

AB 232 - 2003

Introduced on Mar 04, 2003

By Conklin, Atkinson, Horne, Perkins, Buckley, Anderson, Andonov, Angle, Arberry Jr., Beers, Brown, Carpenter, Chowning, Christensen, Claborn, Collins, Geddes, Gibbons, Giunchigliani, Goicoechea, Goldwater, Grady, Griffin, Gustavson, Hardy, Hettrick, Knecht, Koivisto, Leslie, Mabey, Manendo, Marvel, McClain, McCleary, Mortenson, Oceguela, Parks, Pierce, Sherer, Weber, Williams, Titus, Amodei, Rawson, Neal, Townsend, Carlton, Hardy, Care, Cegavske, Mathews, McGinness, Nolan, O'Connell, Raggio, Schneider, Shaffer, Tiffany, Washington, Wiener

Revises provisions relating to trade practices. (BDR 52-1073)

Fiscal Notes [View Fiscal Notes](#)

Effect On Local Government: *Yes.*

Effect on the State: *Yes.*

Most Recent History Action:
(See full bill history below)

Chapter 464. **Section 29 effective June 10, 2003. Sections 1, 2, 3, and 3.5 to 19, inclusive, of this act effective June 10, 2003, for purposes of adopting regulations and entering into contracts or otherwise preparing to carry out the provisions of this act. Sections 3.3 and 20 to 28, inclusive, of this act effective October 1, 2003. Section 1, 2, 3 and 3.5 to 19, inclusive, of this act effective January 1, 2004, for the purpose of the Attorney General making the determination described in subsection 1 of section 9 of this act. If the Attorney General makes the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, section 1, 2, 3, and 3.5 to 19, inclusive, of this act effective on May 1, 2004, for all other purposes. If the Attorney General does not make the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective: (a) May 1, 2004, for purposes of the Attorney General receiving and accepting requests to include telephone numbers in the registry established pursuant to section 10 of this act. (b) June 1, 2004, for purpose of publishing the first list of telephone numbers in the registry; and (c) July 1, 2004, for all other purposes.**

Hearings

Assembly Commerce and Labor	Mar-10-2003	No Action
Assembly Commerce and Labor	Mar-14-2003	Amend, and do pass as amended
Senate Commerce and Labor	Apr-17-2003	No Action
Senate Commerce and Labor	May-08-2003	Amend, and do pass as amended
Assembly Commerce and Labor	May-09-2003	No Action
Senate Commerce and Labor	May-21-2003	Do not recede
Senate Commerce and Labor	May-24-2003	Do not recede

Votes (2/3 Majority Required)

Assembly Final Passage	Mar-18	37 Yea ,	4 Nay ,	1 Excused ,	0 Not Voting ,	0 Absent
Senate Final Passage	May-14	20 Yea ,	0 Nay ,	1 Excused ,	0 Not Voting ,	0 Absent

Bill Text (PDF)	As Introduced	1st Reprint	Second Reprint	Third Reprint	As Enrolled
Bill Text (HTML)	As Introduced	1st Reprint	Second Reprint	Third Reprint	As Enrolled
Amendments (HTML)	Amend. No.37	Amend. No.667	Amend. No.Ca17		

Bill History

Mar 04, 2003 Read first time. Referred to Committee on Commerce and Labor. To printer.

Mar 05, 2003 From printer. To committee.

Mar 17, 2003 From committee: Amend, and do pass as amended.

Mar 18, 2003 From printer. To engrossment. Engrossed. First reprint.

Mar 19, 2003 In Senate.

May 09, 2003 From committee: Amend, and do pass as amended.

May 12, 2003 Read second time. Amended. (Amend. No. 667.) To printer.

May 13, 2003 From printer. To re-engrossment. Re-engrossed. Second reprint.

May 13, 2003 Taken from General File. Placed on General File for next legislative day.

May 14, 2003 Read third time. Passed, as amended. Title approved, as amended. (Yeas: 20, Nays: None, Excused: 1) To Assembly.

May 15, 2003 In Assembly.

May 17, 2003 Senate Amendment No. 667 not concurred in. To Senate.

May 19, 2003 In Senate.

May 26, 2003 Senate Amendment No. 667 not receded from. Conference requested. First Conference Committee appointed by Senate. To Assembly.

May 27, 2003 In Assembly.

May 27, 2003 First Conference Committee appointed by Assembly. To committee.

Jun 02, 2003 From committee: Concur in Senate Amendment No. 667 and further amend. First Conference report adopted by Assembly.

Jun 03, 2003 First Conference report adopted by Senate.

Jun 03, 2003 To printer.

Jun 03, 2003 From printer. To re-engrossment. Re-engrossed. Third reprint.

Jun 03, 2003 To enrollment.

Jun 04, 2003 Enrolled and delivered to Governor.

Jun 10, 2003 Approved by the Governor.

Jun 11, 2003 Chapter 464.

Section 29 effective June 10, 2003. Sections 1, 2, 3, and 3.5 to 19, inclusive, of this act effective June 10, 2003, for purposes of adopting regulations and entering into contracts or otherwise preparing to carry out the provisions of this act. Sections 3.3 and 20 to 28, inclusive, of this act effective October 1, 2003. Section 1, 2, 3 and 3.5 to 19, inclusive, of this act effective January 1, 2004, for the purpose of the Attorney General making the determination described in subsection 1 of section 9 of this act. If the Attorney General makes the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, section 1, 2, 3, and 3.5 to 19, inclusive, of this act effective on May 1, 2004, for all other purposes. If the Attorney General does not make the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective: (a) May 1, 2004, for purposes of the Attorney General receiving and accepting requests to include telephone numbers in the registry established pursuant to section 10 of this act. (b) June 1, 2004, for purpose of publishing the first list of telephone numbers in the registry; and (c) July 1, 2004, for all other purposes.



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

BILL SUMMARY
72nd REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY BILL 232

Topic

Assembly Bill 232 relates to telephone solicitation.

Summary

This bill requires the Attorney General to establish and maintain a registry of telephone numbers of persons who do not wish to receive unsolicited calls from telephone solicitors. The Attorney General may contract for the establishment and maintenance of the registry.

The measure prohibits a telephone solicitor from making an unsolicited telephone call for the sale of goods or services to a telephone number included in the registry, except in certain circumstances. Making an unsolicited telephone call in violation of the provisions of A.B. 232 is a deceptive trade practice. The bill also makes it a deceptive trade practice to place an unsolicited telephone call that does not allow a service to identify the caller. Furthermore, automated dialing calls are prohibited between 8:00 p.m. and 9:00 a.m.

The bill also authorizes the Attorney General to forward the names in the registry to a federal agency that establishes a single national database of telephone numbers of persons who do not want to receive unsolicited telephone calls for goods or services. The national database will then constitute the registry for purposes of the bill.

Charitable organizations, political organizations, and religious organizations are not subject to the provisions of this bill. In addition, a call is not an unsolicited call if a person expressly requested or expressly gave permission for the call to be made, or had a business relationship and a call is made solely to verify the termination of the business relationship. Nor is a call unsolicited if a person has a delinquent obligation for which payment or performance is due and the call is made either to collect the payment or obtain performance, or to extend credit to allow the person to make the payment.

Additionally, the prohibition does not apply if there is a pre-existing business relationship between the caller and the subscriber and the caller complies with the Act. A pre-existing business relationship is defined as one based on the customer's purchase, rental, or lease of the

telemarketer's goods or services, or a financial transaction between the two, within the 18-month period immediately preceding the call.

Furthermore, at least annually, a telemarketer subject to the pre-existing business relationship exemption must provide a written notice to each existing customer advising them they may elect to be placed on the telemarketer's internal do-not-call list and that the customer may contact either the Attorney General or the telemarketer's customer service department for further information. The notice must include current contact information for both the Attorney General and the customer service department.

The registry is to be published at least semiannually and must be purged every three years. Information in the registry other than telephone numbers must not be published or released and may only be used by the Attorney General to administer the registry program. The Attorney General may charge a fee not to exceed \$1,000 annually to each telephone solicitor. These fees are to be deposited into a Registry Fund created by this bill. In addition, the bill increases the cap on the permissible balance in the Attorney General's Special Fund. The cap is raised from \$250,000 to \$500,000. The measure also authorizes money in this fund to be used for expenses related to the do-not-call list. Additionally, the bill establishes corrective procedures and penalties for violations of its provisions.

Finally, the bill amends A.B. 343, a measure enacted earlier in the 2003 Legislative Session to allow sellers of travel the alternative of using trust accounts or posting security.

Effective Date

This measure is effective upon passage and approval for the purposes of adopting regulations and entering into contracts, or otherwise preparing to carry out the provisions of this bill. It is effective on October 1, 2003, for the purposes of the Attorney General receiving and accepting requests to include telephone numbers in the registry, and on December 1, 2003, for the purpose of publishing the first list of telephone numbers in the registry. The bill is effective on January 1, 2004, for all other purposes.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Second Session
March 10, 2003**

The Committee on Commerce and Labor was called to order at 2:08 p.m., on Monday, March 10, 2003. Chairman David Goldwater presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Goldwater, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Morse Arberry Jr.
Mr. Bob Beers
Mr. David Brown
Mrs. Dawn Gibbons
Ms. Chris Giunchigliani
Mr. Josh Griffin
Mr. Lynn Hettrick
Mr. Ron Knecht
Ms. Sheila Leslie
Mr. John Ocegüera
Mr. David Parks
Mr. Richard Perkins

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Mr. Marcus Conklin, District No. 37

Mr. Tanchek summarized that the Labor Commission would like the language "entering into a compromise" deleted at the end of A.B. 190. They would like discretion in dealing with some of the other problems.

Assemblyman Knecht said he shared some of the Labor Commissioner's concerns, as well as those of Mr. Milliken.

Chairman Goldwater directed the interested parties to work through the sponsor of the bill, Assemblyman Parks, to prepare something for the coming Friday's work session. He commented that there might be some issues that could not be compromised, in which case he would leave it to the sponsor to communicate how he wanted the bill handled.

With no other testimony, Mr. Goldwater closed the hearing on A.B. 190. He then opened the hearing on A.B. 232.

Assembly Bill 232: Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

Assemblyman Marcus Conklin, District No. 37, introduced A.B. 232 and spoke from prepared testimony (Exhibit D). He explained the techniques used by some telemarketers and described problems consumers incurred due to unsolicited telephone calls. Mr. Conklin also described fraudulent telemarketers and options currently available to the consumer to curtail telemarketing. He discussed other states' efforts through legislation to prohibit telemarketing, and noted that all of the states contiguous to Nevada had enacted legislation to prevent unwanted telephone solicitors. He then briefly reviewed the provisions of A.B. 232.

Larry Spitler, Associate Director, AARP Nevada, testifying in support of the bill, spoke from prepared testimony (Exhibit E). He said that AARP was a non-profit organization dedicated to making life better for people aged 50 and older. He explained how the AARP worked with legislatures in various endeavors. He stated that Nevada had over 258,000 AARP members, and indicated a number of members were present to show their support of A.B. 232.

Chairman Goldwater invited the members of the AARP in the audience to stand and show their support of the bill. He thanked them for their interest and said he was gratified to see nonprofessionals participating in the legislative process.

Mr. Spitler acknowledged the hospitality received by the AARP members in observing the legislative process from the previous day. He then introduced Doris Alcorn.

Doris Alcorn, Volunteer Leader, Consumer Issues Advocacy, AARP, testified in support of A.B. 232. Her prepared testimony was also included in Exhibit E. She stated that telemarketers intruded on the privacy of citizens in their homes. She provided statistics regarding the number of calls made per day, the costs to the consumer, and the percentage of telemarketing calls directed to the elderly. She described the specific legislation that AARP endorsed and concluded that A.B. 232 addressed all those issues.

Assemblywoman Giunchigliani asked Assemblyman Conklin if he knew where the drafting department got the language on page 4, beginning on line 20. She said it seemed similar to their "push/pull" language that was passed six years ago. She said, if that was the case, it had been upheld and managed, which would provide a premise from which to work.

Assemblyman Conklin replied that he was not familiar with the "push/pull" statute. He said this particular language came either from California's "no call" bill or from Indiana's.

Assemblywoman Giunchigliani suggested that would be useful evidence to prove the legislation could work.

Assemblyman Conklin added that they had been very particular to draft a bill that had zero exceptions. He said that was why they clearly identified telephone-marketing solicitors. He said that charitable organizations were an exception, along with political parties and political candidates, in an effort to preserve freedom of speech.

Assemblywoman Giunchigliani inquired whether there was funding provided through the federal government for states to establish "no call" legislation to parallel that which was done at the national level.

Mr. Conklin responded there was no funding.

Assemblywoman Leslie asked whether the Attorney General's office was responsible for overseeing the program and the registry fund. She asked whether he was thinking of the Bureau of Consumer Advocates within the Attorney General's office.

Assemblyman Conklin said that was not exactly the case. He referenced a list of over 30 states that had bills similar to A.B. 232. He said about 40 percent of the states had the authority housed in the Attorney General's office. The remainder of states placed it with the Secretary of State, Consumer Advocate, or the Department of Consumer Affairs. He said the sponsors were willing to place the authority in the appropriate place. He said he personally, as a consumer, thought placing the authority with the Attorney General would provide more "teeth" to the bill.

Assemblywoman Giunchigliani noted that the Consumer Advocate's office in Nevada was under the Attorney General's office.

