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HOUSE BILL 234

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Delores C. Wright

AN ACT

**RELATING TO TELECOMMUNICATIONS; REGULATING TELEMARKE
TING ACTIVITIES; ENACTING THE TELEMARKE
TING REGULATION ACT;
PROVIDING CIVIL REMEDIES AND PENALTIES.**

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

**Section 1. SHORT TITLE. -- This act may be cited as the
"Telemarketing Regulation Act".**

Section 2. FINDINGS AND PURPOSE. --

A. The legislature finds that:

**(1) the use of the telephone to market goods
and services to the home is pervasive now due to the increased
use of cost-effective telemarketing techniques;**

**(2) over thirty thousand businesses actively
telemarket goods and services to business and residential
customers;**

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1 (3) every day, over three hundred thousand
2 solicitors place calls to more than eighteen million
3 Americans, including citizens of this state;

4 (4) telemarketing can be an intrusive and
5 relentless invasion of the privacy and peacefulness of the
6 home;

7 (5) many citizens of this state are outraged
8 over the proliferation of nuisance calls to their homes from
9 telemarketers;

10 (6) individuals' privacy rights and
11 commercial freedom of speech can be balanced in a way that
12 accommodates both the privacy of individuals and legitimate
13 telemarketing practices; and

14 (7) it is in the public interest to establish
15 a mechanism under which the individual citizens of this state
16 can decide whether or not to receive telemarketing calls in
17 their homes.

18 B. The purpose of the Telemarketing Regulation Act
19 is to regulate the practice of telemarketing in a manner that
20 balances individuals' expectations of privacy with business
21 interests' exercise of commercial free speech.

22 Section 3. DEFINITIONS. --As used in the Telemarketing
23 Regulation Act:

24 A. "caller identification service" means a
25 telephone service that permits telephone subscribers to see

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1 the telephone number of incoming telephone calls;

2 B. "commission" means the public regulation
3 commi ssi on;

4 C. "local exchange area" means a geographic area
5 encompassing one or more local communities, as described in
6 maps, tariffs or rate schedules filed with the commission,
7 where local exchange rates apply;

8 D. "local exchange service" means the transmission
9 of two-way interactive switched voice communications furnished
10 by a telecommunications company within a local exchange area;

11 E. "public telecommunications service" means the
12 transmission of signs, signals, writings, images, sounds,
13 messages, data or other information of any nature by wire,
14 radio, lightwaves or other electromagnetic means originating
15 and terminating in this state regardless of actual call
16 routing, but "public telecommunications service" does not
17 include the provision of terminal equipment used to originate
18 or terminate the service; private telecommunications service;
19 broadcast transmissions by radio, television and satellite
20 broadcast stations regulated by the federal communications
21 commission; radio common carrier services, including mobile
22 telephone service and radio paging; or one-way cable
23 television service;

24 F. "residential subscriber" means a person who has
25 subscribed to residential telephone service from a local

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1 exchange company or the other persons living or residing with
2 such person;

3 G. "telecommunications company" means a person
4 that provides public telecommunications service;

5 H. "telemarketing" means any voice communication
6 by a live operator or other means over a telephone line for
7 the purpose of encouraging the purchase or rental of, or
8 investment in, property, goods or services, but does not
9 include communications:

10 (1) to a residential subscriber with that
11 subscriber's prior express invitation or permission;

12 (2) by or on behalf of a person with whom a
13 residential subscriber has a prior or current business or
14 personal relationship; or

15 (3) by or on behalf of an organization that
16 has been granted exemption from the federal income tax by the
17 United States commissioner of internal revenue as an
18 organization described in Section 501(c)(3) of the United
19 States Internal Revenue Code of 1986.

20 Section 4. PROHIBITION OF TELEMARKETING IN CERTAIN
21 CASES. -- Telemarketing on the telephone line of a residential
22 subscriber in this state who has given notice to the
23 commission, in accordance with rules promulgated pursuant to
24 the Telemarketing Regulation Act, of the subscriber's
25 objection to receiving telephone solicitations is prohibited.

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1 Section 5. COMMISSION TO ESTABLISH DATABASE OF
2 SUBSCRIBERS WHO OBJECT TO TELEMARKETING. --The commission shall
3 establish and provide for the operation of a database to
4 compile a list of telephone numbers of residential subscribers
5 who object to telemarketing. The commission shall have the
6 database in operation no later than January 1, 2002. The
7 database may be operated by the commission or by a person that
8 contracts with the commission.

