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SB BILL NO. 136

INTRODUCED BY Hargrove

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PERSONAL SOLICITATION SALES BY TELEPHONE OR TELEFACSIMILE TRANSMISSION OR IN PERSON; REQUIRING THAT TELEPHONE SOLICITORS DISCLOSE INFORMATION TO POTENTIAL 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; AND AMENDING SECTIONS 30-14-501, 30-14-502, 30-14-503, AND 30-14-504, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants to the public service commission rulemaking authority to determine the form of the notice that must be provided to customers of telephone corporations that are local exchange companies.

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

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

"30-14-501. Purpose. The purpose of this part is to ~~afford consumers subjected to high pressure~~ protect the public from financial hardship resulting from fraud, deception, and misinformation from personal solicitation sales ~~tactics a cooling-off period~~ and to encourage competition among and fair dealing by personal solicitors."

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

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

- (1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.
- (2) "Personal solicitation" means any attempt by a seller or another individual ~~who regularly engages in transactions of the same kind~~ to sell goods or services ~~which are primarily for personal, family,~~



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

4 ~~(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of~~
 5 ~~the business, firm, or organization he represents, and the identity or kinds of goods or services offered for~~
 6 ~~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 solicitation by the seller or a person acting for ~~him~~ the seller, ~~provided if~~ provided if the buyer is
 13 required to give consideration in excess of \$25 in cash or credit ~~therefor~~ for the goods or services.

14 (4) "Principal owner" means the person who holds the largest share of ownership in a corporation,
 15 partnership, limited liability company, or any other type of business.

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

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

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

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

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

28

29 **NEW SECTION. Section 3. Registration of telephone solicitors.** (1) A person may not engage in
 30 telephone solicitation without having registered with the attorney general in accordance with the provisions

1 of this section.

2 (2) (a) The application for registration must be made not less than 60 days before offering goods
3 or services to a potential buyer.

4 (b) An application must be renewed annually by the attorney general.

5 (c) (i) An application for registration must be accompanied by a payment in the amount of \$200.

6 (ii) An application for renewal must be accompanied by a payment in the amount of \$100.

7 (iii) Registration and renewal payments must be paid into the account established in [section 5].

8 (d) An application for registration or renewal must include but is not limited to the following
9 information:

10 (i) the name, current address, and telephone number of the seller, including each name under which
11 the seller intends to engage in telephone solicitation;

12 (ii) the occupation or business that the seller's principal owner has been engaged in for the 2 years
13 immediately preceding the date of the application;

14 (iii) whether a principal owner or a manager of the seller has been convicted or has pleaded guilty
15 to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or
16 theft;

17 (iv) whether there is any pending litigation against the applicant or whether there has been an
18 injunction, temporary restraining order, or a final judgment in any civil or administrative action involving
19 fraud, theft, racketeering, embezzlement, or fraudulent conversion or misappropriation of property entered
20 against a principal owner or a manager of the seller;

21 (v) whether the seller has filed for bankruptcy, has been judged bankrupt, or has been reorganized
22 because of insolvency at any time in the 7 years preceding the application;

23 (vi) the name, current home address, date of birth, social security number, and all other business
24 names of the following:

25 (A) each telephone solicitor or other person to be employed by the seller; and

26 (B) each executive officer, manager, supervisor, or other person who is responsible for or
27 participates in the management of the seller's business.

28 (vii) the name, address, and relevant account number of each financial institution where banking
29 and other monetary transactions are done by the seller; and

30 (viii) a copy of any script, outline, presentation material, and sales information the seller will require

1 the telephone solicitor to use when soliciting.

2 (3) (a) An application for registration must be accompanied by a surety bond in the amount of
3 \$100,000. The bond must provide for the indemnification of any person who suffers a loss as the result
4 of a violation of this part. The surety may cancel the bond for any cause upon providing a 60-day written
5 notice by certified mail to the seller and to the attorney general. If the bond is not replaced with another
6 surety of equal amount before the expiration of a 60-day notice of cancellation, the registration of the seller
7 must be treated as lapsed.

8 (b) The surety bond must remain in effect for 3 years from the period the telephone solicitation
9 business ceases to operate in this state.

10 (c) A person required to file a bond with an application under this part may instead file a certificate
11 of deposit, cash, or a government bond in the amount of \$100,000.

12 (d) The attorney general shall hold the cash, certificate of deposit, or government bond for 3 years
13 from the period that the telephone solicitation business ceases to operate or when the registration lapses
14 so that the attorney general can pay claims made against the telephone solicitation business during its
15 period of operation.

16 (e) The registration must be treated as lapsed if, at any time, the amount of the bond, cash,
17 certificate of deposit, or government bond falls below \$100,000.

