

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 573

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE CONSUMER NO-CALL  
ACT; REGULATING TELEPHONE SOLICITATION ACTIVITIES; PROVIDING  
PENALTIES.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 7 of this act may be cited as the "Consumer No-Call  
Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Consumer No-Call Act:

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

B. "established business relationship" means a  
relationship that:

1 (1) was formed, prior to a telephone  
2 solicitation, through a voluntary, two-way communication  
3 between a seller or telephone solicitor and a residential  
4 subscriber, with or without consideration, on the basis of an  
5 application, purchase, ongoing contractual agreement or  
6 commercial transaction between the parties regarding products  
7 or services offered by the seller or telephone solicitor;

8 (2) has not been previously terminated by  
9 either party; and

10 (3) currently exists or has existed within the  
11 immediately preceding twelve months;

12 C. "local exchange area" means a geographic area  
13 encompassing one or more local communities, as described in  
14 maps, tariffs or rate schedules filed with the public  
15 regulation commission, where local exchange rates apply;

16 D. "local exchange company" means a  
17 telecommunications company that provides the transmission of  
18 two-way interactive switched voice communications within a  
19 local exchange area;

20 E. "public telecommunications service" means the  
21 transmission of signs, signals, writings, images, sounds,  
22 messages, data or other information of any nature by wire,  
23 radio, lightwaves or other electromagnetic means originating  
24 and terminating in this state regardless of actual call  
25 routing, but "public telecommunications service" does not

1 include the provision of terminal equipment used to originate  
2 or terminate the service; private telecommunications service;  
3 broadcast transmissions by radio, television and satellite  
4 broadcast stations regulated by the federal communications  
5 commission; radio common carrier services, including mobile  
6 telephone service and radio paging; or one-way cable television  
7 service;

8 F. "residential subscriber" means a person who has  
9 subscribed to residential telephone service from a local  
10 exchange company or the other persons living or residing with  
11 such person;

12 G. "telecommunications company" means a person that  
13 provides public telecommunications service; and

14 H. "telephone solicitation" means a voice or  
15 telefacsimile communication over a telephone line for the  
16 purpose of encouraging the purchase or rental of, or investment  
17 in, property, goods or services and includes a communication  
18 described in this subsection through the use of automatic  
19 dialing and recorded message equipment or by other means, but  
20 "telephone solicitation" does not include a communication:

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

23 (2) by or on behalf of a person with whom a  
24 residential subscriber has an established business  
25 relationship;

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1 (3) by or on behalf of an organization that  
2 has been granted an exemption from the federal income tax by  
3 the United States commissioner of internal revenue as an  
4 organization described in Section 501(c) of the Internal  
5 Revenue Code of 1986;

6 (4) made for the sole purpose of urging  
7 support for or opposition to a political candidate or ballot  
8 issue;

9 (5) made for the sole purpose of conducting  
10 political polls or soliciting the expression of opinions, ideas  
11 or votes; or

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

19 Section 3. [NEW MATERIAL] DO-NOT-CALL REGISTRY-- FEDERAL  
20 TRADE COMMISSION REGISTRY ADOPTED AS STATE REGISTRY.-- The  
21 national "do-not-call" registry established and maintained by  
22 the federal trade commission pursuant to 16 CFR Section  
23 310.4(b)(1)(iii)(B) is adopted and shall serve as the New  
24 Mexico do-not-call registry for the purposes of the Consumer  
25 No-Call Act.

1           Section 4.   [NEW MATERIAL] PROHIBITED ACT-- CIVIL ACTION--  
2 CRIMINAL PENALTY. --

3           A.   A person engaging in telephone solicitation  
4 shall not initiate an outbound telephone call consisting of  
5 telephone solicitation to a residential subscriber in New  
6 Mexico when that residential subscriber's telephone number has  
7 been on the national do-not-call registry, established by the  
8 federal trade commission, for at least three months prior to  
9 the date the call is made.

