

CHAPTER 180

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 05-1288

BY REPRESENTATIVE(S) Cloer, Berens, Boyd, Carroll M., Garcia, Hoppe, Larson, Lindstrom, Madden, Marshall, May M., Paccione, Rose, and Todd;
also SENATOR(S) Keller, Bacon, Entz, Fitz-Gerald, Groff, Grossman, Hanna, Isgar, Johnson, Jones, Kester, Sandoval, Shaffer, Tapia, Taylor, Teck, Tochtrop, Tupa, Veiga, Williams, and Windels.

AN ACT**CONCERNING A PROHIBITION ON KNOWINGLY MAKING A COMMERCIAL TELEPHONE SOLICITATION TO A CELLULAR TELEPHONE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 6-1-304, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

6-1-304. Unlawful telemarketing practices. (4) (a) ON OR AFTER SEPTEMBER 1, 2005, A PERSON COMMITS AN UNLAWFUL TELEMARKETING PRACTICE IF THE PERSON KNOWINGLY:

(I) LISTS A CELLULAR TELEPHONE NUMBER IN A DIRECTORY FOR A COMMERCIAL PURPOSE UNLESS THE PERSON WHOSE NUMBER HAS BEEN LISTED HAS GIVEN AFFIRMATIVE CONSENT, THROUGH WRITTEN, ORAL, OR ELECTRONIC MEANS, TO SUCH LISTING; OR

(II) USES A SCANNING DEVICE OR OTHER ELECTRONIC MEANS TO IDENTIFY A CELLULAR TELEPHONE NUMBER AND TO MAKE A COMMERCIAL TELEPHONE SOLICITATION TO A CELLULAR TELEPHONE.

(b) THIS SUBSECTION (4) SHALL NOT APPLY TO A COMMERCIAL TELEPHONE SOLICITATION THAT IS IN RELATION TO A PREEXISTING COMMERCIAL RELATIONSHIP BETWEEN THE PERSON AND THE PERSON WHO OWNS THE CELLULAR TELEPHONE.

SECTION 2. 6-1-305 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

6-1-305. Penalties. (1) In addition to the remedies available under sections 6-1-110, 6-1-112, and 6-1-113:

(c) A PERSON WHO ENGAGES IN ANY UNLAWFUL TELEMARKETING PRACTICE AS DEFINED IN SECTION 6-1-304 (4) SHALL BE LIABLE IN A PRIVATE CIVIL ACTION TO THE OWNER OF THE CELLULAR TELEPHONE FOR CONSEQUENTIAL DAMAGES, COURT COSTS, ATTORNEY FEES, AND A PENALTY IN THE AMOUNT OF AT LEAST THREE HUNDRED DOLLARS AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR A FIRST OFFENSE AND AT LEAST FIVE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND DOLLARS FOR A SECOND OR SUBSEQUENT OFFENSE.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to commercial telephone solicitations occurring on or after the applicable effective date of this act.

Approved: May 27, 2005