18 (f) The aggregate liability of the surety company to a person injured by a telephone solicitor's
19 violations may not exceed the amount of the surety bond.

20 (4) The following acts constitute a violation of this part, and a person is guilty of a felony if that
21 person purposefully:

22 (a) fails to register;

23 (b) fails to meet the surety requirements in this section;

24 (c) fails to maintain a certificate of registration;

25 (d) provides false or misleading information on a registration application; or

26 (e) misrepresents that a seller is registered.

27
28 **NEW SECTION. Section 4. Exemptions.** (1) The provisions of this part are not applicable to a
29 personal solicitation or a telephone solicitation in which:

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

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

3 (b) the potential 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 a nonprofit organization; or

10 (g) the seller or an affiliate of the seller is subject to the jurisdiction of the public service
 11 commission or the federal 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 5. 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 **Section 6.** Section 30-14-503, MCA, is amended to read:

19 **"30-14-503. Disclosure obligation.** (1) Before any personal solicitation, each a seller shall, at the
 20 time of initial contact or communication with the potential buyer, clearly and expressly disclose:

21 (a) the individual seller's name;

22 (b) the name of the business, firm, or organization ~~he~~ the seller represents;

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

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

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

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

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

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

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

6
7 **NEW SECTION. Section 7. Credit card transactions -- penalty.** (1) A merchant who engages a
8 telephone solicitor to make or cause to be made a telephone sales call may not make or submit a charge
9 to a buyer's credit card account until the merchant has received from the buyer a written verification of the
10 buyer's agreement to purchase the item offered for sale by the telephone solicitor.

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

13
14 **Section 8.** Section 30-14-504, MCA, is amended to read:

15 **"30-14-504. Buyer's right to cancel -- time allowed -- notice -- return of goods.** (1) Except as
16 provided in subsection (5), in addition to any right ~~otherwise~~ to revoke an offer, the buyer or any other
17 person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight
18 of the third business day after the day on which the buyer has signed an agreement or offer to purchase
19 relating to ~~such sale, the sale, provided that in the case of a personal solicitation sale made by telephone,~~
20 ~~the~~ The buyer may cancel at any time ~~prior to his~~ before the signing of an agreement or offer, or contract
21 to purchase relating to ~~such~~ the sale.

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

23 (3) Notice of cancellation, if given by mail or telefacsimile transmission, is considered given when
24 properly addressed and deposited in a mailbox properly addressed and postage prepaid or when sent by
25 telefacsimile transmission.

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

28 (5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be
29 returned to the seller in substantially the same condition as when received by the buyer."
30

1 **NEW SECTION. Section 9. Authority of attorney general -- county attorney.** (1) The attorney
2 general and a county attorney have the same authority in enforcing and carrying out the provisions of this
3 part as they have under Title 30, chapter 14, part 1.

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

6
7 **NEW SECTION. Section 10. Private causes of action -- remedies.** (1) A person who purchases
8 goods or services pursuant to a personal solicitation and who suffers damages as a result of any act,
9 conduct, or practice declared unlawful under this part has the same rights and remedies as those granted
10 under Title 30, chapter 14, part 1.

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

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

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

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

19
20 **NEW SECTION. Section 11. Limitation of action -- jurisdiction.** (1) A private action may not be
21 brought under the provisions of this part more than 2 years after the cause of action accrues.

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

24 (3) The district court of the first judicial district of the state has exclusive jurisdiction for all causes
25 of action arising under this part. Any individual or entity who engages in personal solicitation is subject to
26 the jurisdiction of the state.

27
28 **NEW SECTION. Section 12. Consumer notification -- rulemaking by public service commission.**
29 (1) A telephone corporation that is a local exchange company, as defined in 53-19-302, shall notify
30 customers of the provisions of 30-14-503 and [sections 4 and 10]. Publication of the notification in an

1 annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer
2 information pages of local telephone directories relieves a telephone corporation of any liability under this
3 part to buyers or others claiming to have suffered harm from telephone solicitors.

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

6

7 **NEW SECTION. Section 13. Codification instruction.** [Sections 3 through 5, section 7, and
8 sections 9 through 12] are intended to be codified as an integral part of Title 30, chapter 14, part 5, and
9 the provisions of Title 30, chapter 14, part 5, apply to [sections 3 through 5, section 7, and sections 9
10 through 12].

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0136, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring telephone solicitor registration and providing customer protection from fraud.

