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SENATE BILL 220

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

INTRODUCED BY

Dede Feldman

AN ACT

**RELATING TO TELECOMMUNICATIONS; REGULATING TELEPHONE
SOLICITATION ACTIVITIES; ENACTING THE TELEPHONE CONSUMER
PRIVACY ACT.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 8 of this act may be cited as the "Telephone Consumer
Privacy Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Telephone Consumer Privacy Act:**

**A. "caller identification service" means a
telephone service that permits telephone subscribers to see
the telephone number of incoming telephone calls;**

**B. "local exchange area" means a geographic area
encompassing one or more local communities, as described in**

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1 maps, tariffs or rate schedules filed with the commission,
2 where local exchange rates apply;

3 C. "local exchange service" means the transmission
4 of two-way interactive switched voice communications furnished
5 by a telecommunications company within a local exchange area;

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

19 E. "residential subscriber" means a person who has
20 subscribed to residential telephone service from a local
21 exchange company or the other persons living or residing with
22 such person;

23 F. "telecommunications company" means a person
24 that provides public telecommunications service; and

25 G. "telephone solicitation" means any voice

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1 communication by a live operator or other means over a
2 telephone line for the purpose of encouraging the purchase or
3 rental of, or investment in, property, goods or services, but
4 does not include communications:

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

7 (2) by or on behalf of a person with whom a
8 residential subscriber has had a business relationship within
9 the twelve months immediately preceding the communication on
10 behalf of the organization; or

11 (3) by an unpaid volunteer for or unpaid
12 member of an organization if the organization has been granted
13 an exemption from the federal income tax by the United States
14 commissioner of internal revenue as an organization described
15 in Section 501(c)(3) of the United States Internal Revenue
16 Code of 1986.

17 Section 3. [NEW MATERIAL] PROHIBITION OF TELEPHONE
18 SOLICITATION IN CERTAIN CASES. --

19 A. Telephone solicitation on the telephone line of
20 a residential subscriber in this state who has given notice to
21 the attorney general, in accordance with rules promulgated
22 pursuant to the Telephone Consumer Privacy Act, of the
23 subscriber's objection to receiving telephone solicitations is
24 prohibited.

25 B. Telephone solicitation on the telephone line of

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1 a residential subscriber in this state is prohibited between
2 the hours of 5:00 p.m. and 7:00 p.m.

3 Section 4. [NEW MATERIAL] ATTORNEY GENERAL TO ESTABLISH
4 DATABASE OF SUBSCRIBERS WHO OBJECT TO TELEPHONE
5 SOLICITATION. --

6 A. The attorney general shall establish and
7 provide for the operation of a database to compile a list of
8 telephone numbers of residential subscribers who object to
9 telephone solicitation. The attorney general shall have the
10 database in operation no later than January 1, 2002.

11 B. The database may be operated by the attorney
12 general or by a person that contracts with the attorney
13 general. If the attorney general decides to enter into a
14 contract, he may provide in the contract that all or a
15 specific part of the fees payable pursuant to Section 6 of the
16 Telephone Consumer Privacy Act shall be the remuneration for
17 the services of the contractor.

18 Section 5. [NEW MATERIAL] ATTORNEY GENERAL TO PROMULGATE
19 RULES TO IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS. -- No
20 later than January 1, 2002, the attorney general shall
21 promulgate rules that specify:

22 A. the methods by which a residential subscriber
23 may give notice to the attorney general or the attorney
24 general's contractor of his objection to receiving telephone
25 solicitations or revocation of a notice previously given;

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1 B. the length of time for which a notice of
2 objection shall be effective and the effect of a change of
3 telephone number on the notice;

4 C. the methods by which objections and revocations
5 shall be collected and added to the database;

6 D. the methods by which a person desiring to
7 engage in telephone solicitation may obtain access to the
8 database to avoid calling the telephone numbers of residential
9 subscribers included in the database;

10 E. a fee schedule and time and method of payment
11 of fees authorized pursuant to Section 6 of the Telephone
12 Consumer Privacy Act; and

13 F. methods for keeping the database current and
14 other matters relating to the database that the attorney
15 general deems desirable.

