

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2057


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2057

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date JANUARY 11, 1999

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
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| Committee Clerk Signature  | | | |

Minutes:

The hearing for SB2057 was opened. All Senators were present.

SENATOR LINDAAS introduced SB2057.

SENATOR KLEIN. Is commission meaning The Public Service Commission?

SENATOR LINDAAS. Yes, it does.

SENATOR KLEIN. 99% of these calls are generated from out of state. There are other methods of getting use of these telecommunications.

SENATOR LINDAAS. I'm not sure how effective that is.

PARELL GROSSMAN, Director Of The Consumer Protection And Anti Trust Division Of The Attorney Generals Office, testified in support of SB2057. Testimony is included.

SENATOR THOMPSON. Do you feel \$1,000.00 fine is appropriate?

PARELL GROSSMAN. As I understand it, it is actually \$1,000.00 per violation.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2057

Hearing Date JANUARY 11, 1999

SENATOR KREBSBACH. If I was fundraising for the local Easter Seals, and I have call received on my phone, would I be subject to the fine?

PARELL GROSSMAN. I believe that you would, however, those are not the calls we would be looking for.

ILLONA JEFFCOAT-SACCO testified on SB2057. Her testimony is included.

JERRY MALEY, testified in opposition to SB2057.

The hearing was closed on SB2057.

COMMITTEE DISCUSSION took place on January 13, 1999.

SENATOR MUTCH: So then this would be transferring jurisdiction from the Public Service Commission to the Attorney General?

SENATOR THOMPSON: As we heard testimony I think that they felt that they have the consumer fraud over there and this might fall under the Attorney General for that administrative penalty and not the commission.

SENATOR KLEIN: I think that the discussion is that the technology isn't there for the T-1 to respond. There not blocking the caller id number and this legislation doesn't prevent them as some of these other states where it says if it is possible or the sellers equipment is capable. This doesn't allow for any of that. I know that I for one will be opposed to this.

Senator Heitkamp disagrees with Senator Klein.

More discussion took place.

Senator Thompson moved for a do pass on the amendments offered by Senator Lindaas. Senator Heitkamp seconded the motion. Roll call vote took place. It passed 5 to 2 with 1 absent and not voting.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2057

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Senator Heitkamp moved for a do not pass on SB2057. Senator Krebsbach seconded the motion.

Roll call vote took place. The motion passed. (4 yes, 3 no).

Senator Klein will carry the bill.

Date: 1/13/99
 Roll Call Vote #: 2057

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken To AMEND

Motion Made By THOMPSON Seconded By HEITKAMP

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|----------|-----|----|
| Senator Mutch | | X | | | |
| Senator Sand | | X | | | |
| Senator Klein | X | | | | |
| Senator Krebsbach | X | | | | |
| Senator Heitkamp | X | | | | |
| Senator Mathern | X | | | | |
| Senator Thompson | X | | | | |
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Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/13/99
Roll Call Vote #: 2057

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS w/ AMENDMENTS

Motion Made By KLEIN Seconded By KREBSBACH

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|----------|-----|----|
| Senator Mutch | X | | | | |
| Senator Sand | X | | | | |
| Senator Klein | X | | | | |
| Senator Krebsbach | X | | | | |
| Senator Heitkamp | | X | | | |
| Senator Mathern | | X | | | |
| Senator Thompson | | X | | | |
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Total (Yes) 4 No 3

Absent 0

Floor Assignment KLEIN

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 14, 1999 1:54 p.m.

Module No: SR-08-0636
Carrier: Klein
Insert LC: 90260.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2057: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2057 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "commission" with "attorney general"

Renumber accordingly

1999 TESTIMONY

SB 2057

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2057

Mr. Chairman and members of the Senate Industry, Business and Labor Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and Consumer Protection Division support Senate Bill No. 2057.

There are several very good reasons why telemarketers, or "telephone solicitors" as referred to in this bill should be prohibited from and penalized for blocking caller identification ("caller I.D.") information from being indicated on a consumer's caller identification device or equipment. Consumers pay a monthly service fee to their telephone company for providing caller I.D. information. Those fees may vary, but for instance, customers in the Bismarck area pay US West approximately \$6.00 per month for that service. I think we all would agree the reason for having and paying for this service is to avoid unwanted telephone calls, interruptions, etc. The primary source of undesirable or unwanted telephone calls would have to be telephone solicitations. The most frequent question we probably are asked in Consumer Protection about telemarketing is, "How do I stop telephone solicitations or telemarketers from calling me"? Among other advice, one response is to suggest the consumer obtain caller I.D. service to screen calls that the consumer does not readily recognize and could be telephone solicitations. Allowing telephone solicitations to use caller I.D. blocking circumvents the purpose and usefulness of the caller I.D. service. Consumers can refuse to accept "blocked calls" but there may be valid reasons, excluding telephone solicitations, for blocked calls. In some instances, the caller can code an individual call to unblock the call, when appropriate. This can be inconvenient and makes less sense than addressing the source of the problematic calls and simply prohibiting blocking by telephone solicitations.