10           B.   A residential subscriber may bring a civil  
11 action against a person who violates the provisions of  
12 Subsection A of this section in respect to that subscriber.  A  
13 residential subscriber who succeeds in obtaining a judgment of  
14 violation shall be awarded liquidated damages in the amount of  
15 five hundred dollars (\$500) for each violation proved.  Each  
16 call is a separate violation of the provisions of this section.  
17 A residential subscriber that succeeds in obtaining a judgment  
18 of violation shall be awarded reasonable attorney fees and  
19 costs by the court.

20           C.   Violation of the provisions of Subsection A of  
21 this section is a misdemeanor, and the violator shall be  
22 sentenced pursuant to Section 31-19-1 NMSA 1978.

23           Section 5.   [NEW MATERIAL] ATTORNEY GENERAL TO PROMULGATE  
24 RULES TO IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS. -- No  
25 later than January 1, 2004, the attorney general shall

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1 promulgate rules that specify:

2 A. the methods by which a residential subscriber  
3 may give notice to the attorney general of his objection to  
4 receiving telephone solicitations or revocation of a notice  
5 previously given;

6 B. the length of time for which a notice of  
7 objection shall be effective and the effect of a change of  
8 telephone number on the notice;

9 C. the methods by which objections and revocations  
10 shall be collected and added to the New Mexico do-not-call  
11 registry;

12 D. the methods by which a person desiring to engage  
13 in telephone solicitation may obtain access to the New Mexico  
14 do-not-call registry to avoid calling the telephone numbers of  
15 residential subscribers in New Mexico; and

16 E. methods for keeping the New Mexico do-not-call  
17 registry current and other matters relating to the registry  
18 that the attorney general deems desirable.

19 Section 6. [NEW MATERIAL] RESTRICTIONS ON USE OF  
20 REGISTRY. -- Information contained in the registry established  
21 pursuant to the Consumer No-Call Act shall be used only for the  
22 purpose of compliance with that act. The information is  
23 confidential and is not subject to public inspection or  
24 disclosure.

25 Section 7. [NEW MATERIAL] BLOCKING PROHIBITED. -- A person

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1 engaging in telephone solicitation shall not use a method to  
 2 block or otherwise circumvent a residential subscriber's use of  
 3 a caller identification service.

4 Section 8. Section 57-12-1 NMSA 1978 (being Laws 1967,  
 5 Chapter 268, Section 1) is amended to read:

6 "57-12-1. SHORT TITLE. -- ~~[This act]~~ Chapter 57, Article 12  
 7 NMSA 1978 may be cited as the "Unfair Practices Act". "

8 Section 9. Section 57-12-2 NMSA 1978 (being Laws 1967,  
 9 Chapter 268, Section 2, as amended) is amended to read:

10 "57-12-2. DEFINITIONS. -- As used in the Unfair Practices  
 11 Act:

12 A. "person" ~~[includes]~~ means, where applicable,  
 13 natural persons, corporations, trusts, partnerships,  
 14 associations, cooperative associations, clubs, companies,  
 15 firms, joint ventures or syndicates;

16 B. "seller-initiated telephone sale" means a sale,  
 17 lease or rental of goods or services in which the seller or his  
 18 representative solicits the sale by telephoning the prospective  
 19 purchaser and in which the sale is consummated entirely by  
 20 telephone or mail, but does not include a transaction:

21 (1) in which a person solicits a sale from a  
 22 prospective purchaser who has previously made an authorized  
 23 purchase from the seller's business; or

24 (2) in which the purchaser is accorded the  
 25 right of rescission by the provisions of the federal Consumer

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1 Credit Protection Act, 15 U. S. C. 1635 or regulations issued  
2 pursuant thereto;

3 C. "trade" or "commerce" includes the advertising,  
4 offering for sale or distribution of any services and any  
5 property and any other article, commodity or thing of value,  
6 including any trade or commerce directly or indirectly  
7 affecting the people of this state;