16 Section 6. [NEW MATERIAL] FEES FOR INCLUDING NOTICE IN,
17 GAINING ACCESS TO OR OBTAINING COPY OF DATABASE. -- A
18 residential subscriber shall be charged a fee of up to ten
19 dollars (\$10.00) by the attorney general for each notice for
20 inclusion in the database established under the Telephone
21 Consumer Privacy Act. A person desiring to engage in
22 telephone solicitation shall be charged a fee of up to two
23 hundred dollars (\$200) annually by the attorney general for
24 access to the database or for furnishing a paper or electronic
25 copy of the database.

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1 Section 7. [NEW MATERIAL] RESTRICTIONS ON USE OF
2 DATABASE. -- Information contained in the database established
3 pursuant to the Telephone Consumer Privacy Act shall be used
4 only for the purpose of compliance with that act. The
5 information is confidential and is not subject to public
6 inspection or disclosure.

7 Section 8. [NEW MATERIAL] BLOCKING PROHIBITED. -- A person
8 engaging in telephone solicitation shall not use a method to
9 block or otherwise circumvent a residential subscriber's use
10 of a caller identification service.

11 Section 9. Section 57-12-1 NMSA 1978 (being Laws 1967,
12 Chapter 268, Section 1) is amended to read:

13 "57-12-1. SHORT TITLE. -- ~~[This act]~~ Chapter 57, Article
14 12 NMSA 1978 may be cited as the "Unfair Practices Act". "

15 Section 10. Section 57-12-22 NMSA 1978 (being Laws 1989,
16 Chapter 309, Section 2) is amended to read:

17 "57-12-22. TELEPHONE SOLICITATION SALES-- AUTOMATED
18 TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED-- DISCLOSURE AND
19 OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE
20 SOLICITATION SALES-- PROHIBITED TELEPHONE SOLICITATION. --

21 A. It is unlawful for a person ~~[shall not]~~ to
22 utilize an automated telephone dialing or push-button or tone-
23 activated address signaling system with a prerecorded message
24 to solicit persons to purchase goods or services unless there
25 is an existing business relationship between ~~[such]~~ the

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1 persons and the person being called consents to hear the
2 prerecorded message.

3 B. It is unlawful [~~under the Unfair Practices Act~~]
4 for [~~any~~] a person to solicit by means of a seller-initiated
5 telephone sale of goods or services:

6 (1) without promptly disclosing the name of
7 the sponsor and the primary purpose [~~or purposes~~] of the
8 contact;

9 (2) in which offers or solicitations in the
10 guise of research or a survey are made when the real intent is
11 to sell goods or services;

12 (3) without disclosing, prior to commitments
13 by customers, the cost of the goods or services, all terms,
14 conditions, payment plans and the amount or existence of any
15 extra charges such as shipping and handling;

16 (4) [~~which~~] that are received before 9:00
17 a.m. or after 9:00 p.m. or between 5:00 p.m. and 7:00 p.m.;

18 (5) using automatic dialing equipment unless
19 the telephone immediately releases the line when the called
20 party disconnects; and

21 (6) asking for credit card numbers until and
22 unless the customer has committed to make the purchase and
23 expressed a desire to use a credit card to pay for the
24 purchase.

25 C. It is unlawful for a person to:

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1 (1) make a seller-initiated telephone sale of
2 goods or services to a residential telephone subscriber who
3 has given notice to the attorney general of the subscriber's
4 objection to receiving telephone solicitations pursuant to the
5 Telephone Consumer Privacy Act; or

6 (2) use a method to block or otherwise
7 circumvent a residential subscriber's use of a caller
8 identification service pursuant to the Telephone Consumer
9 Privacy Act. "

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