9 Section 6. COMMISSION TO PROMULGATE RULES TO IMPLEMENT
10 TELEMARKETING RESTRICTIONS. --No later than January 1, 2002,
11 the commission shall promulgate rules that:

12 A. require a telecommunications company that
13 provides local exchange service to inform its residential
14 subscribers of the opportunity to provide notification to the
15 commission or its contractor that the subscriber objects to
16 telemarketing on his line;

17 B. specify the methods by which a residential
18 subscriber may give notice to the commission or its contractor
19 of his objection to receiving telemarketing or revocation of a
20 notice previously given;

21 C. specify the length of time for which a notice
22 of objection shall be effective and the effect of a change of
23 telephone number on the notice;

24 D. specify the methods by which objections and
25 revocations shall be collected and added to the database;

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1 E. specify the methods by which a person desiring
2 to engage in telemarketing may obtain access to the database
3 to avoid calling the telephone numbers of residential
4 subscribers included in the database; and

5 F. specify other matters relating to the database
6 that the commission deems desirable.

7 Section 7. ADDITION OF NATIONAL DATABASE INFORMATION. --

8 If, pursuant to 47 USCA Section 227(c)(3), the federal
9 communications commission establishes a single national
10 database of telephone numbers of residential subscribers who
11 object to receiving telemarketing, the commission shall
12 include the part of the single national database that relates
13 to New Mexico in the database established under the
14 Telemarketing Regulation Act.

15 Section 8. FEES FOR INCLUDING NOTICE IN, GAINING ACCESS
16 TO OR OBTAINING COPY OF DATABASE. -- A residential subscriber
17 shall be charged a fee of five dollars (\$5.00) by the
18 commission for each notice for inclusion in the database
19 established under the Telemarketing Regulation Act. A person
20 desiring to engage in telemarketing shall be charged a fee of
21 ten dollars (\$10.00) by the commission in each instance in
22 which access to the database is granted or in which a paper or
23 electronic copy of the database is furnished.

24 Section 9. RESTRICTIONS ON USE OF DATABASE. -- Information
25 contained in the database established pursuant to the

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1 Telemarketing Regulation Act shall be used only for the
2 purpose of compliance with that act. The information is
3 confidential and is not subject to public inspection or
4 disclosure.

5 Section 10. BLOCKING PROHIBITED. --A person engaging in
6 telemarketing shall not use a method to block or otherwise
7 circumvent a residential subscriber's use of a caller
8 identification service.

9 Section 11. CIVIL REMEDIES--PENALTIES. --

10 A. The commission shall enforce the provisions of
11 the Telemarketing Regulation Act.

12 B. The commission may bring an action to enjoin a
13 violation or threatened violation of Section 4 or Section 10
14 of the Telemarketing Regulation Act. It may impose a civil
15 penalty up to a maximum of two thousand dollars (\$2,000) for
16 each violation. It may seek additional and appropriate relief
17 in the district court for Santa Fe county.

18 C. A person who has received more than one act of
19 telemarketing within any twelve-month period by or on behalf
20 of the same person in violation of Section 4 or Section 10 of
21 the Telemarketing Regulation Act may:

- 22 (1) bring an action to enjoin the violation;
23 (2) bring an action to recover for actual
24 monetary loss from the violation or receive up to two thousand
25 dollars (\$2,000) in damages for each violation, whichever is

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1 greater; or

2 (3) seek relief pursuant to both Paragraphs
3 (1) and (2) of this subsection.

4 Section 12. DEFENSES TO ENFORCEMENT ACTIONS. --It is a
5 defense to an action brought pursuant to Section 11 of the
6 Telemarketing Regulation Act that the defendant has
7 established and implemented, with due care, reasonable
8 practices and procedures to effectively prevent telemarketing
9 in violation of that act.

10 Section 13. LIMITATION OF ACTIONS. --No action may be
11 brought pursuant to Section 11 of the Telemarketing Regulation
12 Act after the occurrence of the later of:

13 A. two years after the person bringing the action
14 knew or should have known of the occurrence of the alleged
15 violation; or

16 B. two years after the termination of an action by
17 the commission.

18 Section 14. REMEDIES CUMULATIVE. --The remedies of the
19 Telemarketing Regulation Act are not exclusive and are in
20 addition to all other causes of action, remedies and penalties
21 provided by law.