8 D. "unfair or deceptive trade practice" means [~~any~~]  
9 an act specifically declared unlawful pursuant to the Unfair  
10 Practices Act, a false or misleading oral or written statement,  
11 visual description or other representation of any kind  
12 knowingly made in connection with the sale, lease, rental or  
13 loan of goods or services or in the extension of credit or in  
14 the collection of debts by [~~any~~] a person in the regular course  
15 of his trade or commerce, which may, tends to or does deceive  
16 or mislead any person and includes [~~but is not limited to~~]:

17 (1) representing goods or services as those of  
18 another when the goods or services are not the goods or  
19 services of another;

20 (2) causing confusion or misunderstanding as  
21 to the source, sponsorship, approval or certification of goods  
22 or services;

23 (3) causing confusion or misunderstanding as  
24 to affiliation, connection or association with or certification  
25 by another;



1 (4) using deceptive representations or  
2 designations of geographic origin in connection with goods or  
3 services;

4 (5) representing that goods or services have  
5 sponsorship, approval, characteristics, ingredients, uses,  
6 benefits or quantities that they do not have or that a person  
7 has a sponsorship, approval, status, affiliation or connection  
8 that he does not have;

9 (6) representing that goods are original or  
10 new if they are deteriorated, altered, reconditioned,  
11 reclaimed, used or secondhand;

12 (7) representing that goods or services are of  
13 a particular standard, quality or grade or that goods are of a  
14 particular style or model if they are of another;

15 (8) disparaging the goods, services or  
16 business of another by false or misleading representations;

17 (9) offering goods or services with intent not  
18 to supply them in the quantity requested by the prospective  
19 buyer to the extent of the stock available, unless the  
20 purchaser is purchasing for resale;

21 (10) offering goods or services with intent  
22 not to supply reasonable expectable public demand;

23 (11) making false or misleading statements of  
24 fact concerning the price of goods or services, the prices of  
25 competitors or one's own price at a past or future time or the

1 reasons for, existence of or amounts of price reduction;

2 (12) making false or misleading statements of  
3 fact for the purpose of obtaining appointments for the  
4 demonstration, exhibition or other sales presentation of goods  
5 or services;

6 (13) packaging goods for sale in a container  
7 that bears a trademark or trade name identified with goods  
8 formerly packaged in the container, without authorization,  
9 unless the container is labeled or marked to disclaim a  
10 connection between the contents and the trademark or trade  
11 name;

12 (14) using exaggeration, innuendo or ambiguity  
13 as to a material fact or failing to state a material fact if  
14 doing so deceives or tends to deceive;

15 (15) stating that a transaction involves  
16 rights, remedies or obligations that it does not involve;

17 (16) stating that services, replacements or  
18 repairs are needed if they are not needed; or

19 (17) failure to deliver the quality or  
20 quantity of goods or services contracted for; and

21 E. "unconscionable trade practice" means ~~[any]~~ an  
22 act or practice in connection with the sale, lease, rental or  
23 loan, or in connection with the offering for sale, lease,  
24 rental or loan, of any goods or services, including services  
25 provided by licensed professionals, or in the extension of

1 credit or in the collection of debts which to a person's  
2 detriment:

3 (1) takes advantage of the lack of knowledge,  
4 ability, experience or capacity of a person to a grossly unfair  
5 degree; or

6 (2) results in a gross disparity between the  
7 value received by a person and the price paid. "

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

10 "57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED  
11 TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE AND  
12 OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE  
13 SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION.--

14 A. A person shall not utilize an automated  
15 telephone dialing or push-button or tone-activated address  
16 signaling system with a prerecorded message to solicit persons  
17 to purchase goods or services unless there is an ~~[existing]~~  
18 established business relationship between ~~[such]~~ the persons  
19 and the person being called consents to hear the prerecorded  
20 message.

