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HOUSE BILL 78

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO UNFAIR PRACTICES; EXPANDING THE RESTRICTIONS ON
TELEPHONE SOLICITATIONS TO INCLUDE WIRELESS AND VOICE OVER
INTERNET PROTOCOL VOICE SERVICES; MAKING TECHNICAL AND
CONFORMING CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 57-12-22 NMSA 1978 (being Laws 1989,
Chapter 309, Section 2, as amended) is amended to read:

"57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED
TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE AND
OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE
SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION.--

A. A person shall not utilize an automated
telephone dialing or push-button or tone-activated address
signaling system with a prerecorded message to solicit persons

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1 to purchase goods or services unless there is an established
2 business relationship between the persons and the person being
3 called consents to hear the prerecorded message.

4 B. It is unlawful under the Unfair Practices Act
5 for a person to make a telephone solicitation for a purchase of
6 goods or services:

7 (1) without disclosing within fifteen seconds
8 of the time the person being called answers the name of the
9 sponsor and the primary purpose of the contact;

10 (2) that misrepresents the primary purpose of
11 a telephone solicitation of a residential subscriber as a
12 "courtesy call", a "public service information call" or some
13 other euphemism;

14 (3) under the guise of research or a survey
15 when the real intent is to sell goods or services;

16 (4) without disclosing, prior to commitments
17 by customers, the cost of the goods or services, all terms,
18 conditions, payment plans and the amount or existence of any
19 extra charges such as shipping and handling;

20 (5) that are received before 9:00 a.m. or
21 after 9:00 p.m.;

22 (6) using automatic dialing equipment unless
23 the telephone immediately [~~releases the line~~] discontinues the
24 call when the called party disconnects;

25 (7) using automatic dialing equipment that

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1 dials and engages the telephone numbers of more than one person
2 at a time but allows the possibility of a called person not
3 being connected to the calling person for some period not
4 exceeding that established by the federal trade commission at
5 16 C.F.R. Sections 310(b)(1)(iv) and 310.4(b)(4); and

6 (8) in which credit card numbers are requested
7 before the prospective purchaser expresses a desire to use a
8 credit card to pay for the purchase.

9 C. It is unlawful for a person to:

10 (1) make a telephone solicitation of a
11 [~~residential subscriber~~] person whose telephone number has been
12 on the national do-not-call registry, established by the
13 federal trade commission, for at least three months prior to
14 the date the call is made; or

15 (2) use a method to block or otherwise
16 intentionally circumvent a [~~residential subscriber's~~] person's
17 use of a caller identification service [~~pursuant to the~~
18 ~~Consumer No-Call Act~~].

19 D. As used in this section:

20 (1) "established business relationship" means
21 a relationship that:

22 (a) was formed, prior to a telephone
23 solicitation, through a voluntary, two-way communication
24 between a seller or telephone solicitor and a [~~residential~~
25 ~~subscriber~~] person, with or without consideration, on the basis

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1 of an application, purchase, ongoing contractual agreement or
2 commercial transaction between the parties regarding products
3 or services offered by the seller or telephone solicitor; and

4 (b) currently exists or has existed
5 within the immediately preceding twelve months; and

6 [~~(2)~~ "~~local exchange company~~" means a
7 ~~telecommunications company that provides the transmission of~~
8 ~~two-way interactive switched voice communications within a~~
9 ~~local exchange area;~~

10 [~~(3)~~ "~~residential subscriber~~" means a person
11 who has subscribed to residential telephone service from a
12 local exchange company or the other persons living or residing
13 with such person; and

14 [~~(4)~~] (2) "telephone solicitation" means [a
15 ~~voice or telefaesimile communication over a telephone line~~] the
16 initiation of a telephone call or message for the purpose of
17 encouraging the purchase or rental of or investment in
18 property, goods or services and includes a communication
19 described in this subsection through the use of automatic
20 dialing and recorded message equipment or by other means, but
21 "telephone solicitation" does not include a communication:

22 (a) to a [~~residential subscriber~~] person
23 with that [~~subscriber's~~] person's prior express [~~invitation or~~
24 ~~permission~~] written permission, invitation or consent;

25 (b) by or on behalf of a person with

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1 whom [~~a residential subscriber~~] the telephone call or message
2 recipient has an established business relationship;

3 (c) made for the sole purpose of urging
4 support for or opposition to a political candidate or ballot
5 issue;

6 (d) made for the sole purpose of
7 conducting political polls or soliciting the expression of
8 opinions, ideas or votes; or

9 (e) by a person who is a duly licensed
10 real estate broker pursuant to Section 61-29-11 NMSA 1978, who
11 is a resident of the state and whose telephone call to the
12 consumer is for the sole purpose of selling, exchanging,
13 purchasing, renting, listing for sale or rent or leasing real
14 estate in accordance with the provisions for which [~~he or she~~]
15 the person is licensed and not in conjunction with any other
16 offer."

17 SECTION 2. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2020.