and ~~shall be~~ is sufficient if it indicates
14 the intention of the buyer not to be bound.

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

17

18 **Section 9.** Section 30-14-506, MCA, is amended to read:

19 "**30-14-506. Repayment to buyer -- retention of goods by buyer.** (1) Except as provided in this
20 section, within 10 days after a personal or telephone solicitation sale has been canceled or an offer to
21 purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or
22 other evidence of indebtedness.

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

27 (3) If the seller refuses within the period prescribed by subsection (1) to return the cash ~~down~~
28 ~~payment~~ downpayment or goods tendered as ~~down payment~~ downpayment, ~~he shall be~~ the seller is liable
29 to the buyer for the entire ~~down payment~~ downpayment, and if the buyer is successful in ~~his action therefor~~
30 an action for recovery, the court shall also award ~~him~~ the buyer \$100 plus reasonable ~~attorneys'~~ attorney

1 fees and costs.

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

5

6 **Section 10.** Section 30-14-507, MCA, is amended to read:

7 **"30-14-507. Redelivery of goods.** (1) Except as provided by 30-14-506(4), within a reasonable
8 time after a personal or telephone solicitation sale has been canceled or an offer to purchase revoked, the
9 buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need
10 not tender at any place other than ~~his~~ the buyer's residence. If the seller fails to demand possession of ~~such~~
11 the goods within a reasonable time after cancellation or revocation, the goods ~~shall~~ become the property
12 of the buyer without obligation to pay for them. For the purpose of this section, 40 days ~~shall be~~ are
13 presumed to be a reasonable time.

14 (2) The buyer shall take reasonable care of the goods in ~~his~~ the buyer's possession both before
15 cancellation or revocation and for a reasonable time ~~thereafter~~ after cancellation or revocation, during which
16 time the goods are otherwise at the seller's risk, and ~~such~~ the goods must be returned in substantially the
17 same condition as received."

18

19 **NEW SECTION. Section 11. Authority of department of commerce, attorney general, and county**
20 **attorney.** (1) The department of commerce, the attorney general, and a county attorney have the same
21 authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14,
22 part 1.

23 (2) Except for penalties collected under [section 5(6)], all penalties, costs, and fees received or
24 recovered by the department or the attorney general must be paid to the state for deposit in the general
25 fund.

26

27 **NEW SECTION. Section 12. Private causes of action -- remedies.** (1) A person who purchases
28 goods or services pursuant to a personal solicitation and suffers damages as a result of any act, conduct,
29 or practice declared unlawful under this part has the same rights and remedies as those granted under Title
30 30, chapter 14, part 1.

1 (2) If the person making the personal solicitation violates any applicable provision of this part, a
2 contract of sale or purchase is void and unenforceable.

3 (3) If the person making the personal solicitation fails to deliver the goods or services contracted
4 for, the contract to purchase is void and the consumer is entitled to a refund of the purchase price.

5 (4) A contract, agreement to purchase, or written confirmation executed by a buyer that purports
6 to waive any of the buyer's rights under this part is against public policy and is void and unenforceable.

7 (5) The remedies provided for in this section are not exclusive and are in addition to any other
8 procedures or remedies for any violation or conduct provided for in any other law.

9
10 **NEW SECTION. Section 13. Limitation of action.** (1) A private action may not be brought under
11 the provisions of this part more than 2 years after the cause of action accrues.

12 (2) A cause of action accrues when the buyer knows or in the exercise of reasonable care should
13 have known about the violation of the provisions of this part.

14
15 **NEW SECTION. Section 14. Consumer notification -- rulemaking by public service commission.**
16 (1) A telephone corporation that is a local exchange company, as defined in 53-19-302, shall notify
17 customers of the provisions of 30-14-503 and [sections 3 through 5]. Publication of the notification in an
18 annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer
19 information pages of local telephone directories relieves a telephone corporation of any liability under this
20 part to buyers or others claiming to have suffered harm from telephone solicitors.

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

23
24 **NEW SECTION. Section 15. Codification instruction.** [Sections 3 through 5, 7, and 11 through
25 14] are intended to be codified as an integral part of Title 30, chapter 14, part 5, and the provisions of Title
26 30, chapter 14, part 5, apply to [sections 3 through 5, 7, and 11 through 14].

27 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0356, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act regulating personal solicitation sales by telephone and facsimile transmission; establishing a no solicitation calls list; requiring that telephone solicitors disclose information to buyers; providing for enforcement authority, procedures, and penalties for noncompliance; providing for remedies in private actions and a 2-year statute of limitations; requiring that local telephone exchange companies notify customers of regulations regarding personal solicitation sales under rules set forth by the Public Service Commission.

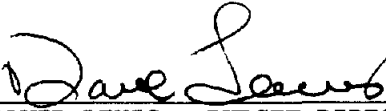
ASSUMPTIONS:

1. The Department of Commerce (DOC) estimates that because the proposed legislation broadens the scope of consumer protection to include businesses, that it will result in an increase of 500 complaints filed with the Office of Consumer Affairs.
2. A "no solicitation calls" list is mandated by the legislation. It is estimated that 1,000 consumers will wish to placed on this list in FY96 and FY97.
3. DOC estimates it will receive 500 complaints annually from individuals on the "no solicitation call" list which will result in additional investigation and litigation against solicitation. The 500 complaints will result in \$62,500 in fines being levied and \$31,250 actually being collected.
4. Four additional FTE will be required to implement the legislation. Staffing will include an attorney, an investigator, and two compliance specialists.
5. Operating expenses will be necessary in each year of the biennium to support the staff, and office equipment in FY96 only.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	4.00	4.00
Personal Services	125,210	125,650
Operating Expenses	43,029	51,229
Equipment	<u>18,458</u>	<u>0</u>
Total	186,697	176,879
<u>Funding:</u>		
Telemarketing SSR (02)	186,697	176,879
<u>Revenues:</u>		
No Solicitation List Fees	10,000	5,000
Penalties	<u>31,250</u>	<u>31,250</u>
Total	41,250	36,250
<u>Net Impact:</u>		
Telemarketing SSR (02)	(145,447)	(140,629)

(continued on page 2)

 2-16-95
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-18-95
 WILLIAM WILSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0356, as introduced

SB 356

TECHNICAL NOTES:

It will be extremely difficult, if not impossible to collect solicitation penalties from those entities located out of state with no connection to the State of Montana. It is the opinion of the Department of Commerce that sufficient revenues will not exist to cover anticipated costs.

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No. The SB356 proposes to fund telemarketing program costs through fees charged to individuals and businesses not wanting to receive telephone solicitation calls and by penalties assessed on individuals and businesses making solicitation calls to those entities not desiring calls.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

State Special Revenue funds enables programs to more efficiently and effectively serve its customers by ensuring that improvements in the delivery of program services are based upon fees and penalties collected.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? ___ Yes X No (if no, explain)

The DOC is unsure that sufficient revenues would be collected to meet program expenditures. Particularly during the first biennium when the program would incur substantial expenditures associated with beginning a new program. Collection of the \$500 telemarketing penalty from out of state telemarketing entities will be an extremely difficult process. Especially from those entities with no connection to the State.

d) Does the need for this state special revenue provision still exist? X Yes ___ No (Explain)

SB356 requires the establishment of a state special revenue account.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. The dedicated revenue provision, which this proposed legislation would establish, does not diminish the legislature's ability to control expenditures or establish priorities.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes. SB356 would establish the requirement of a telemarketing program in statute.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The proposed legislation, which contains a dedicated revenue provision, would ensure that program services are financed entirely through fees and penalties. The Department could adequately account for program activity through the general fund if required.