Assemblyman Conklin said he would place the authority under the Attorney General and, from there, it could be placed at the Attorney General's discretion.

Assemblyman Griffin inquired whether there had been enforcement problems in the other states with similar legislation. In particular, he asked about jurisdiction concerns regarding call centers that were located out of state.

Assemblyman Conklin responded that it had not been a "total problem." There were some concerns because of the nature of interstate business. He believed the Attorney General had indicated it would not be a problem, as they had experienced reciprocity between other states' Attorney General offices. He said he did not believe it would be any violation of any constitutional right or commerce clause.

Assemblyman Arberry asked how this would affect companies who used "cold-call" during the day. He asked whether it would put companies out of business.

Assemblyman Conklin said that he could not accurately say. He offered that A.B. 232 would create a registry for people who did not wish to be called. He opined that a telemarketing business realized that it took many rejections to get an acceptance. He said the list eliminated the rejections. He said he believed the people remaining would be more favorably inclined toward telemarketers. He offered that it might save time and money for businesses.

Chairman Goldwater inquired whether this type of legislation worked in other states.

Assemblyman Conklin said he did not know. He noted that Florida's law had been enacted in 1998, and since then, 29 other states had followed suit. He said he could assume that it was working in those states because more states had enacted the legislation. He noted that the federal government was also

facilitating the process. Additionally, he said that in the states that had enacted comparable laws, a substantial number of citizens had signed the "no call" list. He said the number was anywhere from 100,000 to 500,000 people. He explained that the volume of interest by the consumers put legislators, governors, and attorney generals "to task" to ensure the legislation was effective.

There were no further questions for Assemblyman Conklin. Chairman Goldwater called for other people who wished to testify to come forward.

Bob Gastonguay, Legislative Advocate, representing Nevada State Cable Telecommunications Association, testified in opposition to A.B. 232. He said that there was a federal registry that would be administered by both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). He said legislation to fund the registry was currently lying on the President's desk. From his perspective, a state registry, in addition to the federal registry, was counter-productive.

Steven Tackes, Legislative Advocate, representing MCI/WorldCom and Eschelon Telecom, spoke in opposition to A.B. 232. He mentioned the federal law recently enacted, H.R. 395 (U.S. House of Representatives Bill No. 395) (Exhibit F). He briefly explained the four sections. He said the end result was a singular "do not call" list, which, he believed, solved many of the problems. He said it created one set of standards, which "captured" the people who did not want to be called and also the companies who were doing the calling. Additionally, he said, it provided funding.

Chairman Goldwater requested that Mr. Tackes "walk the Committee through" how a consumer could seek a remedy under the federal legislation.

Mr. Tackes responded that the federal law required the FCC to develop the rules. He said the FCC had opened a rule-making docket last fall to adopt the rules, but they were not yet in place. Presumably, he said, if they followed the guidelines set out in the law, individuals would notify the federal registry of their intent not to be called. The FCC would be the repository of the list and would require any call center or telemarketer to obtain the list, which, in so doing, would restrict the calls. He said until the precise rules were enacted, he could provide no further details. Mr. Tackes referenced that last session a similar bill was proposed and he had testified regarding the Direct Marketing Association. He explained that the Association provided a free service by which anyone could be listed at no charge. He said he could personally testify to the efficacy of their listing. He said it was a voluntary list, but that it appeared to work.

Assemblywoman Buckley said she had a concern with waiting for the federal government to enact legislation. She opined that if a federal law could be expeditiously enacted, it would be her choice to have one national list; adversely, however, the legislation had not been funded, the national deficit was continuing to grow, domestic programs were getting cut, and federal bureaucracy would require time to prepare the regulations. Ms. Buckley concluded that Nevada citizens should not have to "wait forever" for the federal government to protect their rights.

Mr. Tackes answered that the federal bill first addressed a time frame and required the FCC to respond within 180 days. He confirmed that the federal bill was not open-ended. Second, he said the funding was contained within the language of the bill passed by Congress. He believed Ms. Buckley had brought up excellent points, but both concerns were already addressed in the legislation.

Assemblyman Beers asked what the price tag was for A.B. 232.

Timothy Hay, Chief Deputy Attorney General, Bureau of Consumer Protection, stated that his department had not been contacted on the fiscal implications of the bill. He said if it were to be placed in the Bureau, the Deceptive Trade Revolving Fund would probably be an adequate funding mechanism with only some slight changes in its current language. He said the Bureau had not solicited cost proposals for implementation of the list. From the states that he had surveyed of similar populations, he estimated \$200,000 for start-up costs. Mr. Hay advised if that were funded out of the Deceptive Trade account, it would not be General Fund monies.

Mr. Hay also wanted to address Ms. Buckley's question on the federal legislation. He said there was no current indication that either the FTC or the FCC intended to pre-empt state legislation, which could be more restrictive than that of the federal government. He also noted that the federal law had bifurcated jurisdiction; there were different rules for airlines and banks than for financial institutions, telephone companies, and other telemarketing entities. Mr. Hay believed there was a benefit in having a tough, enforceable state list. He also indicated his approval of the draft A.B. 232 before the Committee.

Assemblywoman Leslie asked if the authority was not placed in the Bureau of Consumer Protection within the Attorney General's domain, was there another logical place within the office where it could be placed.

Mr. Hay said he had not consulted with the Attorney General regarding that question. He advised, however, that the Bureau did have the enforcement responsibility under *Nevada Revised Statutes*, Chapter 598, for other deceptive trade and telemarketing practices. He said it would appear to him the Bureau

would be the logical place since the Bureau had a funding source that would be available. Also, he noted that about half the states that had legislated a similar bill had placed the function under the Attorney General's office. Mr. Hay noted there was no state paradigm, but expressed the Bureau's willingness to implement the legislation, should they be assigned the task. He estimated that they could probably have the list functioning within six months after the effective date.

Assemblywoman Leslie agreed with Mr. Hay that the Bureau seemed the logical place to implement the law.

Assemblyman Griffin asked whether there had been any challenge to enforcement from telemarketers accused of fraud. He noted particularly those telemarketers that operated out of state. If it were challenged, he asked whether A.B. 232 would alleviate the problem.

Mr. Hay responded that there were actually two issues. He said there were existing laws to prosecute and noted there was a successful track record of prosecuting unscrupulous telemarketers. He said he believed the intent of the current legislation was more to relieve the consumer from the burden of receiving unsolicited calls from telemarketers. He cited the Indiana statute, which most closely paralleled A.B. 232, and reported that it had been tested in court and thus far had withstood judicial scrutiny. Mr. Hay also believed the bill would not be problematic to enforce on out-of-state telemarketers. He said whether a telemarketer resided inside or outside the state, he still would be required to purchase the list and prove compliance with the list from his database.

Assemblywoman Buckley asked if the registry were placed in the Bureau, could the front-end costs be absorbed through the non-general Deceptive Practices Fund. Furthermore, she asked whether the registry could then be funded through the fees to be assessed to the telemarketers.

Mr. Hay said the Bureau had not received a request to provide input on a fiscal note. He explained the Deceptive Trade, 1039 account, was a revolving fund. The income into the fund was episodic and a certain amount was reverted at the end of each year. He offered to prepare a preliminary assessment of the implementation costs if the Committee would like. Mr. Hay advised if they removed the \$250,000 cap for this biennium in order to finance the start-up costs, he believed they could fund the up-front costs without burdening the General Fund. He added that once they could identify the volume of telemarketers who wanted to purchase the list at the price determined by the Committee, those fees would probably fund the ongoing expenses. He stated his belief that once the system was operating, they could essentially have an

automated system. A consumer could put his number on the Internet without requiring human interface, or he could mail a form. Mr. Hay believed that the fees generated from fines and penalties, as well as the revenue from telemarketers' purchases of the list twice a year, would adequately fund the program without committing to any General Fund resources for the program. He suggested more detailed analysis could be prepared if the Committee desired.

There were no other questions. Chairman Goldwater called Bob Ostrovsky to testify.

Robert A. Ostrovsky, Legislative Advocate, representing Cox Communications Company, said that although they supported Assemblyman Conklin's effort to resolve the problem of unscrupulous telemarketers or unwanted telephone calls, they opposed A.B. 232 in its current form. He said they would support the bill if it were amended to address some of the needs of Cox Communications. He said the bill draft eliminated telephone communications between legitimate businesses in the state and the customers of those businesses. He provided an example: Cox Communications, operating as Cox Cable in Clark County, recently telephoned its clients regarding a Las Vegas prize fight that was blacked-out to cable users. Service was not available on a pay-for-view basis until forty-eight hours prior to the fight. From their records at Cox Cable, they knew of clients who regularly purchased all the prizefights. He said that as soon as the blackout was ended, Cox Cable called those customers from their call center to advise them they could purchase the fight. Mr. Ostrovsky noted that other times a company would contact their customers to inform them of special sales. He also mentioned that the company monitored the amount of data delivered to customers with cable modem services and would contact the customers to advise whether they should upgrade or downgrade the size of their cable modem service.

If A.B. 232 were enacted, Mr. Ostrovsky noted, a legitimate company would be prohibited from contacting their clientele. He said the solution would be to allow companies with existing business relationships to be able to contact their customers. Mr. Ostrovsky gave a personal example, explaining that he regularly used a tree-trimming service. At the appropriate time the company would call to remind him and inquire whether he needed their service. He emphasized this was a service the company provided. He contrasted this with the harassing, inappropriate calls Assemblyman Conklin had referenced in his testimony.

Mr. Ostrovsky said he would support an amendment to the bill that would allow telephone calls for existing business relationships, even if it required a business to have its own "opt-out" list for clients. He added that Cox Communications

utilized an "opt-out" list, which allowed customers to call them at any time to have their names removed. He also advised that Cox Communications mailed an annual notice asking if customers wanted their names removed. He noted that there were federal statutes, and the FCC had the authority to fine cable companies up to \$11,000 per day for violations. He provided the Committee with a memorandum (Exhibit G) written by Gardner F. Gillespie, Cox Communications' Washington D.C.-based counsel, which detailed the existing business relationship rules of the FCC and FTC as they applied to cable companies. Mr. Ostrovsky also provided the Committee with a matrix of the states with "do-not-call" lists (Exhibit H), which identified the code site, any exemptions, and any relevant notes. He said of the 32 states that had adopted a call list, only one state, Indiana, had failed to adopt language exempting existing business relationships. He explained that Indiana had a "no call" list that exempted only newspapers. He offered his assistance to the Committee to draft reasonable changes to A.B. 232.

Assemblywoman Buckley acknowledged that the existing business relationship was problematic. She said she did not support all of the exceptions, but she was stymied by some of them. She asked whether a company, in the normal course of their business, could ask their clients' preference on receiving time-sensitive information, via a telephone call. She said in that way, the customer would be protected but still would have the opportunity to receive further information. She asked whether the business relationship exception and the written permission would help in that regard.

Mr. Ostrovsky responded that it would seem logical. He said he would advise businesses to include language on their enrollment forms or contracts that detailed their customer contact policy. He said he appreciated, for instance, his credit card company's fraud department telephoning him regarding suspicious simultaneous calls from two different geographic areas.

Chairman Goldwater asked a question regarding solicitation from the credit card company.

Mr. Ostrovsky responded that the Committee needed to carefully study the language in Section 6 of A.B. 232 that defined "good or service." He quoted part of Section 6, which defined it as anything of value, a gift, a prize, or other inducement or act.

Chairman Goldwater asked whether telephone calls regarding questionable charges would fall under Section 6.

Mr. Ostrovsky stated he was not sure of that specific example. He affirmed that a business could not make sales calls under the current provisions of the bill.

Chairman Goldwater inquired whether Cox Communications sold consumer information to telemarketers.

Mr. Ostrovsky responded that, to his knowledge, Cox did not sell information even to "affiliates," but added that he would pose that question directly to Cox.

Chairman Goldwater refined his inquiry to include "share" as well as "sell."

Mr. Ostrovsky noted that with automatic dialers and other technology, it was unnecessary, in his opinion, to purchase a list.

James T. Endres, Legislative Advocate, representing AT&T Communications of Nevada, Inc., commented that a number of people over the years had worked with the Committee in trying to resolve the issue of annoying telephone calls. He believed there were solutions that would fit the needs of the business world while preserving customer relationships. He offered AT&T's support to everything Mr. Ostrovsky had presented. He said he understood that the state of Nevada provided an attractive market for the call center business and that it was a booming business for the state. Mr. Endres said the state's economy and tax structure benefited from the telemarketing industry. He also cautioned that the Committee needed to be sensitive to how A.B. 232 and other similar legislation would affect the continuing entrance of those types of call-center businesses to the state. He offered his willingness to work with the Committee to meet the needs of the state and its economic development, businesses, and the needs of consumers.

Chairman Goldwater asked whether AT&T shared client lists for the purpose of solicitation.

Mr. Endres said he would have to pose that question to AT&T. He noted that AT&T had many affiliates who, he suspected, each had different out-bound calling and telemarketing methods.

Patricia Jarman-Manning, Commissioner of the Nevada Consumer Affairs Division, testified via teleconference from Las Vegas. She said she recently was recovering from an illness at home and received four to seven unsolicited telemarketer calls a day. She opined it was the right of every consumer who owned a telephone to determine who called them. She said no one had any right to offer information about her to someone else that she did not want provided. She added that she did not want to be contacted by anyone at any

time unless they had received her permission. Ms. Jarman-Manning said people had contacted the Consumer Affairs Division to complain about the problem and asked to be put on a list, and the Division would have to inform them there was no list available. She said Consumer Affairs supported any legislation that, with a minimum of exemptions, would prohibit anyone from calling anyone who did not want to be contacted.

