

Regular Session, 2003

ACT No. 991

HOUSE BILL NO. 150

BY REPRESENTATIVE TUCKER

AN ACT

To enact R.S. 45:844.4 and 844.8, relative to telephonic solicitations; to provide relative to solicitations to wireless subscribers; to provide for definitions; to prohibit certain solicitations; to provide for responsibility; to provide for investigations and penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 45:844.4 and 844.8 are hereby enacted to read as follows:

CHAPTER 8-G. WIRELESS TELEPHONE CONTRACTS AND TELEPHONIC SOLICITATIONS TO WIRELESS SUBSCRIBERS

§844.4. Definitions

As used in this Chapter, the following terms and phrases shall have the meanings hereinafter ascribed to them:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Commission" means the Louisiana Public Service Commission.

(3) "Conducting business in this state" means conducting a telephonic solicitation either from a location within this state or from a location outside of this state to wireless telephonic subscribers residing in this state.

(4)(a) "Telephonic solicitation" means any voice or data communication, including but not limited to text message advertisements, made by any person or entity to a wireless telephonic subscriber who is a Louisiana resident for any of the following purposes:

(i) Encouraging a sale or rental of or investment in property, consumer goods, or services.

(ii) Encouraging an extension of credit for property, consumer goods, or services.

(iii) Obtaining information that will or may be used for the direct solicitation of a sale or rental of or investment in property, consumer goods, or services or an extension of credit for such purposes.

(iv) Encouraging a contribution to a charitable organization.

(v) Conducting marketing research, public opinion polling, or similar activities.

(vi) Engaging in political activity.

(b) "Telephone solicitation" shall not include voice or data communications made to a wireless telephonic subscriber by any of the following persons:

(i) By a business that has an existing business relationship with the subscriber if the subscriber is offered an option not to receive such communications.

(ii) By an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the messages from affiliates of that business.

(iii) By a person or business that does not complete the sales presentation during the wireless telephone solicitation and made in contemplation of the sales presentation being completed at a later face-to-face meeting between the wireless solicitor and the person contacted.

(5) "Telephonic solicitor" means any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, conducting business in this state, who makes or causes to be made a telephonic solicitation to a wireless telephonic subscriber residing in this state.

(6) "Text message advertisements" means a telephonic solicitation sent to a wireless telephone, pager, or other device equipped with short message capability or any similar capability that allows the transmission of text messages.

(7) "Wireless telephonic subscriber" means any Louisiana resident who utilizes any cellular, mobile, or wireless telephone, pager, or any other similar device that requires the subscriber to pay a fee for any incoming voice or data communications.

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§844.8. Prohibited telephonic solicitations; exception; violations; penalties

A. No telephonic solicitor conducting business in this state shall make a telephonic solicitation to any wireless telephonic subscriber residing in this state.

B. However, a person or entity offering wireless telephonic service shall not be held responsible for the transmission of a telephonic solicitation to a wireless telephonic subscriber, unless the solicitation is transmitted at the direction of that person or entity.

C. The commission shall investigate any complaints received concerning violations of this Section. If, after investigating such complaint, the commission finds that there has been a violation of this Section, the commission, after notice and hearing, shall impose an administrative penalty against the telephonic solicitor found to be in violation not to exceed one thousand five hundred dollars for each violation.

D. Any telephonic solicitor found by the commission to be in violation of this Chapter, who refuses to pay the fine assessed, shall after notice and hearing, be assessed additional costs and reasonable attorney fees related to the collection of the fine.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____