

SUBJECT: Regulating telephone solicitation

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Brimer, Dukes, Ritter, Siebert, Solomons, Woolley

1 nay — Corte

2 absent — George, Giddings

WITNESSES: For — Mary Alexander; Ronald DeLord, Combined Law Enforcement Association of Texas; Wilhelmina Gladden, American Association of Retired Persons; James Ross; Van Theriot, Jr.

Against — Ronald Barnes, SITEL Corp.; Tom Calvert, MCI; John R. Camillo, J.C. Penney Life Insurance; John Erwin, West Teleservices; Eric Glenn, Texas Association of Business and Chambers of Commerce; Mike Jewell, AT&T; Tyson Payne, Texas Association of Life Underwriters; Jeffery Plaut; Mike Pollard and Jay Thompson, Texas Association of Life and Health Insurers

On — Roger Borgett, Office of the Attorney General; Saralee Tiede, Public Utility Commission

BACKGROUND: Regulation of telemarketers is spread among several state agencies, including the secretary of state, the Office of the Attorney General (OAG), and the Public Utility Commission (PUC). Telemarketers doing business in Texas must register with the secretary of state, pay a \$200 annual fee, and post a \$10,000 bond. Currently, 26 telephone solicitors are registered.

The Texas Public Utility Regulatory Act requires telephone solicitors to make their best efforts to comply with customer no-call requests. PUC rules specify that when making calls, telemarketers must identify themselves by name, identify the business for which they are calling, state the purpose of the call, and provide a working telephone number. Calls may be made between 9 a.m. and 9 p.m. Monday through Saturday and between noon and 9 p.m. on Sunday.

The PUC investigates and enforces complaints involving the repeated solicitation of consumers who have asked not to be contacted again. The commission is charged with enforcing the law that prohibits telemarketers from blocking their caller identification information on caller ID devices. Companies that do not comply can be fined as much as \$1,000 a day.

The OAG investigates consumer complaints of telemarketing activity that violate the Deceptive Trade Practices Act. The OAG may seek civil penalties against fraudulent telemarketers but not criminal penalties. The maximum civil penalty for violations is \$10,000.

DIGEST: CSHB 537 would amend Business and Commerce Code, chapters 37 and 38 by establishing a telephone solicitation no-call list, requiring registration of entities currently not required to register, and expanding enforcement tools.

No-call list. The PUC would maintain the no-call list for Texas residential customers who had asked to be on the list. A customer's listing would expire in five years but could be renewed for another five years. There would be no charge to be placed on the list or to renew an entry.

The PUC would have to update the list quarterly, and a telephone solicitor would be prohibited from calling an individual on the list after the 30th day after the solicitor received a list that contained that person's number. A solicitor violating this prohibition would be subject to administrative penalties, which could include up to a \$5,000 fine for each day.

The PUC would have to develop and disseminate a no-call form for residential customers to use and would have to provide a toll-free number for customers to call for a copy of the form. The form would have to convey to customers that they might continue to receive telephone solicitation calls from:

- ! religious and charitable organizations;
- ! veteran's organizations;
- ! public or private universities and their alumni organizations;
- ! organizations calling on behalf of political candidates and officeholders or individuals calling about ballot issues; and
- ! businesses the customer already did business with.

The form would have to stipulate that the no-call list would not apply to a customer's business telephone.

The PUC could adopt rules to administer provisions relating to the no-call list. The commission would have to adopt rules that would require local-exchange telephone companies to inform customers annually about the no-call list through inserts in customers' billing statements or through notices in a conspicuous place in the local telephone book. The rules also would have to stipulate that an isolated solicitation by a solicitor that otherwise had adequate procedures in place to comply with the bill's provisions would not be a violation.

The commission also would have to conduct an educational program to inform the public of their rights regarding a no-call list. The program would have to be directed to all residential customers and would have to be conducted at least once a year if funds were available.

The PUC would have to disseminate the no-call list in formats that telephone solicitors commonly use, including electronic formats. The no-call list and updates would be free to solicitors registered with the secretary of state. For others, the no-call list would cost \$200 for each list and update.

Entities exempt from the no-call list provisions would be:

- ! private or independent higher education institutions;
- ! nonprofit organizations;
- ! organizations calling on behalf of a candidate or office holder;
- ! organizations calling on behalf of ballot issues;
- ! securities brokers;
- ! persons licensed under the Insurance Code;
- ! solicitations made in response to a request;
- ! solicitations made in connection with an existing debt; and
- ! veteran's and charitable organizations.

Individuals who did not intend to complete a sale or obtain a commitment to obtain money for something, who did not make a major sales or solicitation presentation during the call, and who either arranged a face-to-face meeting or invited the called person to attend a later meeting would not have to comply with the provisions of the no-call list. A solicitation by a solicitor

with an established business relationship with the person called also would be exempt. This would not apply to solicitations made by local telephone service providers or long-distance service providers.