Bobbie Gang, Legislative Advocate, representing the Nevada Women's Lobby, testified that the Lobby supported A.B. 232.

Mark Nichols, Executive Director, National Association of Social Workers, Nevada Chapter, said NASW also wanted to be on record in support of the bill. He explained the social work profession advocated for people who were vulnerable and disenfranchised. He noted that, while the AARP had provided excellent support of the bill, there were senior citizens less able to voice their concerns, and NASW represented them in supporting A.B. 232.

Margaret McMillan, Director, Government Affairs, Sprint, testified that Sprint supported the existing business relationship provision discussed by Mr. Ostrovsky.

Mary Lau, Executive Director, Retail Association of Nevada, testified in opposition to A.B. 232. She expressed the Association's support of consistency, recognizing that the FCC and the FTC were working together to develop relationships and language that were consistent. She said the Retail Association preferred a simple "one-stop shopping" list for their customers. Ms. Lau said they supported the existing business relationship provision. She said they recognized the need for legislation, but desired consistency across state lines.

George Ross, Legislative Advocate, representing AIG Claim Services, Inc., said AIG was not asking for major changes to A.B. 232, but noted AIG currently enjoyed customer satisfaction with their product line. He continued, because of that relationship with those loyal customers, AIG had a good idea of what other available products those customers would like. He said they were willing to work with the Committee on the bill to enable AIG to continue to communicate with its existing customer base.

Samuel McMullen, Legislative Advocate, representing the Las Vegas Chamber of Commerce, noted that business practices were always a concern to the Chamber. He explained that they had surveyed small businesses to learn if unsolicited calls were a commonly used marketing tactic. The result indicated it was used. He said a lot of businesses would prospect through their existing customer base and have their employees make calls during slow business hours.

He said that sometimes calls were made regularly and other times only during promotions. Mr. McMullen noted that a slow economy seemed to stimulate the need to make more calls. For example, he said a gift shop that dealt in collectibles liked to contact their clients to inform them of the availability of a new collectible in a line. He said the shop was concerned when they were notified the provisions of A.B. 232 prohibited this. He noted that it was difficult, particularly in retail, to define when a customer relationship was established. Another example he provided was a dry cleaner opening in a neighborhood and wanting to inform the community. He said some individuals considered notification a service rather than a telemarketing tactic. He said the Chamber had concerns about a businessman's ability to reach out appropriately to his customers or potential customers.

With no other questions or people to testify, Chairman Goldwater closed the hearing on A.B. 232. He directed the interested parties as well as the sponsor to work along the lines suggested by Assemblywoman Buckley to arrive at a bill that would be agreeable. He provided the caveat that a lot of times that would not be possible. He requested any amendments be available for discussion at the coming Friday's work session.

Speaker Perkins noted the challenges in amending the bill. He said one concern he had was how businesses with existing relationships could interact with their customers in spite of the bill. He interpreted A.B. 232 to not preclude a business from allowing customer contact, but rather provided the customer who did not want contact to have a mechanism to be removed from a business listing.

Chairman Goldwater closed the hearing on A.B. 232 and said they would direct staff to address those concerns.

Chairman Goldwater advised the Committee they would go off the agenda to open a work session on A.B. 194.

Assembly Bill 194: Prohibits insurer from using information included in consumer report of applicant or policyholder for certain policies of insurance. (BDR 57-1114)

Vance Hughey, Principal Research Analyst, Legislative Counsel Bureau, advised that A.B. 194 prohibited the insurer from using information included in a consumer report of an applicant or policy holder for certain policies of insurance. He recalled that during the hearing on the bill, Birny Birnbaum, Executive Director of the Center for Economic Justice, had proposed some technical amendments. Mr. Hughey reviewed those amendments. The first amendment

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Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

**"NO CALL" REGISTRY
ASSEMBLY BILL 232**

**INTRODUCTORY COMMENTS FOR
ASSEMBLYMAN MARCUS CONKLIN**

OPENING REMARKS OF A PERSONAL NATURE.

THE NEED FOR THIS LEGISLATION

TELEMARKETING INVOLVES SITUATIONS IN WHICH COMPANIES MAKE UNSOLICITED CALLS TO CONSUMERS TO SELL GOODS OR SERVICES. THESE CALLS OFTEN ARE MADE AT TIMES WHEN CONSUMERS ARE EXPECTED TO BE AT HOME, WHICH IT SEEMS IS USUALLY DURING A FAMILY'S DINNERTIME. IT IS NOT UNCOMMON FOR A PERSON TO RECEIVE SEVERAL SUCH CALLS EACH NIGHT, AND EVEN MORE SUCH CALLS ON WEEKENDS. EVEN IF A PERSON HAS AN UNLISTED TELEPHONE NUMBER, HE MAY STILL RECEIVE UNSOLICITED TELEPHONE CALLS. IN SOME CASES, UNLISTED NUMBERS CAN BE OBTAINED FROM A DIRECTORY ASSISTANCE OPERATOR. THESE NUMBERS MAY BE SOLD TO OTHER ORGANIZATIONS OR PEOPLE WITH WHOM A PERSON HAS DONE BUSINESS. SOME SALES ORGANIZATIONS CALL ALL NUMBERS IN NUMERICAL ORDER FOR A NEIGHBORHOOD OR AREA.

TELEMARKETING CALLS CAN BE VERY ANNOYING FOR SEVERAL REASONS. FIRST, THEY ARE UNSOLICITED. MANY CONSUMERS ARE OFFENDED BY SUCH SOLICITATIONS FOR ITEMS THAT THEY NEITHER NEED NOR WANT. SECOND, THESE CALLS OFTEN INTERRUPT FAMILY DISCUSSIONS AROUND THE DINNER TABLE OR CAUSE THE CONSUMER TO RUSH FROM ANOTHER PART OF THE HOUSE OR YARD JUST TO RECEIVE A SALES PITCH. THIRD, THESE CALLS MAY TIE UP A TELEPHONE LINE WITH A SALES PITCH THEREBY PRECLUDING THE RECEIPT OF AN IMPORTANT OR EMERGENCY CALL FROM A FAMILY MEMBER OR FRIEND. FOURTH, IN NEVADA'S 24-HOUR ECONOMY, MANY PEOPLE WORK AT NIGHT AND SLEEP DURING THE DAY. THESE FOLKS OFTEN ARE WOKEN UP BY NUISANCE SALES CALLS FROM TELEMARKETERS. FIFTH, SOME ADVOCATES OF "NO CALL" LAWS CLAIM THAT UNSOLICITED TELEMARKETING CALLS NOT ONLY ARE ANNOYING AND INCONVENIENT, BUT THAT NUMEROUS HANG-UP CALLS DURING THE DAY BY AUTOMATED CALLING DEVICES MAY EVEN CAUSE PSYCHOLOGICAL HARM TO SOME INDIVIDUALS WHO MAY FEAR SOMEONE IS STALKING THEM OR THAT THEIR HOMES ARE BEING CASED BY CRIMINALS.

IN ADDITION, WHILE THERE ARE MANY LEGITIMATE TELEMARKETING OPERATIONS, SOME ARE NOT LEGITIMATE. FRAUDULENT BUSINESS OPERATORS SOMETIMES USE TELEMARKETING AS A VEHICLE FOR CONDUCTING THEIR BUSINESS. SOMETIMES, THEY USE TELEMARKETING AS A VEHICLE

TO OBTAIN SENSITIVE PERSONAL AND FINANCIAL INFORMATION FROM PEOPLE. CROOKED CALLERS USE THE INFORMATION TO OPEN BANK AND CHARGE ACCOUNTS IN VICTIMS' NAMES. OFTEN, ELDERLY PEOPLE ARE SPECIFICALLY TARGETED FOR SUCH SCHEMES. SCAM ARTISTS SOMETIMES CREATE "FLY-BY-NIGHT" OPERATIONS WHEREBY THEY RECEIVE MONEY FROM THEIR TRUSTING VICTIMS AND THEN SHUT DOWN OPERATIONS AND MOVE ON WITHOUT SENDING THE PRODUCTS THEY PROMISED. IN OTHER CASES, THESE RIP-OFF ARTISTS SEND THEIR VICTIMS INFERIOR PRODUCTS. BECAUSE THESE BUSINESSES DO NOT HAVE "BRICK AND MORTAR" STOREFRONTS WHERE CUSTOMERS CAN GO TO RETURN OR REPLACE THE PRODUCTS, THEIR VICTIMS OFTEN FIND IT DIFFICULT OR IMPOSSIBLE TO GET SATISFACTION FROM THE VENDORS. FINALLY, TELEPHONE SOLICITORS ARE NOW DIALING CELL PHONE NUMBERS TO MAKE THEIR PITCHES. FOR MANY CELL PHONE CUSTOMERS, THESE UNSOLICITED CALLS CAN DRAIN THEIR "FREE CALLING MINUTES" OR OTHERWISE COST THEM MONEY.

CURRENT OPTIONS FOR CONSUMERS TO AVOID INTERRUPTIONS OF THEIR HOME LIVES BY UNTIMELY AND UNSOLICITED TELEMARKETING CALLS INCLUDE PURCHASING TELEPHONE ANSWERING MACHINES OR SPECIAL DEVICES TO INTERRUPT COMPUTER-GENERATED TELEMARKETING CALLS. WHILE MANY OF US HAVE SUCH DEVICES, A LARGE SEGMENT OF OUR POPULATION DOES NOT HAVE THEM. BUT THAT IS NOT THE POINT. THE POINT

IS THAT CONSUMERS SHOULD NOT HAVE TO SPEND THEIR MONEY ON DEVICES THAT THEY OTHERWISE WOULD NOT PURCHASE JUST TO BE ABLE TO EAT DINNER PEACEFULLY, TO CONDUCT THEIR HOME LIVES WITHOUT UNNECESSARY INTERRUPTIONS, TO FEEL SECURE IN THEIR HOMES, OR TO GET A GOOD DAY'S SLEEP. WHILE SOME NEVADANS WANT TO CONTINUE TO RECEIVE UNSOLICITED TELEPHONE CALLS, THOSE WHO DON'T SHOULD HAVE THE OPTION OF NOT BEING INTRUDED UPON.

"NO CALL" LEGISLATION IN OTHER STATES

NEVADA DOES NOT HAVE A LAW TO PREVENT UNSOLICITED CALLS FROM TELEMARKETERS. HOWEVER, MOST OTHER STATES HAVE ENACTED "NO CALL" LAWS TO PROTECT THEIR RESIDENTS FROM THE ABUSES AND INCONVENIENCES THAT ARE CAUSED BY UNSOLICITED SALES CALLS. IN 1998, FLORIDA WAS THE FIRST STATE TO ADOPT A "NO CALL" LAW. CURRENTLY, THERE ARE ABOUT 30 STATES THAT HAVE ENACTED SOME FORM OF "NO CALL" LEGISLATION. ALL OF THE STATES CONTIGUOUS TO NEVADA HAVE LAWS DESIGNED TO PREVENT UNWANTED TELEPHONE SOLICITATIONS.

AB232

GENERAL SUMMARY

THIS BILL REQUIRES THE ESTABLISHMENT OF A STATE REGISTRY OF TELEPHONE NUMBERS WITHIN THE OFFICE OF THE ATTORNEY GENERAL. UNDER THE PROVISIONS OF THIS BILL, TELEPHONE SOLICITORS ARE PROHIBITED FROM MAKING UNSOLICITED CALLS FOR THE SALE OF GOODS OR SERVICES TO ANY TELEPHONE NUMBER INCLUDED IN A LIST THAT IS AVAILABLE FOR PURCHASE FROM THE ATTORNEY GENERAL. MAKING AN UNSOLICITED CALL IN VIOLATION OF THE PROVISIONS OF THIS BILL IS A DECEPTIVE TRADE PRACTICE. THE BILL EXCLUDES FROM THE DEFINITION OF AN UNSOLICITED TELEPHONE CALL A CALL ON BEHALF OF A CHARITABLE ORGANIZATION, A POLITICAL PARTY, OR A CANDIDATE FOR PUBLIC OFFICE. IN ADDITION, A CALL IS NOT AN UNSOLICITED CALL IF THE RECEIVER OF THE CALL (A) EXPRESSLY REQUESTED OR EXPRESSLY GAVE PERMISSION FOR THE CALL TO BE MADE, (B) HAD AN ESTABLISHED BUSINESS RELATIONSHIP WITH THE CALLER IF THE CALL IS MADE SOLELY TO VERIFY THE TERMINATION OF THE BUSINESS RELATIONSHIP; OR (C) HAS A DELINQUENT OBLIGATION FOR WHICH PAYMENT OR PERFORMANCE IS DUE BUT HAS NOT BEEN MADE. THE LIST IS TO BE PUBLISHED AT LEAST SEMI-ANNUALLY AND MUST BE PURGED EVERY 3 YEARS.



TESTIMONY -- AB 232
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR
MONDAY, MARCH 10, 2003

GOOD AFTERNOON, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. FOR THE RECORD MY NAME IS LARRY SPITLER AND I'M THE ASSOCIATE STATE DIRECTOR FOR AARP NEVADA.

