

## **BILL ANALYSIS**

Senate Research Center

H.B. 537  
By: Danburg (Barrientos)  
Economic Development  
5/13/1999  
Engrossed

### **DIGEST**

Currently, federal and state laws are not sufficiently deterring telemarketing abuse and fraud. There are exemptions in registration and bonding requirements which can make those laws difficult to enforce. Some telephone solicitors call citizens who have requested not to be called, and misrepresent themselves and the total cost of the goods or services they offer. Sales people have withdrawn money from consumer accounts without permission. H.B. 537 prohibits telephone solicitation calls to telephone numbers of residential customers in Texas who have requested that their telephone numbers be placed on a telephone solicitation no call list, and provides civil and criminal penalties for telephone solicitors who violate certain provisions of this Act.

### **PURPOSE**

As proposed, H.B. 537 prohibits telephone solicitation calls to telephone numbers of residential customers in Texas who have requested that their telephone numbers be placed on a telephone solicitation no call list, and provides civil and criminal penalties for telephone solicitors who violate certain provisions of this Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Public Utilities Commission in SECTION 1 (Section 37.01, Business & Commerce Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 37 and 38, Business & Commerce Code, as follows:

#### **CHAPTER 37. TELEPHONE SOLICITATION**

Sec. 37.01. DEFINITIONS. Redefines “consumer good or service,” “telephone solicitation,” and “telephone solicitor.” Deletes the definition of consumer

Sec. 37.02. SOLICITOR IDENTITY; PERMISSIBLE HOURS; DISCONNECT. Prohibits a telephone solicitor from making a telephone solicitation, rather than consumer call to a consumer unless certain action is taken. Changes “business to “entity” and “consumer” to “called person.”

Sec. 37.03. CHARGES TO CONSUMER CREDIT ACCOUNT. Makes no change.

Sec. 37.031. NO-Call LIST. Defines “commission.” Sets forth certain requirements for the Public Utilities Commission (commission). Authorizes the commission to adopt rules to administer this section. Requires the commission to adopt rules to take certain actions.

Sec. 37.032. REQUEST OF CREDIT CARD NUMBER OR FINANCIAL INSTITUTION ACCOUNT NUMBER AFTER OFFER OF FREE CONSUMER GOOD OR SERVICES. Provides that a telephone solicitor commits an offense if the telephone solicitor knowingly takes certain actions. Provides that an offense under this section is a Class A misdemeanor.

Sec. 37.04. ENFORCEMENT. Make a conforming change.

Sec. 37.05. CIVIL PENALTY. Authorizes the attorney general to also seek attorney fees and investigative costs. Prohibits the damages awarded from being less than the amount paid by the

called person making the sale or receiving the contribution as a result of the telephone solicitation, rather than buyer to the telephone solicitor.

Sec. 37.06. DECEPTIVE TRADE PRACTICES. Provides that a violation of this chapter is a false, misleading, or deceptive act or practice under Chapter 17E and authorizes the use of any public or private right or remedy prescribed by that subchapter to enforce this chapter.

Sec. 37.07. EXEMPTION. Provides that this chapter does not apply to certain persons.

## CHAPTER 38. New heading: REGISTRATION OF TELEPHONE SOLICITORS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 38.001. DEFINITIONS. Defines “principal.” Redefines “consumer good or service,” “owner,” “purchaser,” “telephone solicitor,” “telephone solicitation.”

Sec. 38.002. MAKING TELEPHONE SOLICITATION. Deletes text regarding an automated dialing machine a recordable message device.

Sec. 38.003. CONSTRUCTION AND APPLICATION. Makes no change.

### SUBCHAPTER B. EXEMPTIONS

Sec. 38.051. CLAIM OF EXEMPTION. Makes no change.

Sec. 38.052. New heading: EXEMPTIONS APPLY TO TELEPHONE SOLICITOR. Provides that the exemptions provided by this chapter apply, except as provided by Section 38.054, only to a telephone solicitor, rather than seller, engaging in a telephone solicitation on the telephone solicitors, rather than seller’s, own behalf.

Sec. 38.053. New heading: PERSONS REGULATED BY OTHER LAW. Provides that this chapter does not apply to certain persons. Deletes text regarding a publicly traded corporation and other entities and persons.

Sec. 38.054. New heading CERTAIN NONPROFIT, EDUCATIONAL, AND POLITICAL ORGANIZATIONS. Provides that this chapter does not apply to certain entities or persons. Deletes text regarding certain commercial sales. Deletes Section 38.056 regarding certain solicitations.