Solicitors would be prohibited from asking consumers for their credit card numbers or bank account numbers to charge or debit an amount after implying that a consumer would receive a free consumer good or service, including gifts, premiums, bonuses, prizes, or coupon books. A violation of this provision would be a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

In addition to bringing actions for injunctive relief, the attorney general could recover attorney's fees and investigative costs. A violation of the provisions of the no-call list also could be a violation of deceptive trade practice laws.

Registration. CSHB 537 would reduce the filing fee for registration of telephone solicitors from \$200 to \$75. The fee could be used only to defray the cost to the secretary of state and the PUC for administering the bill's requirements.

Registrants would have to disclose the complete street address of the physical location of the principal place of business, rather than each location, of the telephone solicitor, and the telephone number of the location. In addition, the registrant would have to disclose the name of an officer, a general or limited partner, or sole proprietor of the telephone solicitor instead of each officer, director, trustee, and individual responsible for management. The bill would delete other items of information now required for registration.

The bill would delete registration exemption language and therefore would require the following entities to register:

- ! local and long-distance telephone companies;
- ! financial institutions;
- ! media and subscription services, including a person soliciting the sales of daily or weekly newspapers, magazines, or other periodicals;
- ! a person soliciting the sale of cable television service;
- ! a person who issues and delivers catalogues;

- ! a business that resells items or uses purchased items for recycling, reuse, or manufacturing; and
- ! solicitors of food sales.

The bill would exempt the following entities from registration:

- ! educational institutions;
- ! nonprofit organizations;
- ! organizations calling on behalf of a candidate or office holder;
- ! organizations calling on behalf of ballot issues;
- ! securities brokers;
- ! person licensed under the Insurance Code;
- ! solicitors with an established business relationship to the called person;
- ! solicitors who called to arrange a later presentation; and
- ! veteran's, public safety, and charitable organizations.

Security. CSHB 537 would increase the amount of a security bond from \$10,000 to \$25,000. The secretary of state could accept self-insurance or self-bonding if the registrant demonstrated sufficient solvency and continuous operation in Texas.

A telephone solicitor that ceased all telephone soliciting in the state could apply to the secretary of state for release of the security. The application would have to be verified by each principal of the telephone solicitor, and the secretary of state would have to notify the attorney general that the application had been received. Unless the attorney general objected, the secretary of state would have to release the security not earlier than the 180th day after the date the solicitor conducted its final activity or the 60th day after the attorney general was notified, whichever came later.

The attorney general could bring an action in the name of the state to recover against the \$25,000 bond, letter of credit, or certificate of deposit.

CSHB 537 would require a telephone solicitor to provide the telephone number of the location from which the solicitation was being made before consummating a sale and accepting any money from a solicited person. The bill would eliminate references to sections 38.153 and would state in substantially the same terms those provisions relating to disclosure of certain sales information.

CSHB 537 would take effect September 1, 1999, except that provisions related to the no-call list would take effect January 1, 2000.

**SUPPORTERS
SAY:**

CSHB 537 would implement improved telemarketing regulations that would protect legitimate businesses and consumers who are harassed and defrauded by unscrupulous telemarketers. U.S. businesses spend \$80 billion a year on telemarketing, more than twice what they spend on direct mail, because it works. An estimated 140,000 telemarketers nationwide generate about \$550 billion per year. The widespread use of computers, credit cards, and toll-free telecommunications has made at-home shopping a welcome convenience for many consumers.

Telemarketing is a legitimate business practice, but some unscrupulous individuals are using high-pressure, deceptive tactics to scam Texans out of their hard-earned money.

According to the PUC, hundreds of complaints have been lodged by customers who have asked to no avail for telemarketers to stop calling them. The commission logged more than 900 complaints about phone solicitations in 1998. Telemarketing fraud victimizes people of all ages, ethnic groups, educational backgrounds, and income levels. Fraudulent telemarketers, however, often target the elderly. More than three-quarters of telemarketing victims are 55 or older.

Five states already have enacted laws similar to CSHB 537: Alaska, Florida, Georgia, Kentucky, and Oregon. In Georgia, where the telemarketing law is new, 90,000 people signed up the first month a no-call list was offered. The Florida no-call list includes more than 84,000 residents and has a 95 percent renewal rate. Since the law was enacted in 1991, Florida has settled 40 cases for a total of \$250,000 in damages. Half of the cases were settled with out-of-state companies.

Recommendations of the Business and Industry Committee's interim report to the 76th Legislature include:

- ! Limit the information required in the registration process. Much of the information required serves no real purpose, and it needs to be limited to the information necessary to locate a telemarketer in the event of a complaint. The committee also recommended eliminating current

registration exemptions in an attempt to register more companies. Registration would serve as a deterrent to some bad actors and would serve as a basis for pursuit and prosecution.