21 B. It is unlawful under the Unfair Practices Act  
22 for ~~[any]~~ a person to ~~[solicit by means of a seller-initiated~~  
23 ~~telephone sale]~~ make a telephone solicitation for a purchase of  
24 goods or services:

25 (1) without ~~[promptly]~~ disclosing within

underscored material = new  
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1 fifteen seconds of the time the person being called answers the  
2 name of the sponsor and the primary purpose [~~or purposes~~] of  
3 the contact;

4 (2) that misrepresents the primary purpose of  
5 a telephone solicitation of a residential subscriber as a  
6 "courtesy call", a "public service information call" or some  
7 other euphemism;

8 [~~(2) in which offers or solicitations in~~]

9 (3) under the guise of research or a survey  
10 [~~are made~~] when the real intent is to sell goods or services;

11 [~~(3)~~] (4) without disclosing, prior to  
12 commitments by customers, the cost of the goods or services,  
13 all terms, conditions, payment plans and the amount or  
14 existence of any extra charges such as shipping and handling;

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

17 [~~(5)~~] (6) using automatic dialing equipment  
18 unless the telephone immediately releases the line when the  
19 called party disconnects; and

20 [~~(6)~~] (7) asking for credit card numbers until  
21 and unless the customer has committed to make the purchase and  
22 expressed a desire to use a credit card to pay for the  
23 purchase.

24 C. It is unlawful for a person to:

25 (1) make a telephone solicitation of a

1 residential subscriber whose telephone number has been on the  
2 national do-not-call registry, established by the federal trade  
3 commission, for at least three months prior to the date the  
4 call is made; or

5 (2) use a method to block or otherwise  
6 circumvent a residential subscriber's use of a caller  
7 identification service pursuant to the Consumer No-Call Act.

8 D. As used in this section:

9 (1) "established business relationship" means  
10 a relationship that:

11 (a) was formed, prior to a telephone  
12 solicitation, through a voluntary, two-way communication  
13 between a seller or telephone solicitor and a residential  
14 subscriber, with or without consideration, on the basis of an  
15 application, purchase, ongoing contractual agreement or  
16 commercial transaction between the parties regarding products  
17 or services offered by the seller or telephone solicitor;

18 (b) has not been previously terminated by  
19 either party; and

20 (c) currently exists or has existed  
21 within the immediately preceding twelve months;

22 (2) "local exchange company" means a  
23 telecommunications company that provides the transmission of  
24 two-way interactive switched voice communications within a  
25 local exchange area;

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1                   (3) "residential subscriber" means a person  
2 who has subscribed to residential telephone service from a  
3 local exchange company or the other persons living or residing  
4 with such person; and

5                   (4) "telephone solicitation" means a voice or  
6 telefacsimile communication over a telephone line for the  
7 purpose of encouraging the purchase or rental of or investment  
8 in property, goods or services and includes a communication  
9 described in this subsection through the use of automatic  
10 dialing and recorded message equipment or by other means, but  
11 "telephone solicitation" does not include a communication:

12                               (a) to a residential subscriber with that  
13 subscriber's prior express invitation or permission;

14                               (b) by or on behalf of a person with whom  
15 a residential subscriber has an established business  
16 relationship;

17                               (c) by or on behalf of an organization  
18 that has been granted an exemption from the federal income tax  
19 by the United States commissioner of internal revenue as an  
20 organization described in Section 501(c) of the Internal  
21 Revenue Code of 1986 and that is in compliance with the  
22 Charitable Solicitations Act;

23                               (d) made for the sole purpose of urging  
24 support for or opposition to a political candidate or ballot  
25 issue; or

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(e) made for the sole purpose of  
conducting political polls or soliciting the expression of  
opinions, ideas or votes."

Section 11. CONTINGENT REPEAL. --Sections 1 through 7 of  
this act are repealed on the date that a federal do-not-call  
rule adopted by the federal communications commission is  
effective.

Section 12. EFFECTIVE DATE. --The effective date of the  
provisions of this act is July 1, 2003.

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