



ADMINISTRATIVE RULES OF MONTANA

42.26.505 SPECIFIC LISTING OF UNPROTECTED AND PROTECTED ACTIVITIES

- (1) The following two listings set forth the in-state activities that are presently treated as "unprotected activities" or "protected activities." The mere inclusion of an activity on the listing of "protected activities" is not a statement or admission that the activity is afforded any protection under P.L. 86-272.
- (2) The following in-state activities are considered unprotected activities (assuming they are not of a de minimis level), are not considered as either solicitation of orders, or contributory to, or otherwise protected under P.L. 86-272, and will cause otherwise protected sales to lose their protection under P.L. 86-272:
 - (a) making repairs or providing maintenance or service to the property sold or to be sold;
 - (b) collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
 - (c) investigating credit worthiness;
 - (d) installing or supervising installation at or after shipment or delivery;
 - (e) conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;
 - (f) providing any kind of technical assistance or service including, but not limited to, engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;
 - (g) investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to gain influence for the sales personnel with the customer;
 - (h) approving or accepting orders;
 - (i) repossessing property;
 - (j) securing deposits on sales;
 - (k) picking up or replacing damaged or returned property;
 - (l) hiring, training, or supervising personnel other than personnel involved only in solicitation;
 - (m) using agency stock checks or any other instrument or process by which sales are made within Montana by sales personnel;

- (n) maintaining a sample or display room for a period greater than two weeks (14 days) at any one location within Montana during the tax year;
- (o) carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
- (p) owning, leasing, using, or maintaining any of the following facilities or properties in-state:
 - (i) repair shop;
 - (ii) parts department;
 - (iii) any kind of office other than an in-home office as described and permitted under (r) and (3)(b);
 - (iv) warehouse;
 - (v) meeting place for directors, officers, or employees;
 - (vi) stock of goods other than samples for sales personnel or those used entirely ancillary to solicitation;
 - (vii) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative capacity;
 - (viii) mobile stores; i.e., vehicles with drivers who are sales personnel making sales from the vehicles; and
 - (ix) real property or fixtures to real property of any kind;
- (q) consigning for sale stock of goods or other tangible personal property to any person, including an independent contractor;
- (r) maintaining, by any employee or other representative, an office or place of business of any kind (other than an in-home office located within the residence of the employee or representative) that:
 - (i) is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity, and so long as the use of such office is limited to soliciting and receiving orders from customers, for transmitting such orders outside the state for acceptance or rejection by the company, or for such other activities that are protected under P.L. 86-272 or under (3);
 - (ii) lists a telephone number or other public listing within the state for the company or for an employee or representative of the company in such capacity or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state, (such a listing shall normally be determined as the company maintaining within Montana an office or place of business attributable to the company or to its employee or representative in a representative capacity). However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; and

- (iii) the maintenance of any office or other place of business in Montana that does not strictly qualify as an "in-home" office as described above shall, by itself, cause the loss of protection under this rule. For the purpose of this subsection, it is not relevant whether the company pays directly, indirectly, or not at all, for the cost of maintaining such in-home office;
 - (s) entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or
 - (t) conducting any activity not listed in (3) which is not entirely connected to requests for orders, even if such activity helps to increase purchases.
- (3) The following in-state activities will not cause the loss of protection for otherwise protected sales:
- (a) soliciting orders for sales by any type of advertising;
 - (b) soliciting of orders by a Montana resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in Montana other than an "in-home" office as described in (2)(r);
 - (c) carrying samples and promotional materials only for display or distribution without charge or other consideration;
 - (d) furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
 - (e) providing automobiles to sales personnel for their use in conducting protected activities;
 - (f) passing orders, inquiries, and complaints on to the home office;
 - (g) missionary sales activities, e.g., the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities were otherwise immune;
 - (h) coordinating shipment or delivery without payment or other consideration and providing related information either prior or subsequent to the placement of an order;
 - (i) checking of customers' inventories without a charge (for re-order, but not for other purposes such as quality control);
 - (j) maintaining a sample or display room for two weeks (14 days) or less at any one location within Montana during the tax year;
 - (k) recruiting, training, or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel;
 - (l) mediating direct customer complaints when the purpose is solely for supporting the sales personnel with the customer and facilitating requests for orders; or
 - (m) owning, leasing, using, or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to conducting protected activities. The use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited

to conducting protected solicitation and activity entirely ancillary to such solicitation or permitted by this rule shall not, by itself, remove the protection under this rule.

Authorizing statute(s): 15-1-201, 15-31-313, MCA

Implementing statute(s): 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

History: NEW, 2004 MAR p. 1035, Eff. 4/23/04; AMD, 2016 MAR p. 2198, Eff. 11/26/16.