AARP IS A NONPROFIT, NONPARTISAN MEMBERSHIP ORGANIZATION DEDICATED TO MAKING LIFE BETTER FOR PEOPLE 50 AND OVER. WE PROVIDE INFORMATION AND RESOURCES; ENGAGE IN LEGISLATIVE, REGULATORY AND LEGAL ADVOCACY; ASSIST MEMBERS IN SERVING THEIR COMMUNITITES; AND OFFER A WIDE RANGE OF UNIQUE BENEFITS, SPECIAL PRODUCTS AND SERVICES FOR OUR MEMBERS. WE HAVE OVER 258,000 MEMBERS IN NEVADA.

WITH ME TODAY ARE SEVERAL AARP NEVADA VOLUNTEERS IN THE AUDIENCE, AND IF I MAY, MR. CHAIRMAN, I'D LIKE TO ASK THEM TO STAND.

AND, WITH ME AT THE TABLE IS DORIS ALCORN, A LONG TIME AARP VOLUNTEER AND OUR ADVOCACY CONSUMER ISSUE LEAD. DORIS HAS WORKED ON THIS ISSUE FOR SOME TIME AND IS READY TO ADDRESS THE COMMITTEE CONCERNING AARP'S SUPPORT OF AB 232. DORIS.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS DORIS ALCORN AND I AM VERY HAPPY TO GIVE OUR

ASSEMBLY COMMERCE & LABOR 103
DATE: 3/10/03 ROOM: 4100 EXHIBIT E
SUBMITTED BY: Larry Spitler

SUPPORT TO AB 232. IT IS A LONG AWAITED BILL FOR OUR MEMBERSHIP. WHILE TELEMARKETERS AFFECT US ALL, OVER HALF THE NUMBER OF PEOPLE TARGETED ARE 50 AND OLDER. WE BELIEVE CONSUMERS SHOULD HAVE THE RIGHT TO PRIVACY IN THEIR HOMES FROM UNSOLICITED CALLS AND OBVIOUSLY SO DO CITIZENS IN MANY OTHER STATES, SINCE OVER 30 STATES HAVE INSTITUTED REGISTRIES THAT PROHIBIT UNSOLICITED CALLS.

WE APPLAUD THE SPONSORS OF THIS BILL FOR HAVING INCLUDED MANY KEY OBJECTIVES THAT AARP OVERWHELMINGLY SUPPORT.

MORE THAN 150,000 TELEMARKETING FIRMS MAKE UNSOLICITED CALLS TO MILLIONS OF PEOPLE EVERY DAY. APPROXIMATELY 10 PERCENT OF THESE CALLS COME FROM FRAUDULENT TELEMARKETERS. CONGRESS ESTIMATES THAT THE PROFITABLE TELEMARKETING INDUSTRY COSTS AMERICAN CONSUMERS MORE THAN \$40 BILLION A YEAR.

FRAUDULENT TELEMARKETING CALLS TYPICALLY TARGET MINORITY AND LOWER-INCOME COMMUNITIES AND THE ELDERLY. IN ONE CASE THE FBI FOUND FRAUDULENT TELEMARKETERS WERE DIRECTING NEARLY 80 PERCENT OF THEIR CALLS TOWARD OLDER CONSUMERS.

SURVEYS SHOW THAT CONSUMERS OVERWHELMINGLY FIND TELEMARKETING CALLS TO BE ANNOYING AND OBTRUSIVE, AND THAT THEY SUPPORT CREATION OF STATEWIDE "DO NOT CALL" LAWS.

IN NEVADA AARP STAFF AND VOLUNTEERS ARE URGING LEGISLATORS TO PASS "DO NOT CALL" LEGISLATION DURING THIS SESSION.

AARP IS WORKING TO ALLOW CONSUMERS THE OPTION TO LIST THEIR NAME ON A STATEWIDE "DO NOT CALL" LIST, WHICH TELEMARKETERS MUST PURCHASE BEFORE DOING BUSINESS IN THE STATE, WITH PENALTIES FOR NONCOMPLIANCE.

SPECIFICALLY AARP SUPPORTS LEGISLATION THAT WOULD:

- KEEP EXEMPTIONS TO A MINIMUM;
- INCLUDE THE OVERSIGHT AND ENFORCEMENT AUTHORITY OF THE STATE ATTORNEY GENERAL ;
- BE AVAILABLE AT LITTLE OR NO COST ;
- INCLUDE SIGNIFICANT PENALTIES FOR VIOLATIONS; AND,
- BE UPDATED FREQUENTLY

WE FEEL AB 232 ADDRESSES THOSE STANDARDS. WE THANK YOU FOR ALLOWING US TO SHARE THESE THOUGHTS WITH YOU TODAY.

2/27/03 to President Bush

*One Hundred Eighth Congress
of the
United States of America
AT THE FIRST SESSION*

Begun and held at the City of Washington on Tuesday, the seventh day of January, two thousand and three

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a 'do-not-call' registry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Do-Not-Call Implementation Act'.

**SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL
REGISTRY FEES.**

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission--Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

SEC. 4. REPORTING REQUIREMENTS.

(a) **REPORT ON REGULATORY COORDINATION-** Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

- (1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;
- (2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and
- (3) proposals to remedy any such inconsistencies.

(b) **ANNUAL REPORT-** For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

- (1) an analysis of the effectiveness of the 'do-not-call' registry as a national registry;
- (2) the number of consumers who have placed their telephone numbers on the registry;
- (3) the number of persons paying fees for access to the registry and the amount of such fees;
- (4) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with similar registries established and maintained by the various States;
- (5) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and
- (6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission,

and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.),
in the case of the Federal Communications Commission.

Speaker of the House of Representatives.

Vice President of the United States

and President of the Senate.

END

F 3 83

MEMORANDUM

February 6, 2003

TO:

FROM: Gardner F. Gillespie
C. Jeffrey Tibbels

RE: **Established Business Relationship; FCC and FTC Internal Do-Not-Call List Requirements**

Recently, you requested more information regarding whether the Federal Communications Commission's ("FCC's") and Federal Trade Commission's ("FTC's") regulations require telephone solicitors to maintain their own do-not-call lists, and the potential relationship between these requirements and the established business relationship exemptions. As explained briefly below, both the FCC's and FTC's telemarketing rules require maintenance of company-specific, internally maintained do-not-call lists, and such lists do impact the established business relationship exemptions.

The FCC defines an "established business relationship" as:

[A] prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding the products or services offered by such person or entity, which relationship has not been previously terminated by either party.

47 C.F.R. § 64.1200(f)(4). There is no express time limit on the existence of an established business relationship. The FCC has sought comments on whether there should be such a time limit in its ongoing proceeding on telemarketing. The United States Congress is currently considering a bill which would require the FCC to "ensure

maximum consistency" between its telemarketing rules and those of the FTC (the FTC has an 18-month time limit on the established business relationship).

The FCC's regulations prohibit telephone solicitations, unless the solicitor has "instituted procedures for maintaining a list of persons who do not wish to receive solicitations made by or on behalf of that [solicitor]." 47 C.F.R. § 64.1200(e)(2). Those procedures must include, among other things: a written policy, to be supplied upon demand, for maintaining a do-not-call list; training of personnel involved in telephone solicitations; prompt identification of the identity of the solicitor; and prompt recordation of do-not-call requests. *Id.* §§ 64.1200(e)(2)(i) through (iv). A do-not-call request must be honored for 10 years following the date of the request. *Id.* § 64.1200(e)(2)(vi).

Violations of the FCC's telemarketing rules are punishable by forfeitures of up to \$11,000 for each violation or each day of a continuing violation. See 47 C.F.R. § 180(b)(3). In addition, a state attorney general (or other official so designated) may institute a civil suit on behalf of its aggrieved residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. See 47 U.S.C. § 227(f)(1). If a court finds that the violations were knowing and willful, it may, in its discretion, award up to treble damages. See *id.*

For FCC compliance purposes, unless a residential customer (or solicitor) has terminated an established business relationship, or has made a do-not-call request, a solicitor may continue to make telephone solicitations under the established business relationship exemption.

The FTC's amended Telemarketing Sales Rule ("TSR") ^{1/} defines an "established business relationship" as:

[A] relationship between a seller and a consumer based on: (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

^{1/} The amended TSR was published in the *Federal Register* on January 29, 2003, and for the most part will take effect on March 31, 2003. The FTC estimates that the FTC-maintained do-not-call list requirements will go into effect approximately seven months after the U.S. Congress allocates funds for effective implementation of the regulations.

16 C.F.R. § 310.2(n).

The FTC's amended TSR prohibits a solicitor from initiating any outbound telephone call to a person when "that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited." *Id.* § 310.4(b)(1)(iii)(A). A solicitor will not be liable for violation of the rule if it can demonstrate, as part of the solicitor's routine business practice, that it has: (i) established and implemented written procedures to comply with the rule; (ii) trained personnel to comply with the rule; (iii) internally maintains and records a list of telephone numbers the solicitor may not contact in compliance with the rule; (iv) establishes a recorded process that prevents solicitations of any telephone number on the FTC-maintained do-not-call registry; (v) monitors and enforces compliance with the amended TSR; and (vi) demonstrates that any subsequent call made in violation of the rules was made in error. 310.4(b)(3). Violations of the amended TSR are punishable by fines of up to \$11,000 per violation.

For purposes of compliance with the FTC's amended TSR, assuming that a transaction took place between the seller and the residential customer within the 18 months immediately preceding the call, or the customer has inquired/applied to the seller within three months regarding a product or service, a seller may continue to make telephone solicitations to that customer under the established business relationship exemption, unless the customer has previously asked the seller not to call.

Please let us know if you have any additional questions.

FEDERAL AND STATE TELEMARKETING LAWS
(Tracking do-not-call list requirements only)
January 30, 2003

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
1	FTC	16 C.F.R. § 310.	X	X	X	Banks; common carriers engaged in common carrier activities.	Revised Telemarketing Sales Rule ("TSR") not only establishes national do-not-call ("DNC") list, but also further prohibits unauthorized billing, constrains abandonment of calls, and requires telemarketers to transmit caller ID information. EBR exemption applies to solicitors who have sold goods or services to customer within 18 months of solicitation.
2	FCC	47 C.F.R. §§ 1200, 1201.	X		X		FCC proceeding to amend the Telephone Consumer Protection Act ("TCPA") regulations to, among other things, create national DNC list, is currently ongoing.
3	Alabama	ALA. CODE §§ 8-19a-1 et seq.		X	X	Cable TV operators; financial institutions; newspapers; periodicals; magazines; telephone and utility companies.	
4	Alaska	ALASKA STAT. §§ 45.50.471 et seq.	LECs keep list		X	Exempt from telemarketing registration: cable TV operators; financial institutions; newspapers; telephone and utility companies.	LECs are not only required to keep the do-not-call list of residential customers, but also place a "black dot" by their names in the telephone directory if they are on the list. EBR exemption applies to solicitors who have sold to customer within 24 months of solicitation.
5	Arkansas	ARK. CODE ANN. §§ 4-95-101 to 4-95-108; 4-99-101 to 4-99-112.		X	X	Financial institutions; newspapers; telephone and utility companies regulated by state PSC.	EBR exemption applies to solicitors who have sold to customer within 36 months of solicitation.
6	California	CAL. BUS. & PROF. CODE §§ 17511, 17590, 17591, 17592.		X	X	Cable TV operators; newspapers; magazines; entities regulated by PSC.	DNC list requirements set to go into effect on April 1, 2003.

ASSEMBLY COMMERCE & LABOR 185
 DATE: 3/1/03 ROOM: 4100 EXHIBIT H
 SUBMITTED BY: Bob Astrovsky

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	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
7	Colorado	COLO. REV. STAT. §§ 6-1-901 <i>et seq.</i>		X	X		EBR exemption applies to solicitors who have sold to customer within 18 months of solicitation.
8	Connecticut	CONN. GEN. STAT. §§ 42-110a, 42-284 to 42-288.		X	X	Telephone companies for directory compiling purposes only.	
9	Florida	FLA. STAT. chs. 501.059, 501.601 to 501.626.		X	X	Newspapers.	
10	Georgia	GA. CODE ANN. §§ 10-5B-3, 10-1-370, 10-1-390, 46-5-27.		X	X		
11	Hawaii	HAW. REV. STAT. §§ 445-184, 468-1 to 468-5, 481P-1 to 481P-8.	X			Providers of telecommunications and cable TV operators; financial institutions.	
12	Idaho	IDAHO CODE §§ 48-1001 to 1010.		X	X	Sellers of newspapers, periodicals, books, musicals or video recordings; federally or state licensed entities; isolated transactions with no repeat pattern.	
13	Illinois	30 ILL. COMP. STAT. 105/5.570; 815 ILL. COMP. STAT. 413/1 to 413/25.	X	FTC	X*	Registration exemption for: financial institutions and telecommunications companies.	*The Illinois law states that compliance with Section 310.4(b) of the FTC's rules (which includes the EBR exemption) constitutes compliance with Illinois law. An existing customer is one who entered into a transaction with the seller within 18 months of the solicitation or opened a credit/discount/debit account which the customer has not terminated.
14	Indiana	IND. CODE § 24-4.7		X		Newspapers (but only if call is made by volunteer or employee of newspaper).	