- ! Increase the bond registration requirement, because levels of fraud often exceed the current \$10,000 bond. Several states require a \$50,000 bond, and other states, including Arizona and California, require a \$100,000 bond.
- ! Establish a statewide no-call list to protect consumers who do not want to receive unsolicited telephone calls. The Telephone Consumer Protection Act, enacted in 1992, requires each company to maintain its own no-call list. This means that a consumer has to ask each company to be put on its no-call list.

The Direct Marketing Association (DMA) maintains a national no-call list and disseminates it to telemarketing companies. However, DMA, with 4,100 members, represents only a small portion of the estimated 140,000 telemarketers nationwide.

Even legitimate telemarketers are a nuisance. Few people respond to “cold calls,” but selling by phone is so cheap that companies are willing to annoy a few thousand people to make an occasional sale.

If the only names on a statewide no-call list were residents who did not want to be contacted by telemarketers with unsolicited offers, a no-call list would not hamper a company’s ability to sell its products and services. Individuals who were receptive to telemarketing would not be on the list. Reputable companies claim that they do not want to call anyone who does not wish to be called because this wastes time and resources. If so, a statewide no-call list would not drive companies out of the state, nor would it drive telemarketing employees from meaningful employment.

**OPPONENTS
SAY:**

CSHB 537 would place overly burdensome restrictions on legitimate telemarketers. The bill would not prevent fraudulent telemarketing because the “bad actors” probably would not register, pay the bond, or abide by any other law. Fraudulent companies come into a state and set up “boiler rooms” with 20 to 30 telephone lines. These operations involve high-pressure selling by banks of salespeople, sometimes in back offices or basements. They work

for a few weeks and then move on. The state should concentrate its efforts on finding these thieves.

CSHB 537's provisions would affect companies that already comply with federal and state laws, especially smaller companies. The increased bonding requirement would be onerous for a small company. Bonding is difficult to obtain these days, and the increased amount would make it difficult for small companies to market their products or services.

No-call lists should continue to be maintained by each separate business entity, as required by federal law. In-house no-call lists are a much more efficient and inexpensive way to protect customers from being contacted by specific companies. A statewide list would inhibit a company's ability to market to prospective customers and would limit opportunities for consumers who might be receptive to receiving calls about certain products. Forcing national companies to keep track of separate no-call lists for each state in addition to their own in-house lists would impose an administrative burden.

A better alternative would be to increase efforts to educate Texas consumers about fraudulent telemarketing and the national no-call list maintained by the DMA. A single letter to the DMA puts a customer on the national list at no cost. Better publicity of existing laws would inform more telemarketers of what they can and cannot do in Texas. Consumers may not be aware they can ask to be placed on a specific company's no-call list. In addition, consumer information needs to be clear about exactly where to file complaints.

Consumers who put their numbers on a no-call list may be lulled into a false sense of security. They still could be called by all the entities that would be exempt under CSHB 537. If consumers want to screen all of their calls, caller identification devices are a good solution.

The telemarketing industry has brought many good things to Texas. For example, more than 10,000 telemarketing jobs are located in San Antonio alone. Telemarketing companies do not have to locate in Texas to call Texans. When they do, they offer job opportunities for many people. The telemarketing industry employs more than 3.4 million people nationwide. These employees gain skills that allow them to move on to other jobs.

Reputable companies that market services and products over the telephone are committed to quality and customer satisfaction. They have quality-control initiatives that include quality inspection, training, and complaint follow-up. Many companies use an independent third-party verification process. New offerings are becoming available almost on a daily basis, and some people are open to receiving information about them.

Consumers can play a role in stanching the flow of fraudulent telemarketing. If, after asking to be placed on a company's no-call list, a consumer still receives calls from the company, the consumer should file a complaint with the PUC. If consumers continue to receive calls from companies they are not familiar with, they should assume the calls are fraudulent. Common sense should prevail. If something sounds too good to be true, it probably is.

**OTHER
OPPONENTS
SAY:**

In 1996, Rhode Island Governor Lincoln Almond vetoed a telephone solicitation bill on the grounds that the legislation was likely unconstitutional under the First Amendment. because it could infringe unreasonably on the rights of companies to communicate their messages by telephone. He also stated that the legislation violated interstate commerce laws by restricting out-of-state telemarketers engaging in interstate commerce.

NOTES:

The committee substitute made numerous changes to the original bill, including:

- ! providing an expiration date of five years for an entry on a no-call list, rather than one;
- ! requiring the commission to develop and disseminate a request form for placement on a no-call list and providing language for the form;
- ! deleting the provision that would require written confirmation of credit-card or debit-card sales and of direct collection and delivery;
- ! reducing the filing fee from \$200 to \$75;
- ! authorizing the attorney general to bring an action in the name of the state rather than of an injured person; and
- ! reinstating the exemption for persons selling certain securities and for persons licensed under the Insurance Code.

The Senate companion bill, SB 120 by Barrientos, has been referred to the Senate Economic Development Subcommittee on Technology and Business.