Sec. 38.055. New heading: SOLICITATION OF CURRENT OR FORMER CUSTOMERS OR CONTRIBUTOR. Provides that this chapter does not apply to certain persons with whom the telephone solicitor has an established business relationship, except that this exemption does not apply to a telephone solicitation by a provider of local exchange or interexchange telecommunication service.

Sec. 38.056. New heading: ARRANGEMENT FOR LATER PRESENTATION. Provides that this chapter does not apply to certain persons. Deletes text regarding certain persons. Deletes Section 38.060 regarding certain solicitation services having predominately exempt customers.

Sec. 38.057. CERTAIN ISOLATED SOLICITATIONS. Deletes “commercial” regarding telephone solicitations.

### SUBCHAPTER C. REGISTRATION

Sec. 38.101. REGISTRATION REQUIRED. Makes a conforming change.

Sec. 38.102. CONTENTS OF REGISTRATION STATEMENT; VERIFICATION; PUBLIC INFORMATION. Deletes the definition of “principal.” Makes a conforming change.

Sec. 38.103. FILING FEE. Provides that the filing fee for a registration statement is \$75, rather than \$200. Authorizes the fee collected under this section to be used only to defray the costs of

the secretary of state and the Public Utility Commission in administering this chapter and Section 37.031.

Sec. 38.104. ISSUANCE OF CERTIFICATION OF REGISTRATION. Makes a conforming change.

Sec. 38.105. EFFECTIVE DATE; RENEWAL. Make no changes.

Sec. 38.106. New heading: CHANGE IN INFORMATION. Requires a telephone solicitation to submit a material change in information to the secretary of state by filing an addendum, including a change of a telephone solicitation agent of the telephone solicitor.

Sec. 38.107. SECURITY. Requires a registration statement filed under this under the chapter to be accompanied by certain items, except as provided by Subsection (c) and (d). Requires the bond letter of credit, or certificate of deposit to take certain action. Sets forth requirements for a telephone solicitor to apply to the secretary of state for release of the security required by this section if the solicitor ceases all activities subject to this chapter.

Sec. 38.108. New heading: SECRETARY OF STATE AS TELEPHONE SOLICITOR'S AGENT TO RECEIVE SERVICE. Makes conforming changes.

#### SUBCHAPTER D. DISCLOSURE REQUIRED IN REGISTRATION STATEMENT.

Sec. 38.151. DISCLOSURE OF CERTAIN NAMES, ADDRESSES, AND ORGANIZATIONAL INFORMATION. Requires a registration statement to contain certain information. Deletes text regarding other statements a registration must contain. Makes conforming changes. Deletes existing Section 38.152 regarding disclosure of certain convictions, judgments, orders, and bankruptcies. Deletes existing Section 38.153 regarding disclosure of certain sales information

#### SUBCHAPTER E. New heading: ADDITIONAL INFORMATION FROM TELEPHONE SOLICITOR

Sec. 38.201. New heading: INFORMATION POSTED OR AVAILABLE AT TELEPHONE SOLICITOR'S LOCATION. Makes conforming changes.

Sec. 38.202. New heading: DISCLOSURE TO SOLICITED PERSONS. Requires a telephone solicitor to provide each purchaser or contributor with certain information, when the solicitation is made and before the consummation of any sale transaction or receipt of any contribution. Makes conforming a changes.

Sec. 38.203. REFERENCE TO COMPLIANCE WITH STATUE PROHIBITED. Makes conforming changes.

#### SUBCHAPTER F. OFFENSES

Sec. 38.251. VIOLATION OF CHAPTER. Makes no change.

Sec. 38.252. New heading: TELEPHONE SOLICITATION FOR UNREGISTERED TELEPHONE SOLICITOR. Provides that a person commits an offense if the person knowing makes a telephone solicitation, rather than acts as a salesperson, on behalf of a telephone solicitor. Makes conforming changes. Deletes existing Section 38.253 regarding a request of credit card account numbers.

#### SUBCHAPTER G. ENFORCEMENT

Sec. 38.301. INJUNCTION. Makes no change.

Sec.38.302. CIVIL PENALTIES. Deletes text regarding \$50,000, for all violations of the injunction.

Sec. 38.303. DECEPTIVE TRADE PRACTICES. Makes no change.

Sec. 38.304. ACTION TO RECOVER AGAINST SECURITY. Authorizes the attorney general to bring an action in the name of the state to recover against the bond, letter of credit, or certification of deposit required under Section 38.107. Makes conforming changes

Sec. 28.305. WAIVER PROHIBITED. Makes no changes.

SECTION 2. Repealer: Chapter 55G, Utilities Code (Telephone Solicitation).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 1999, except that the requirements of Section 37.031, Business & Commerce Code, as added by this Act, apply only on and after the January 1, 2000.

SECTION 5. Emergency clause.