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
15	Kansas	KAN. STAT. ANN. § 50-670.		DMA	X		Sellers must subscribe to the national do-not-call list maintained by the Direct Marketing Association ("DMA"). EBR exemption applies to solicitors who have sold product to customer within 36 months of solicitation.
16	Kentucky	KY. REV. STAT. ANN. §§ 367.46951 et seq.		X	X	<u>Cable TV operators</u> ; newspapers; magazines; periodicals; merchants regulated by PSC; merchants regulated by FCC; publicly traded corporation.	
17	Louisiana	LA. REV. STAT. ANN. §§ 45:821 to 45:830, 45:844.		X	X		EBR includes not only current business relationship, but also a prior relationship that was terminated or lapsed within six months of the phone solicitation.
18	Maine	ME. REV. STAT. ANN. tit. 10, §§ 1498 to 1499; tit. 32, § 14716.		DMA		Sellers with a permanent place of business in Maine	Sellers must obtain, on a semiannual basis, updated national do-not-call list maintained by the DMA.
19	Massachusetts	MASS. GEN. LAWS ch. 159C.		X	X	Persons or telephone companies compiling information for compiling, preparing and/or distributing directories.	EBR exemption applies to solicitors who have sold to customer or maintained an account within 24 months of solicitation.
20	Minnesota	MINN. STAT. § 325E.		X	X		
21	Missouri	MO. REV. STAT. §§ 407.1095 to 407.1110.		X	X	Any entity over which a federal agency has regulatory authority, the entity is required to be licensed by such authority, and the entity is required by law or rule to develop and maintain DNC list.	

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	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
22	Nebraska	NEB. REV. STAT. §§ 86-223 to 86- 257.	X		X		EBR means "a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration. . ."
23	New York	N.Y. GEN. BUS. LAW § 399-z.		X	X		
24	Oklahoma	OKLA. STAT. tit. 20, § 775B.1		X	X		EBR exemption applies to solicitors who have sold to customer within 24 months of solicitation.
25	Oregon	OR. REV. STAT. §§ 646.551 <i>et seq.</i>		X	X	Cable TV operators; newspapers; magazines; financial institutions; entity regulated by PUC.	
26	Pennsylvania	PA STAT. ANN. tit. 73, §§ 2242 <i>et</i> <i>seq.</i>		X	X	Any entity over which a federal or PA state agency has regulatory authority, the entity is required to be licensed by such authority, and the entity is acting within the scope of the business for which it is licensed; newspapers, magazines, and periodicals.	EBR exemption applies to solicitors who have sold to customer within 12 months of solicitation.
27	Rhode Island	R.I. CODE R. § 5- 61	X		X	Cable TV operators; person or affiliate whose business is regulated by PUC; financial institutions.	With respect to maintenance of a DNC list, an entity is in compliance with Rhode Island law if it has established a DNC list that complies with either FCC or FTC regulations.

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
28	Tennessee	TENN. CODE ANN. § 47-18-101 <i>et</i> <i>seq.</i>		X	X		With respect to maintenance of a DNC list, an entity is in compliance with Tennessee law if it has established a DNC list that complies with either FCC or FTC regulations. EBR exemption applies to entities soliciting "existing customers" or to customers with whom the soliciting entity has had a prior relationship within 12 months of solicitation.
29	Texas	TEX. BUS. & COM. CODE ANN. § 43.001 <i>et seq.</i>		X	X		
30	Vermont	VT. STAT. ANN. tit. 9, § 2464.		DMA	X	Any entity that is otherwise registered or licensed with, or regulated by, the Vermont Secretary of State, Public Service Board, Dept. of Banking, insurance, securities, health care administration, Dept. of Taxes, or financial institution.	EBR is not defined. Sellers must subscribe to the national do-not-call list maintained by the DMA.
31	Wisconsin	WIS. STAT. ANN. § 100.20 <i>et seq.</i>		X	X		EBR exemption applies to solicitations of a customer who is a current client of the solicitor.
32	Wyoming	WYO. STAT. ANN. § 40-12-301 <i>et</i> <i>seq.</i>		DMA	X		Sellers must subscribe to the national do-not-call list maintained by the DMA.

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Second Session
March 14, 2003**

The Committee on Commerce and Labor was called to order at 11:48 a.m., on Friday, March 14, 2003. Chairman David Goldwater presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Goldwater, Chairman
Mr. Morse Arberry Jr.
Mr. Bob Beers
Mrs. Dawn Gibbons
Ms. Chris Giunchigliani
Mr. Josh Griffin
Mr. Lynn Hettrick
Mr. Ron Knecht
Ms. Sheila Leslie
Mr. John Ocegüera
Mr. David Parks
Mr. Richard Perkins

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley, Vice Chairwoman (excused)
Mr. David Brown (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, District No. 37
Assemblywoman Ellen Koivisto, District No. 14

Assembly Bill 232: Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

Assemblyman Marcus Conklin, Clark County, District No. 37, reported that after the initial hearing on A.B. 232, he had met with a group of 12 to 14 interested business representatives and lobbyists, regarding amendments. He said although there was substantial disagreement among the parties, regarding the protection of business relationships, most finally agreed to provide an exemption for existing or established business relationships. He reported the group did not go into detail to define a "business relationship." He noted some parties supported minimal to no exceptions to the legislation. He said businesses and industries supported either many exceptions or no bill at all.

Mr. Conklin noted that other states had enacted "no-call" legislation because the proposed federal legislation had many exceptions. He advised that many industries were included in the federal exceptions including telecommunications, banking, and insurance companies. Additionally, he noted, the federal law could not constitutionally affect intrastate commerce, i.e., commerce that was generated from within the state. He stated there was a "big gaping hole" in the federal legislation. He said his understanding, from speaking with Timothy Hay, Nevada Consumer Advocate, was that the federal government would create their registry based on all the states' registries. He said generally the states' bills were more stringent than those of the federal legislation. He explained that federal legislation set a benchmark and the states then enhanced it based on the political culture of their communities.

At the suggestion of legal counsel, Mr. Conklin said most of the interested parties had agreed on a compromise. The compromise was to provide an option to consumers either to exempt or to include their current business relationships. He explained there would be two lists. The first list would be very "broad-based" to include anyone with whom a consumer did business or from whom he wanted to receive calls. Mr. Conklin explained only telemarketers and "cold calls" would not be included on the list. The second list, he said, would be the "I really mean it, don't call" list. There would be no exemptions if one signed the second list. He cautioned that a government could not legislate an individual's right to give permission for people to call him. He said, for example, if a person submitted a form requesting more information from a company, that company had the right to respond. Mr. Conklin also advised that a company still had the right to call a client about current and ongoing business transactions.

Mr. Conklin summarized that this was a fair and equitable solution. A.B. 232 would give the consumer the right to decide for himself who he wanted calling him and who he did not want calling him, noting that the consumer was paying for their telephone service and should have some control over who called. Additionally, he said the supporters of the bill recommended the authority be moved to the Bureau of Consumer Protection under the jurisdiction of the Consumer Advocate. He said that the parties agreed that this was an appropriate place for it. He noted there were some fiscal matters that also would need to be considered.

Chairman Goldwater thanked Mr. Conklin for his diligent work on preparing the bill and working on the amendments.

Mr. Hughey said he believed that Assemblyman Conklin had reviewed two of the changes, which were also listed in Exhibit C. Mr. Hughey advised a third change was an addition to Section 1. He said the responsibility for the registry fund also would be directed towards the Consumer Advocate. He added there was still the issue of the source of start-up funding for the program that could either be addressed by the Committee or diverted to the Committee on Ways and Means. He said he had spoken to Tim Hay, Consumer Advocate, who had advised there was a "1039" account within the Attorney General's Office that he thought would be an appropriate source of start-up funds. Mr. Hughey said he believed he was referring to the account established pursuant to NRS 228.340, but he said he would have that double-checked. He said that was the account established for the Bureau of Consumer Protection.

Chairman Goldwater said, in the interest of fairness, and because they did not want to rehear A.B. 232, he would indicate to the Committee that there were a number of parties who had signed in who were still opposed to the bill, even as amended. He said their opposition was noted in hearing and identified them as Mr. Ostrovsky, representing Cox Communications; Ms. Brower, representing the National Association of Insurance; Mr. Guild, Ms. Grimmer, and Mr. Gastonguay, representing the Cable Association; Ms. Lau, representing the Retailer Association of Nevada; and Mr. Tackes, representing AT&T.

Bob Ostrovsky, Legislative Advocate, representing Cox Communications, said he wanted to advise the Committee that they had offered an "existing business relationship" amendment. He confirmed their opposition to the bill in its current form.

Assemblyman Hettrick commended Mr. Conklin's efforts. He said he still had a problem with the fee structure for small business owners, who could never

afford a fee of up to \$1,000 to get a list of names they could not call. He said he understood that the President signed the national bill and he did not know what that legislation would cover or what money might be generated. He said perhaps there would be federal money available to help offset the cost of state legislation. He said he did not believe A.B. 232 could be passed without first sending it to Ways and Means and cautioned that might mean "death" for this bill this session. He said he believed the amendments offered by Mr. Conklin improved the bill significantly, but stated he could not support the bill as currently written.

Chairman Goldwater thanked Mr. Conklin for the hours and work he had expended in preparing the bill.

Assemblyman Knecht thanked Mr. Conklin for his work and acknowledged that he had signed on for the bill when it first was circulated. He said that in view of the federal legislation, however, he agreed with Mr. Hettrick's comments.

ASSEMBLYWOMAN GIBBONS MOVED TO AMEND AND DO PASS
A.B. 232.

ASSEMBLYWOMAN LESLIE SECONDED THE MOTION.

Assemblyman Griffin said he had problems with the original bill, but he believed the amendments moved closer to his endorsement. He asked whether the objection to A.B. 232 was that the existing business relationship was not inherent within the law, that it was the option of the consumer.

Chairman Goldwater conferred with Mr. Hughey and recalled from testimony that the objection was that they wanted exemptions for an existing business relationship. He said there were two tiers of "do not call." The first tier, he explained, acknowledged an existing business relationship and allowed for continued telephone calls. The second tier was, to paraphrase Ms. Morgan, a "No, I really mean it, don't call me" list.

Mr. Hughey said he believed Mr. Goldwater's summary was accurate. He restated the options: the first list would allow the consumer to indicate that he did not want to receive unsolicited calls unless there was an established business relationship; the second list would not allow any calls even if there was an established business relationship.

Assemblyman Griffin responded he was curious about the objection. He said he supported the amendment, but would like to reserve the right to change his vote on the Floor, based on what he learned about the objection.

Assemblyman Beers said he did not enjoy answering telemarketer telephone calls, but he referenced a key point in Mr. Hay's testimony that the money available to finance the bill would revert to the General Fund. He said, therefore, spending money on this project would be a "hit" to the General Fund. He added he was not certain that the bill could be enforced. He said for those reasons, and those outlined by Mr. Hettrick, he would be voting no.

Chairman Goldwater said he concurred with Mr. Beers' interpretation that Ms. Gibbons' motion included the references to the "1039" budget account. Also, he noted that Assemblywoman Giunchigliani, the Chairwoman of the Elections, Procedures, and Ethics Committee, had indicated to him that the two-thirds requirement held only to the Floor, not to Committee. He said he believed that was in the Committee rules as well.

Assemblyman Perkins said, in a positive sense, he had probably received as much correspondence on A.B. 232 as any legislation undertaken. He said he had seen what happened on the federal level. He noted that having spent his career in law enforcement, he had learned that the best predictor of future behavior was past behavior. He said he had no confidence that the federal government would assist in the current situation. He concluded that he believed it was very important to have the bill enacted.

Chairman Goldwater asked for other comments or questions. There were none. He then brought the Gibbons/Leslie motion to a vote.

THE MOTION CARRIED WITH MR. HETTRICK, MR. KNECHT AND
MR. BEERS VOTING NO. (Ms. Buckley and Mr. Brown were not
present for the vote.)

Chairman Goldwater said that concluded the Committee's work session. He then opened the hearing on A.B. 182.

Assembly Bill 182: Authorizes employer to enter into fair share agreement with labor organization. (BDR 53-1076)

Assemblywoman Ellen Koivisto, Clark County, District No. 14, said she introduced A.B. 182 at the request of two gentlemen who were ready to testify via videoconference from Las Vegas.

Thomas A. Morley, Legislative Advocate, representing the 4,000 members of Laborers' Union Local #872 in Las Vegas, said he supported A.B. 182. He said that for many years his membership had had to pull the weight of "freeloaders"

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WORK SESSION DOCUMENT

ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

FRIDAY, MARCH 14, 2003

The following measures will be considered for action during the work session. Possible amendments are noted; these were either suggested during testimony or submitted in writing and do not necessarily have the approval of the Committee, but are merely compiled here to assist the Committee in its deliberations.

• Assembly Bill 32 (Heard in Committee on 2/10/03—NACT)

Revises provisions governing payment and collection of certain taxes, fees and assessments relating to purchase of natural gas or energy, capacity or ancillary services under certain circumstances. (BDR 58-626)

The following amendments to A.B. 32 have been proposed:

1. Require "providers of discretionary natural gas service" to pay applicable taxes, fees, and assessments using language substantially similar to that in existing Sections 1 and 4 of the bill.
2. Require necessary records to be kept by the entities addressed by A.B. 32. Require such records to be provided to the Public Utilities Commission of Nevada (PUCN) and affected local governments. Require the PUCN and affected local governments to keep such records confidential if designated as confidential by the entity providing the records.
3. Expressly require that the applicable taxes, fees, and assessments not only be collected, but also be remitted to the appropriate governmental entity.
4. Revise Section 4(2) to require only the amount specified in Section 4(1)(b) to be set forth separately on an eligible customer's utility bill.