ASSUMPTIONS:


Department of Commerce:

1. The Department of Commerce (DOC) estimates, because the proposed legislation broadens the scope of consumer protection to include businesses and facsimile transmissions, that it will result in an increase of 500 complaints filed with the DOC Consumer Affairs office.
2. The DOC remains responsible under 30-14-508, MCA for enforcement of the law in conjunction with the Attorney General's Office and County Attorney Offices.
3. The proposed legislation will require 3.00 FTE to implement. A 1.00 FTE, grade 17 attorney, 1.00 FTE, grade 14 investigator, and 1.00 FTE, grade 12 compliance specialist. Estimated personal services costs for fiscal year 1998 and fiscal year 1999 are \$99,000 each year.
4. Estimated operating expenses are \$35,000 in fiscal year 1998 and fiscal year 1999. Operating expenses include other services, supplies and materials, communications, travel, rent, and other expenses.
5. Estimated equipment expenses are \$15,000 for fiscal year 1998 only and include purchase of three personal computers, printer, calculators, desks, chairs, and file cabinets.

Department of Justice:

6. The bill requires any person who engages in telephone solicitation to register with the attorney general 60 days before offering any goods or services; applications must be renewed annually by the attorney general.
7. There is an initial application fee of \$200 and a renewal fee of \$100 for telephone solicitors who register with the attorney general. Applications also must be accompanied by a surety bond, certificate of deposit, cash, or a government bond in the amount of \$100,000. The attorney general is required to hold the bond or cash for three years from the time the registration lapses or the solicitor ceases to do business so that the attorney general can pay claims made against the solicitor.
8. The bill will require the Department of Justice to establish a procedure for registering telephone solicitors, for both Montana and out-of-state companies doing business in Montana, to collect fees, renew registrations, and ensure that the required bond is submitted. Administrative hearings may be necessary to determine how to apportion bonds between victims if a telephone solicitor is subjected to claims by consumers during the period in which the bond is held by the attorney general.
9. Because the bill applies to both in-state and out-of-state telephone solicitors, it is estimated that 100 companies will register with the attorney general.
10. The attorney general may be called upon by either the Department of Commerce or a county attorney to assist with enforcement of violations of the law. Because primary enforcement authority is not given to the Department of Justice, it is assumed that no enforcement actions will be taken by the department during the biennium and that complaints will be handled by the Department of Commerce.

(Continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


DON HARGROVE, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, as introduced

SB136

(Continued)

11. The Department of Justice will require 1.50 FTE to implement this legislation: one grade 10 (\$23,600) administrative support position to handle registration and 0.50 FTE grade 12 (\$13,600) compliance specialist to handle the bonding requirements.
12. Operating expenses per year are estimated at \$7,400. Equipment costs in the first year of operation include a PC and office equipment at \$5,000 per FTE.
13. Registration fees will be deposited into a special revenue fund. During the biennium, registration fees are estimated to be \$20,000, with annual renewal fees of approximately \$5,000 in the second year of the biennium.

FISCAL IMPACT:

Department of Commerce:	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	3.00	3.00
Personal Services	99,000	99,000
Operating Expenses	35,000	35,000
Equipment	<u>15,000</u>	<u>0</u>
Total	149,000	134,000

<u>Funding:</u>		
General Fund (01)	149,000	134,000

Department of Justice:

<u>Expenditures:</u>		
FTE	1.50	1.50
Personal Services	37,200	37,200
Operating Expenses	7,400	7,400
Equipment	<u>10,000</u>	<u>0</u>
Total	54,600	44,600

<u>Funding:</u>		
General fund (01)	34,600	39,600
State special (02)	<u>20,000</u>	<u>5,000</u>
Total	54,600	44,600

<u>Revenues:</u>		
Application Fees (02)	20,000	5,000

<u>Net Impact on Fund Balance:</u> (Revenue minus expense)		
General fund (01)	(\$183,600)	(\$173,600)
State special (02)	0	0

TECHNICAL NOTES:

Clarification is needed in the bill concerning enforcement authority of the Departments of Justice and Commerce.

DEDICATION OF REVENUE:

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

The bill is designed to benefit consumers, who will not be paying any of the revenue. It also, however, will benefit those telephone solicitors who do register with the attorney general, and they are the ones who will be paying the fee.

(Continued)

(Continued)

- 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?

None.

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

The source of revenue is relevant to the use of the funds, but it is not adequate to fund the unit that will be created in the Department of Justice to administer the program.

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

Activity could be tracked in the general fund.

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

No.

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

The legislature has recognized a need for consumer protection by enacting the Consumer Protection Act (Tit. 30, ch. 14, part 1), the Unfair Trade Practices Act (Tit. 30, ch. 14, part 2), and the Personal Solicitation Sales Act (Tit. 30, ch. 14, part 5)

- 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?)

Program could be adequately accounted for in general fund through use of responsibility center and revenue estimates.