The more compelling reasons to prohibit caller I.D. blocking relate to telemarketing fraud. Consumers and others are estimated to lose \$40 billion per year in telemarketing fraud. The elderly and other isolated persons are the most susceptible to telemarketing fraud. These individuals are frequently home and available to answer the phone and are the most accessible to

scam artists, crooks and telemarketing fraud perpetrated through telephone. Once smooth con artists get these people on the telephone, they are conned out of hundreds and thousands of dollars and it is difficult, if not impossible, to recover these lost sums. Despite advice to the contrary, these people always answer the phone because they are afraid they will miss an important telephone call. Often times, these potential and actual victims may be advised by friends, family, the Attorney General's Office or other advocates to obtain caller I.D. service to try and reduce or eliminate the source of telemarketing fraud. We try and educate consumers about the risks of answering calls from telephone numbers they are not familiar with. The majority of telemarketing fraud is perpetrated outside the state of North Dakota, including Canada. If the caller I.D. information is blocked, then the victims do not have the additional protection that could be afforded by caller I.D. information. Allowing the legitimate telephone solicitations to block caller I.D. also allows the crooks and con artists to do the same when calling victims in North Dakota. It also eliminates for law enforcement purposes any potential telephone numbers or leads for apprehending the crooks, recovering any restitution for the victims or trying to prevent additional theft from other North Dakota residents for calls from the same callers, companies or crooks.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General and the Consumer Protection Division, I respectfully urge this committee to give Senate Bill 2047 a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.

S.B. 2057

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 11, 1999

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission. The Public Service Commission asked me to bring the following issue to your attention concerning SB 2057.

SB 2057 includes a sentence on lines 12-14 authorizing the commission to impose an administrative penalty on a violator. Since this bill proposes a new section to N.D.C.C. chapter 49-21, the reference to "commission" appears to mean the Public Service Commission. However, we question whether the Public Service Commission has statutory jurisdiction over all "telephone solicitors" that will be affected by this bill and whether the drafter intended such a result. The term will include all callers soliciting donations, memberships, sales, credit extensions or requesting information.

N.D.C.C. § 49-01-01 defines "public utility" as "any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in this title." N.D.C.C. § 49-02-01 extends the general jurisdiction of the commission to motor carriers, telephone companies, pipelines, electric utilities, gas utilities, heating utilities, agricultural warehouses and "8. All other public utilities

engaged in business in this state or in any county, city, township, or other political subdivision of the state.”

Under these two provisions, it appears that all “telephone solicitors” could be considered “public utilities” and consequently come under all the other Public Service Commission provisions.

Mr. Chairman, that concludes my testimony. I will be happy to answer any questions you may have.

FOSS AND MOORE

— ATTORNEYS AT LAW —

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January 11, 1999

INDUSTRY BUSINESS AND LABOR COMMITTEE

North Dakota State Senate

State Capitol Building

Bismarck, North Dakota

Hand-delivered

RE: SB 2057
Comments of MCIWorldCom

Chairman Mutch and Members of the Committee:

I was unable to provide you with testimony during your consideration of SB 2057, this morning because the secretary of state had not yet received confirmation of my authority to represent MCIWorldCom before you. That was resolved while the committee hearing was taking place and I do want to comment on the bill.

MCIWorldCom does a considerable amount of telemarketing of its products and services. However, it is in the same position as Dakota Development in Fessenden. Its telemarketing calls do not produce an identification which will appear on caller ID boxes and MCIWorldCom does not have the technology to which will cause a name and telephone number to appear on the residential caller id systems.

The proponents of the bill suggested that it affects telemarketers which "block" their numbers from caller id systems. However, the bill is substantially more broad than that. It prohibits the use of a method which "prevents" caller id of the name and number of the telemarketer. In effect, it establishes a standard for technology which telemarketers do not meet and puts them out of business in North Dakota.

The bill has a number of other problems which were identified in the committee. We agree that those problems are substantial and that the total effect of the bill will be to eliminate legitimate telemarketing activities in North Dakota.

Accordingly, MCIWorldCom urges you to give this bill a "do not pass" recommendation.

Thank you for your consideration of my comments.

Sincerely Yours,



Marilyn Foss, Lobbyist #18

Caller I.D. Laws - A Review

Georgia H.B. 71 (Act 698, effective July 1, 1998) prohibits telephone solicitors from knowingly using any method to block the display of their telephone number from recipients' Caller I.D. devices.

Kansas H.B. 2462 (ch. 172, effective July 1, 1997) prohibits telephone sellers from withholding the display of their telephone number from a Caller I.D. service if that number is being used for telemarketing purposes and the seller's service or equipment is capable of displaying it.

Kentucky S.B. 199 (ch. 581, effective July 15, 1998) prohibits telephone marketers from using any method to block or otherwise interfere with Caller I.D. service when making sales calls.

Michigan H.B. 5387 (Act 253, effective April 1, 1999) prohibits telephone solicitors from activating a feature to block display of their telephone numbers from a telephone subscriber's Caller I.D. device.

New Hampshire H.B. 670 (ch. 14, effective January 1, 1999) prohibits telephone solicitors from using any per-call or per-line blocking or any other method that prevents the display of their phone numbers on a residential subscriber's Caller I.D. device. If the seller leaves a message or uses an ADAD, the Caller I.D. must display a telephone number at which the seller may receive calls.

New York S.B. 6133 (ch. 176, effective November 4, 1998) prohibits telephone solicitors from intentionally using any blocking device or service to prevent the display of their name or telephone number on a called party's Caller I.D. equipment.

Tennessee H.B. 2473 (ch. 734, effective July 1, 1998) prohibits telephone sellers from making sales calls from a telephone with an unlisted number or using equipment that blocks the function of the called party's Caller I.D. device.

Texas H.B. 2128 (effective September 1, 1997) prohibits telephone marketers from using any method that prevents display of their telephone numbers on a recipient's Caller I.D. unit. If the marketer leaves a message on a called party's answering machine or uses an ADAD, the Caller I.D. display must include a telephone number at which the marketer may receive calls.

Utah H.B. 44 (ch. 77, effective May 4, 1998) prohibits telephone marketers from withholding display of their phone numbers from recipients' Caller I.D. devices when the marketer's service or equipment is capable of allowing display of the number.