• **Assembly Bill 231 (Heard in Committee on 3/12/03—NACT)**

*Authorizes State Board of Podiatry to issue limited license to practice podiatry.
(BDR 54-997)*

No amendments to this bill have been proposed.

• **Assembly Bill 232 (Heard in Committee on 3/10/03—NACT)**

Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

Assemblyman Conklin proposed the following amendments:

1. Amend the bill to shift responsibilities for the administration of (a) the no-call list program and (b) the Registry Fund from the Attorney General to the Consumer's Advocate within the Bureau of Consumer Protection, Office of the Attorney General.
2. Amend the bill to provide consumers with an option to either (a) not receive calls unless an established business relationship exists or (b) not receive calls even if an established business relationship exists. Current exemptions in the bill (e.g., a charitable organization, a political party, or a candidate for public office) would still be applicable regardless of the option chosen by the consumer.

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-second Session
April 17, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 7:00 a.m., on Thursday, April 17, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Michael Schneider
Senator Maggie Carlton

COMMITTEE MEMBERS ABSENT:

Senator Joseph Neal (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus L. Conklin, Assembly District No. 37
Assemblywoman Ellen M. Koivisto, Assembly District No. 14
Assemblywoman Christina R. Giunchigliani, Assembly District No. 9

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary
Lynn Hendricks, Committee Secretary

Senate Committee on Commerce and Labor
April 17, 2003
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Lori T. Ashton, Lobbyist, Southwest Regional Council of Carpenters
Terry Johnson, Labor Commissioner, Office of Labor Commissioner, Department
of Business and Industry
James E. Sala, Lobbyist, Southwest Regional Council of Carpenters
Keith L. Lee, Lobbyist, State Board of Medical Examiners

CHAIRMAN TOWNSEND:

We will open the hearing on Assembly Bill (A.B.) 232.

ASSEMBLY BILL 232 (1st Reprint): Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

ASSEMBLYMAN MARCUS L. CONKLIN, ASSEMBLY DISTRICT NO. 37:

This bill is patterned after legislation enacted in Indiana. It requires the establishment of a State "do-not-call" list by the Bureau of Consumer Protection. The list will be available for purchase from the office of the consumer's advocate. Telephone solicitors calling numbers on this list for the sale of goods or services will be guilty of a deceptive trade practice. This does not include calls on behalf of charities, political parties, or candidates for public office. Unsolicited calls are also allowed if the recipient gave permission or requested information. They are also allowed if the call is intended to terminate an established business relationship or the recipient's account is delinquent. The consumer may allow businesses with which he has an existing business relationship to make calls. The list is to be published semiannually and purged every 3 years. The list was put under the jurisdiction of the attorney general's office to simplify enforcement.

LARRY L. SPITLER, LOBBYIST, AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP):

We support this bill. I have prepared a written statement to this effect (Exhibit C).

DORIS L. ALCORN, AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP):

We support this bill. The public has waited a long time for legislation to correct this problem. Information gathered by AARP suggests that telemarketers target the elderly, minorities, and people living in the poorer communities. Over half of those receiving unsolicited sales calls are over 50 years of age. There are

Senate Committee on Commerce and Labor
April 17, 2003
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"do-not-call" laws in 33 states. There are some 150,000 telemarketing firms making millions of calls daily, and approximately 10 percent of these calls come from fraudulent telemarketers. Congress estimates that the telemarketing industry costs American consumers more than \$40 billion annually.

SENATOR O'CONNELL:

Does that \$40 billion include enforcement costs?

MR. SPITLER:

No. This figure represents the cost borne by consumers as a result of both legitimate and fraudulent calls and includes items purchased. Telemarketers target people who have bought from telemarketers before. I have spoken with many elderly people who tell me they bought things they did not want because the solicitor was "nice."

SENATOR SCHNEIDER:

Is there a provision in this bill covering calls from businesses with whom you have an existing relationship but which you forgot to put on the acceptable list?

ASSEMBLYMAN CONKLIN:

Such businesses may only call if the consumer has agreed to accept calls from existing business relationships or has given the caller express permission to call.

SENATOR O'CONNELL:

Some of these calls originate from outside Nevada. How will the attorney general handle this situation?

ASSEMBLYMAN CONKLIN:

It will be incumbent on the consumer to inform the attorney general's office of calls that violate the statute. We are hoping for reciprocity with the 33 states with similar laws, particularly since so many telemarketing firms are based in Nevada.

CHAIRMAN TOWNSEND:

Have you seen the amendment proposed by the Nevada Association of Realtors?

Senate Committee on Commerce and Labor
April 17, 2003
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ASSEMBLYMAN CONKLIN:

I have read the proposed amendment but have not endorsed that amendment.

ANN WILKINSON, FIRST ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL:

The attorney general supports legislation such as A.B. 232. The attorney general's office has reexamined the fiscal note on this bill and will absorb the related costs associated with this legislation. We will do this by utilizing monies deposited in the registry fund and the attorney general's special fund, requiring more of existing staff, and seeking advice from the attorneys general from other states. Therefore the fiscal note will be removed.

SENATOR O'CONNELL:

Is this matter covered by the attorney general's office in the other 33 states?

Ms. WILKINSON:

In some states it is handled by the Public Utilities Commission, in some states by consumer affairs, and in some states by the attorney general's office. I do not know the exact breakdown. We have spoken to some attorneys general who enforce this matter, and they have agreed to assist us in implementation if this bill is passed.

BE-BE ADAMS, LOBBYIST, BARRICK GOLDSTRIKE MINES, INCORPORATED:

We support this bill on behalf of our employees. I have prepared a short statement (Exhibit D).

JOHN SANDE III, LOBBYIST, NEVADA BANKERS ASSOCIATION:

Enforcement of this bill will create many problems. Tracing and prosecuting telemarketers in other states will be very difficult and expensive. California has not implemented its telemarketing statute because of the cost of enforcement. It would be more cost-effective for the State to simply adopt federal "no-call" legislation. The attorney general's office could then focus its efforts on enforcing this federal legislation.

SENATOR CARLTON:

Can you tell us how the federal legislation compares to this?

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MR. SANDE:

I understand it allows preexisting business relationships. This is a crucial element to the success of this legislation, in my opinion.

SENATOR O'CONNELL:

Enforcement is of primary importance. We need to make sure there is uniformity of the way it is enforced among the 33 states. We also need to find out how it is being enforced in the states where it is not handled by the attorney general's office.

ROBERT A. OSTROVSKY, LOBBYIST, COX COMMUNICATIONS COMPANY:

I handed out a chart detailing the federal and state telemarketing laws currently in existence (Exhibit E). This packet also includes details about who administers the matter in each state and the text of the federal legislation.

We support this bill with the proviso that existing business relationships should be excluded. Legitimate businesses are helped when fraudulent telemarketers are put out of business. Keeping out existing business relationships does a disservice to Nevada businesses, particularly small businesses that cannot as easily absorb the cost of buying the list twice a year.

SENATOR CARLTON:

Small businesses are not the worst offenders. Some of the most offensive calls come from very large businesses such as credit card companies and telephone companies.

MR. OSTROVSKY:

The big companies buy lists of consumers with whom they have no preexisting business relationship. I agree that they should be cut off. On the other hand, if I have an existing mortgage with a bank, they should be able to tell me if they can get me a lower rate. This is a very difficult problem. I hope you are able to solve it. Like everyone else, I hate getting those calls.

MELODY L. LUETKEHANS, LOBBYIST, GENERAL COUNSEL, NEVADA ASSOCIATION OF REALTORS:

We basically support this bill, with the proposed amendment to sections 5 and 6 (Exhibit F). The amendment would define a solicitor as someone not licensed in

Nevada. It would also exempt transactions requiring a face-to-face meeting to conclude.

CURRY JAMESON, NEVADA ASSOCIATION OF REALTORS:

I support the amendment presented by Ms. Luetkehans. Licensed salespeople such as real estate agents use so-called cold telephone calls to develop a business relationship. I had a gentleman in my office who made 50 to 100 calls a day. Over the course of a year, I received 10 complaints from people who did not wish to be called; those people were immediately taken off our list. It is in our best interest not to antagonize the public.

GARY T. CANEPA, RE/MAX REALTY PROFESSIONALS:

This bill as written would adversely affect the consumer by not allowing real estate agents to effectively market their property. The amendment would correct this.

FRED L. HILLERBY, LOBBYIST, AMERICAN COUNCIL OF LIFE INSURERS:

I support the concept of the "no-call" list. I would add that national companies will find it very difficult to comply with 33 different sets of laws on this issue. We support the federal law so national businesses have one standard to follow.

DON NEIBAUER, NEVADA ASSOCIATION OF REALTORS:

My wife and I have made our living in Carson City for 30 years by contacting owners to represent them in the sale of their property. In that time we have spoken with thousands of owners. Fewer than 1 percent have asked us not to call again. We are professional, ethical, and courteous. The telephone is one of our most basic tools of business. To impede our use of the telephone as proposed in A.B. 232 is unfairly limiting to my family and thousands of other real estate agents, who rely on this method of contacting future clients and maintaining contact with past clients. Please do not relate our professional real estate services with the standard telemarketing businesses who use computer dialing, recorded calls, and high-pressure sales techniques.

MIKE WEST, CENTURY 21 MONEY WORLD:

I support the amendment proposed by Ms. Luetkehans. This bill as written restricts the free flow of information. Many people are intimidated by the complex and confusing world of home ownership and do not think they can own their own home until we call. In addition, every home sold generates

Senate Committee on Commerce and Labor
April 17, 2003
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thousands of dollars into the local economy. The housing market has an impact on many industries, including construction, mortgage banking, real estate, insurance, and household goods. Anything that hinders the opportunity to own a home and share in the American dream is a social injustice.

BOBBIE GANG, LOBBYIST, NEVADA WOMEN'S LOBBY:
We support this bill.

SENATOR O'CONNELL:
Did you consider a preexisting business list?

ASSEMBLYMAN CONKLIN:
Yes, we considered the pros and cons. I felt it would give an unfair advantage to the larger businesses by allowing them to share lists among departments of the same business. On the other hand, those who argue for a preexisting business list say their clients want to be called by them. It was for this reason we made the amendment to give consumers the option to allow calls from preexisting business relationships if they so desire.

SENATOR SCHNEIDER:
Does AARP support the amendment offered by Ms. Luetkehans?

MR. SPITLER:
No. We support a "do-not-call" list with the fewest possible exemptions.

CHAIRMAN TOWNSEND:
I will close the hearing on A.B. 232 and open the hearing on A.B. 182.

ASSEMBLY BILL 182: Authorizes employer to enter into fair share agreement with labor organization. (BDR 53-1076)

ASSEMBLYWOMAN ELLEN M. KOIVISTO, ASSEMBLY DISTRICT NO. 14:
This bill is a matter of fairness. It allows that workers who enjoy the benefits of a negotiated labor agreement should pay their fair share of the costs. It does not require them to join the union and has nothing to do with their right to work.

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TESTIMONY – AB 232, 1st Reprint
SENATE COMMITTEE ON COMMERCE AND LABOR
THURSDAY, APRIL 17, 2003

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. FOR THE RECORD MY NAME IS LARRY SPITLER AND I'M THE ASSOCIATE STATE DIRECTOR FOR AARP NEVADA.

AARP IS A NONPROFIT, NONPARTISAN MEMBERSHIP ORGANIZATION DEDICATED TO MAKING LIFE BETTER FOR PEOPLE 50 AND OVER. WE PROVIDE INFORMATION AND RESOURCES; ENGAGE IN LEGISLATIVE, REGULATORY AND LEGAL ADVOCACY; ASSIST MEMBERS IN SERVING THEIR COMMUNITITES; AND OFFER A WIDE RANGE OF UNIQUE BENEFITS, SPECIAL PRODUCTS AND SERVICES FOR OUR MEMBERS. WE HAVE OVER 258,000 MEMBERS IN NEVADA.

WITH ME TODAY, IN BOTH LAS VEGAS AND HERE, ARE SEVERAL AARP VOLUNTEERS IN THE AUDIENCE AND OTHER MEMBERS OF THE GENERAL PUBLIC WHO CARE A GREAT DEAL ABOUT DO NOT CALL LEGISLATION. IF I MAY, MR. CHAIRMAN, I'D LIKE TO ASK THEM TO STAND.

AND, WITH ME AT THE TABLE IS DORIS ALCORN, A LONG TIME AARP VOLUNTEER AND OUR ADVOCACY CONSUMER ISSUE LEAD. DORIS HAS WORKED ON THIS ISSUE FOR SOME TIME AND IS READY TO ADDRESS THE COMMITTEE CONCERNING AARP'S SUPPORT OF AB232. DORIS.

EXHIBIT C Committee on Commerce/Labor

Date: 4/17/03 Page 1 of 3

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS DORIS ALCORN AND I AM VERY HAPPY TO GIVE OUR SUPPORT TO AB 236. IT IS A LONG AWAITED BILL FOR OUR MEMBERSHIP AND THE PUBLIC IN GENERAL. WHILE TELEMARKETERS AFFECT US ALL, OVER HALF THE NUMBER OF PEOPLE TARGETED ARE 50 AND OLDER. WE BELIEVE CONSUMERS SHOULD HAVE THE RIGHT TO PRIVACY IN THEIR HOMES FROM UNSOLICITED CALLS AND OBVIOUSLY SO DO CITIZENS IN MANY OTHER STATES, SINCE OVER 33 STATES HAVE INSTITUTED REGISTRIES THAT PROHIBIT UNSOLICITATED CALLS.

WE THANK THE SPONSORS OF THIS BILL FOR HAVING INCLUDED MANY KEY OBJECTIVES THAT AARP OVERWHELMINGLY SUPPORTS.

MORE THAN 150,000 TELEMARKETING FIRMS MAKE UNSOLICITATED CALLS TO MILLIONS OF PEOPLE EVERY DAY. APPROXIMATELY 10 PERCENT OF THESE CALLS COME FROM FRADULENT TELEMARKETERS. CONGRESS ESTIMATES THAT THE PROFITABLE TELEMARKETING INDUSTRY COSTS AMERICAN CONSUMERS MORE THAN \$40 BILLION A YEAR.

FRADULENT TELEMARKETING CALLS TYPICALLY TARGET MINORITY AND LOWER-INCOME COMMUNITIES AND THE ELDERLY. IN ONE CASE THE FBI FOUND FRADULENT TELEMARKETEERS WERE DIRECTING NEARLY 80 PERCENT OF THEIR CALLS TOWARD OLDER CONSUMERS.

SURVEYS SHOW THAT CONSUMERS OVERWHEMINGLY FIND TELEMARKETING CALLS TO BE ANNOYING AND OBTRUSIVE, AND THAT THEY SUPPORT CREATION OF STATEWIDE "DO NOT CALL" LAWS.

IN NEVADA AARP ADVOCACY STAFF AND VOLUNTEERS ARE URGING PASSAGE OF "DO NOT CALL" LEGISLATION DURING THIS SESSION.

AARP IS WORKING TO ALLOW CONSUMERS THE OPTION TO LIST THEIR NAME ON A STATEWIDE "DO NOT CALL" LIST, WHICH TELEMARKETERS MUST PURCHASE BEFORE DOING BUSINESS IN THE STATE, WITH PENALTIES FOR NONCOMPLIANCE.

SPECIFICALLY AARP SUPPORTS LEGISLATION THAT WOULD:

- KEEP EXEMPTIONS TO A MINIMUM;
- INCLUDE THE OVERSIGHT AND ENFORCEMENT AUTHORITY OF THE STATE ATTORNEY GENERAL ;
- BE AVAILABLE AT LITTLE OR NO COST ;
- INCLUDE SIGNIFICANT PENALTIES FOR VIOLATIONS; AND,
- BE UPDATED FREQUENTLY

WE APPRECIATE THE OPPORTUNITY TO PRESENT OUR VIEWS AND HOPE THAT THE COMMITTEE LOOKS FAVORABLY ON THIS LEGISLATION.
THANK YOU.

Be-Be Div Comm Affairs BGM
Speaking in support of AB232

- > Barrick Goldstrike employs over 1600 men and women.
- Mining is a 365 day a
- > year, 24 hour a day operation. Due to the nature of our business, the
- > employees work long and odd shifts.
- >
- > The majority of the workforce works a 12-hour rotating shift. Miners work 4
 - > days on day shift,
 - > get 7 days off,
 - > work 4 days on the night shift and
 - > get 3 days off,
 - > work 3 day shifts,
 - > get 1 day off,
 - > go back to 3 night shifts,
 - > take 3 days off,
 - > and then start the entire schedule over.
- >
- > Add to the 12 hour shift, the one hour drive to and from the mine site - and
- > you can see how important our personal time is.
- >
- > In order to maintain a quality of life, and uninterrupted sleep for our
- > employees, Barrick is in support of Assembly bill 232.

Submitted by:
 Bob Ostrousky
 for Cox Communications
 RE: AB 232

FEDERAL AND STATE TELEMARKETING LAWS
 (Tracking do-not-call list requirements only)
 January 30, 2003

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
1	FTC	16 C.F.R. § 310.	X	X	X	Banks; common carriers engaged in common carrier activities.	Revised Telemarketing Sales Rule ("TSR") not only establishes national do-not-call ("DNC") list, but also further prohibits unauthorized billing, constrains abandonment of calls, and requires telemarketers to transmit caller ID information. EBR exemption applies to solicitors who have sold goods or services to customer within 18 months of solicitation.
2	FCC	47 C.F.R. §§ 1200, 1201.	X		X		FCC proceeding to amend the Telephone Consumer Protection Act ("TCPA") regulations to, among other things, create national DNC list, is currently ongoing.
3	Alabama	ALA. CODE §§ 8-19a-1 et seq.		X	X	<u>Cable TV operators</u> ; financial institutions; newspapers; periodicals; magazines; telephone and utility companies.	
	Alaska	ALASKA STAT. §§ 45.50.471 et seq.	LECs keep list		X	Exempt from telemarketing registration: <u>cable TV operators</u> ; financial institutions; newspapers; telephone and utility companies.	LECs are not only required to keep the do-not-call list of residential customers, but also place a "black dot" by their names in the telephone directory if they are on the list. EBR exemption applies to solicitors who have sold to customer within 24 months of solicitation.
	Arkansas	ARK. CODE ANN. §§ 4-95-101 to 4-95-108; 4-99-101 to 4-99-112.		X	X	Financial institutions; newspapers; telephone and utility companies regulated by state PSC.	EBR exemption applies to solicitors who have sold to customer within 36 months of solicitation.
	California	CAL. BUS. & PROF. CODE §§ 17511, 17590, 17591, 17592.		X	X	<u>Cable TV operators</u> ; newspapers; magazines; entities regulated by PSC.	DNC list requirements set to go into effect on April 1, 2003.

EXHIBIT E Committee on Commerce/Labor
 Date: 4/17/03 Page 1 of 9

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt			
7	Colorado	COLO. REV. STAT. §§ 6-1-901 <i>et seq.</i>		X	X		EBR exemption applies to solicitors who have sold to customer within 18 months of solicitation.
8	Connecticut	CONN. GEN. STAT. §§ 42-110a, 42-284 to 42-288.		X	X	Telephone companies for directory compiling purposes only.	
9	Florida	FLA. STAT. chs. 501.059, 501.601 to 501.626.		X	X	Newspapers.	
10	Georgia	GA. CODE ANN. §§ 10-5B-3, 10-1-370, 10-1-390, 46-5-27.		X	X		
11	Hawaii	HAW. REV. STAT. §§ 445-184, 468-1 to 468-5, 481P-1 to 481P-8.	X			Providers of telecommunications and cable TV operators; financial institutions.	
12	Idaho	IDAHO CODE §§ 48-1001 to 1010.		X	X	Sellers of newspapers, periodicals, books, musicals or video recordings; federally or state licensed entities; isolated transactions with no repeat pattern.	
13	Illinois	30 ILL. COMP. STAT. 105/5.570; 815 ILL. COMP. STAT. 413/1 to 413/25.	X	FTC	X*	Registration exemption for: financial institutions and telecommunications companies.	*The Illinois law states that compliance with Section 310.4(b) of the FTC's rules (which includes the EBR exemption) constitutes compliance with Illinois law. An existing customer is one who entered into a transaction with the seller within 18 months of the solicitation or opened a credit/discount/debit account which the customer has not terminated.
14	Indiana	IND. CODE § 24-4.7		X		Newspapers (but only if call is made by volunteer or employee of newspaper).	

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
15	Kansas	KAN. STAT. ANN. § 50-670.		DMA	X		Sellers must subscribe to the national do-not-call list maintained by the Direct Marketing Association ("DMA"). EBR exemption applies to solicitors who have sold product to customer within 36 months of solicitation.
16	Kentucky	KY. REV. STAT. ANN. §§ 367.46951 <i>et seq.</i>		X	X	Cable TV operators; newspapers; magazines; periodicals; merchants regulated by PSC; merchants regulated by FCC; publicly traded corporation.	
17	Louisiana	LA. REV. STAT. ANN. §§ 45:821 to 45:830, 45:844.		X	X		EBR includes not only current business relationship, but also a prior relationship that was terminated or lapsed within six months of the phone solicitation.
18	Maine	ME. REV. STAT. ANN. tit. 10, §§ 1498 to 1499; tit. 32, § 14716.		DMA		Sellers with a permanent place of business in Maine	Sellers must obtain, on a semiannual basis, updated national do-not-call list maintained by the DMA.
19	Massachusetts	MASS. GEN. LAWS ch. 159C.		X	X	Persons or telephone companies compiling information for compiling, preparing and/or distributing directories.	EBR exemption applies to solicitors who have sold to customer or maintained an account within 24 months of solicitation.
20	Minnesota	MINN. STAT. § 325E.		X	X		
21	Missouri	MO. REV. STAT. §§ 407.1095 to 407.1110.		X	X	Any entity over which a federal agency has regulatory authority, the entity is required to be licensed by such authority, and the entity is required by law or rule to develop and maintain DNC list.	

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt			
22	Nebraska	NEB. REV. STAT. §§ 86-223 to 86-257.	X		X		EBR means "a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration. . ."
23	New York	N.Y. GEN. BUS. LAW § 399-z.		X	X		
24	Oklahoma	OKLA. STAT. tit. 20, § 775B.1		X	X		EBR exemption applies to solicitors who have sold to customer within 24 months of solicitation.
25	Oregon	OR. REV. STAT. §§ 646.551 <i>et seq.</i>		X	X	<u>Cable TV operators;</u> newspapers; magazines; financial institutions; entity regulated by PUC.	
26	Pennsylvania	PA STAT. ANN. tit. 73, §§ 2242 <i>et seq.</i>		X	X	Any entity over which a federal or PA state agency has regulatory authority, the entity is required to be licensed by such authority, and the entity is acting within the scope of the business for which it is licensed; newspapers, magazines, and periodicals.	EBR exemption applies to solicitors who have sold to customer within 12 months of solicitation.
27	Rhode Island	R.I. CODE R. § 5-61	X		X	<u>Cable TV operators;</u> person or affiliate whose business is regulated by PUC; financial institutions.	With respect to maintenance of a DNC list, an entity is in compliance with Rhode Island law if it has established a DNC list that complies with either FCC or FTC regulations.

	State	Code Section	Do-not-call list		EBR Exemption	Other Important Exemptions	Notes
			Firm	Govt.			
28	Tennessee	TENN. CODE ANN. § 47-18-101 <i>et seq.</i>		X	X		With respect to maintenance of a DNC list, an entity is in compliance with Tennessee law if it has established a DNC list that complies with either FCC or FTC regulations. EBR exemption applies to entities soliciting "existing customers" or to customers with whom the soliciting entity has had a prior relationship within 12 months of solicitation.
29	Texas	TEX. BUS. & COM. CODE ANN. § 43.001 <i>et seq.</i>		X	X		
30	Vermont	VT. STAT. ANN. tit. 9, § 2464.		DMA	X	Any entity that is otherwise registered or licensed with, or regulated by, the Vermont Secretary of State, Public Service Board, Dept. of Banking, insurance, securities, health care administration, Dept. of Taxes, or financial institution.	EBR is not defined. Sellers must subscribe to the national do-not-call list maintained by the DMA.
31	Wisconsin	WIS STAT. ANN. § 100.20 <i>et seq.</i>		X	X		EBR exemption applies to solicitations of a customer who is a current client of the solicitor.
32	Wyoming	WYO. STAT. ANN. § 40-12-301 <i>et seq.</i>		DMA	X		Sellers must subscribe to the national do-not-call list maintained by the DMA.

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PROVIDED BY BCD

STATE "DO NOT CALL" LAWS

STATE	List Administered by:	Compliance enforced by:	Fees to Consumers:
ALABAMA	Public Service Commission	Public Service Commission	None
ALASKA	Local phone companies	Attorney General's Office	Varies by phone company
ARKANSAS	Attorney General's Office	Attorney General's Office	\$5 Initial fee; \$5 Renewal
CALIFORNIA	Attorney General's Office	Attorney General's Office	\$1 for three years
COLORADO	Public Utilities Commission	Attorney General's Office - Consumer Protection Unit	None
CONNECTICUT	Direct Marketing Association	Dept. of Consumer Protection	None
FLORIDA	Dept of Agriculture and Consumer Services	Dept of Agriculture and Consumer Services	\$10 initial fee; \$5 renewal
GEORGIA	Public Service Commission	Governor's Office of Consumer Affairs	\$5 for two years
IDAHO	Attorney General's Office	Attorney General's Office	\$10/three years; \$5 renewal
ILLINOIS	No State list - Telemarketer's maintain individual lists	Commerce Commission	\$5 enrollment fee; additional 5 years at no charge
INDIANA	Attorney General's Office	Attorney General's Office	None
KANSAS	Attorney General's Office	Attorney General's Office	None (listing expires 5 years)
KENTUCKY	Attorney General's Office	Attorney General's Office	None
LOUISIANA	Public Service Commission	Public Service Commission	\$5 for five years
MINNESOTA	Department of Commerce	Department of Commerce	None
MISSOURI	Attorney General's Office	Attorney General's Office	None
NEW YORK	Consumer Protection Board (outside vendor)	State Consumer Protection Board	None
OKLAHOMA	Attorney General's Office	Attorney General's Office	None
OREGON	Attorney General's Office (outside vendor)	Attorney General's Office/ Dept of Justice	\$6.50 initial fee; \$3 renewal
PENNSYLVANIA	Attorney General's Office	Attorney General's Office	None
TENNESSEE	Tennessee Regulatory Authority	Tennessee Regulatory Authority	None
TEXAS	Attorney General's Office and PUC (outside vendor)	Attorney General's Office - Consumer Protection Division and PUC	\$2.25 per phone number
VERMONT	Attorney General Consumer Protection Section (outside vendor - DMA)	Attorney General's Office - Consumer Protection Section	Determined by outside vendor
WISCONSIN	Bureau of Consumer Protection (outside vendor)	Bureau of Consumer Protection	None
WYOMING	No State list - use DMA list	Attorney General's Office - Consumer Protection Division and PUC	None

2/27/03 to President Bush

*One Hundred Eighth Congress
of the
United States of America
AT THE FIRST SESSION*

Begun and held at the City of Washington on Tuesday, the seventh day of January, two thousand and three

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a 'do-not-call' registry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Do-Not-Call Implementation Act'.

**SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL
REGISTRY FEES.**

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission--Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

SEC. 4. REPORTING REQUIREMENTS.

(a) **REPORT ON REGULATORY COORDINATION-** Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

- (1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;
- (2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and
- (3) proposals to remedy any such inconsistencies.

(b) **ANNUAL REPORT-** For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

- (1) an analysis of the effectiveness of the 'do-not-call' registry as a national registry;
- (2) the number of consumers who have placed their telephone numbers on the registry;
- (3) the number of persons paying fees for access to the registry and the amount of such fees;
- (4) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with similar registries established and maintained by the various States;
- (5) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and
- (6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission,

and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.),
in the case of the Federal Communications Commission.

Speaker of the House of Representatives.

Vice President of the United States

and President of the Senate.

END

Proposed Amendment to AB 232, First Reprint
Nevada Association of REALTORS
Contact: Hoyt Suppes, Executive Vice-President
775-829-5911, hoyt@nvar.org

Melody L. Williams

p. 3-4, sections 5 & 6

Sec. 5. 1. "Telephone solicitor" means a person who *is not licensed and regulated by a state agency as a condition of engaging in a profession or occupation in this state and who* makes

2-36 or causes another person or a machine to make an unsolicited
2-37 telephone call for the sale of goods or services.

2-38 2. As used in this section:

2-39 (a) "Device for automatic dialing and announcing" has the
2-40 meaning ascribed to it in NRS 597.812.

2-41 (b) "Machine" includes, without limitation, a device for
2-42 automatic dialing and announcing.

2-43 Sec. 6. 1. "Unsolicited telephone call for the sale of goods
2-44 or services" means an unsolicited telephone call, other than a
3-1 telephone call on behalf of a charitable organization, political
3-2 party or candidate for public office, to:

3-3 (a) Rent, lease, sell, exchange, promote or gift any good or
3-4 service;

3-5 (b) Solicit any act described in paragraph (a) *unless the act described in
paragraph (a) could not be concluded without a face-to-face meeting between
the caller and the person who is called;*

3-6 (c) Seek or obtain a donation or contribution of money or
3-7 anything else of value; or

3-8 (d) Seek or obtain information, including, without limitation,
3-9 any document, intended to be used to facilitate any act described
3-10 in paragraph (a), (b) or (c).

EXHIBIT F Committee on Commerce/Labor

Date: 4/17/03 Page 1 of 1



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**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-second Session
May 8, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:12 a.m. on Thursday, May 8, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Courtney Wise, Committee Policy Analyst
Kevin Powers, Committee Counsel
Makita Schichtel, Committee Secretary
Maryann Elorreaga, Committee Secretary

OTHERS PRESENT:

Lori T. Ashton, Lobbyist, Southwest Regional Council of Carpenters
Robert A. Ostrovsky, Lobbyist, Nevada Resort Association and City of Las Vegas
Susan Fisher, Lobbyist, Barrick Gold Corporation
John M. Vergiels, Lobbyist, Nevada Financial Services Association
Alfredo Alonso, Lobbyist, Money Tree, Incorporated
Michael Alonso, Lobbyist, Nevada State Board of Opticians
Samuel P. McMullen, Lobbyist

Senate Committee on Commerce and Labor
May 8, 2003
Page 6

THE MOTION PASSED UNANIMOUSLY.

Chairman Townsend said there would be a subcommittee meeting on A.B. 220 on Monday, May 19, 2003.

ASSEMBLY BILL 220 (1st Reprint): Makes various changes to provisions governing contractors. (BDR 54-502)

Chairman Townsend opened the work session on A.B. 232.

ASSEMBLY BILL 232 (1st Reprint): Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

Chairman Townsend said the bill would be amended as a whole using the language in Senate Bill (S.B.) 255.

SENATE BILL 255 (1st Reprint): Makes various changes relating to telecommunications. (BDR 52-133)

SENATOR NEAL MOVED TO AMEND AND DO PASS A.B. 232.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Townsend opened the work session on A.B. 280.

ASSEMBLY BILL 280 (1st Reprint): Revises certain provisions governing policies of insurance for motor vehicles. (BDR 57-1090)

SENATOR O'CONNELL MOVED TO INDEFINITELY POSTPONE A.B. 280.

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Second Session
May 9, 2003**

The Committee on Commerce and Labor was called to order at 1:01 p.m., on Friday, May 9, 2003. Chairman David Goldwater presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

Note: These minutes are compiled in the modified verbatim style. Bracketed material indicates language used to clarify and further describe testimony. Actions of the Committee are presented in the traditional legislative style.

COMMITTEE MEMBERS PRESENT:

Mr. David Goldwater, Chairman
Ms. Barbara Buckley, Vice Chairwoman
Mr. Morse Arberry Jr.
Mr. Bob Beers
Mrs. Dawn Gibbons
Ms. Chris Giunchigliani
Mr. Josh Griffin
Mr. Lynn Hettrick
Mr. Ron Knecht
Ms. Sheila Leslie
Mr. John Ocegüera
Mr. David Parks
Mr. Richard Perkins

COMMITTEE MEMBERS ABSENT:

Mr. David Brown

I will open the hearing on S.B. 255, with this proviso that for the vote we have heard a lot about "do call" and "do not call." This Committee has taken action and so we would like to hear, very briefly, what this bill is all about.

Senate Bill 255 (1st Reprint): Makes various changes relating to telecommunications. (BDR 52-133)

Gary M.G. Deacon, Legislative Advocate, Battle Born Research Institute:

[Introduced himself] Senator Townsend was tied up with Government Affairs and sends his apologies for not being here. The telemarketing industry operates on a guaranteed 2 percent response rate, which leaves 98 percent usually hanging up the telephones. The "do not call" list requires the person to call and follow up in writing to be placed on a list. This will eliminate a lot of seniors and others that do not want to be bothered in the first place. The cost of maintaining a "do call" list is a lot less than that of a "do not call" list. There is a lot of fiscal responsibility there. We all have received calls where you pick up the phone and nobody is there. An automated dialing device generates these calls and a computer determines whether it is a fax line, a computer line, or if picked up, a live body is at the other end. The picked-up call is routed to a bank of telemarketers and you receive a second unsolicited telephone call. This bill is a stand-alone bill. It is not dependent on the federal government. It is less cumbersome. You still have the option of putting your telephone number on a federal "do not call" list. This is a simple solution to a complex problem and will eliminate a majority of the unwanted calls. Pass a good law that doesn't inconvenience the 98 percent of Nevadans that don't want these unsolicited telephone calls. Short and brief.

Assemblywoman Buckley:

How many states have passed a "do call" legislation?

Gary M.G. Deacon:

I don't know the exact number.

Assemblywoman Buckley:

My understanding was that there weren't any ["do call" lists].

Gary M.G. Deacon:

I know it is in the Montana legislature right now.

Assemblywoman Buckley:

I think everybody shares the concern that we want the calls to stop for those that don't want to receive them. I think that is across the board. Everybody believes that is the right approach, but I think you also have to weigh in which

[version of the bill] is likely to get the job done with the least risk of litigation. "Do not call" has been challenged constitutionally and upheld, whereas "do call" has not. I guess my concern with this is that this might be held unconstitutional and then people would receive no protection whatsoever, whereas "do not call" was tried and true. I understand we had our own legal counsel look at it and say we have a shot, but there is no precedent. Any comments on that?

Gary M.G. Deacon:

The merit of the issue of constitutionality of the "do call" versus the "do not call" is basically the same argument. It still comes down to side issues of life, liberty, and the pursuit of happiness. As far as the constitutionality of First Amendment [rights], there are challenges there, yes. The grounds for the challenges would be based on the same thing as the "do not call" list. It really is not too much different.

Assemblywoman Buckley:

Except, one has been tested and one has not.

Gary M.G. Deacon:

I understand that but the arguments are the same.

Assemblywoman Buckley:

They are two different mechanisms, but I won't argue the point. Could you talk about what exceptions are in this bill? Are there any?

Gary M.G. Deacon:

There are, with pre-existing business relationships.

Assemblywoman Buckley:

Describe what those might be. What type of pre-existing business relationships?

Gary M.G. Deacon:

Pre-existing relationships would be, for an example, you have bought a Ford automobile and there is a recall. Because you are a client of theirs, they have the right to call you to let you know. Exceptions of that nature. Exceptions for law enforcement, for example, to notify you that your house is on fire or that there is a gas leak or something like that. Utilities should be exempt. A pre-existing business relationship is one that is determined by the need.

Assemblywoman Buckley:

I didn't think either of the bills that we are considering have anything to do with the police calling or fire calling. I think it is just for sales calls.

Gary M.G. Deacon:

I do believe that when this was in subcommittee over in the Senate side, the point was brought out that, under the provisions of the bill as it was written, there were no provisions for emergency calls and things of that nature.

Assemblywoman Buckley:

That has been fixed?

Gary M. G. Deacon:

That has been fixed, because there are law enforcement issues and homeland security issues, where the calls have to be made.

Assemblywoman Buckley:

Can you focus then on what is still allowed under this version for telemarketing calls? If, using the Ford automobile example, if they want to call you to get you to buy another car, when you are happy with your car, or if they have this subsidiary, and they sell insurance, can they still do these telemarketing calls under this bill?

Gary M.G. Deacon:

I can't answer that, right now. I really don't know.

Chairman Goldwater:

It was brought to my attention that the bill that we passed, Mr. Conklin's A.B. 232, was amended on the Senate side. How was that amended?

Gary M.G. Deacon:

Once again, I would have to defer to the Chair. I am not familiar with that.

Chairman Goldwater:

Being mindful that we have heard all these issues before, we would love to hear from you.

Ann Wilkinson, Nevada Assistant Attorney General:

[Introduced herself] Keeping those thoughts in mind, I would like to just let you know that I am here today primarily to indicate that the Attorney General's office supports enacting legislation such as S.B. 255 to protect Nevada citizens from intrusive and unwelcome phone solicitations and to help facilitate the passage of a telemarketing solicitation legislation this session. The Attorney General's office has pulled the fiscal notes, both on S. B. 255 and A.B. 232 and, although we recognize that this will result in a stretch of our resources, we also recognize that we must take on the challenge of absorbing the increased

workload and costs associated with enforcing whichever version of this legislation is passed. We believe that Nevada's citizens deserve legislation that shields them from disruptive and unsolicited and potentially fraudulent telemarketing calls. We stand ready to enforce whatever legislation is ultimately passed by the Legislature.

Chairman Goldwater:

We are so pleased to see the Attorney General finally in support.

Assemblywoman Buckley:

Has your office evaluated both bills and do you have an opinion on which one would be a legally riskier course?

Ann Wilkinson:

To follow up on your prior question, the "do not call" legislation has been tried and tested in the courts and to our knowledge the "do call" legislation has not been tested. Also, it is my understanding that the "do call" legislation that was pending in Montana is no longer being considered by that legislature.

Assemblywoman Buckley:

Do you have any information as to why?

Ann Wilkinson:

I do not. That was just based on research I was able to check on the Internet.

Assemblywoman Buckley:

The other bill that was passed out, we did not have any exceptions in there to allow calls if there was some distant relationship or companies had a number of affiliates, because we think that people don't want the calls. If they want to get them, they can allow the person to get them. This has, I think, exceptions which would allow the business relationship calls. Does your office have an opinion as to whether you would like to limit the calls or allow exceptions?

Ann Wilkinson:

We actually believe that is a policy decision for the Legislature to make, and we stand ready to enforce whatever exemptions are put in place.

Melody Luetkehans:

We have presented a proposed amendment (Exhibit G) to this bill. It would be modifying the definitions of telemarketing, which is Section 10, and modifying some of the definitions of a telemarketing call, which is Section 11. Basically, of the approximately 35 states that have passed this type of legislation, in regards to telephone registries, our counterparts, the different associations of

realtors, have had the ability to have those legislatures acknowledge that at times there is a difference between general telemarketing calls and the kind of calling that real estate licensees do. The language you have before you echoes the Texas language. I could provide you with copies of the actual language in Texas, should you so choose. What this says is that, if a person has been licensed by a state agency in the state of Nevada and is regulated by that agency, and the transaction that a call is made for cannot be concluded without a face-to-face transaction, then the person making the call does not become a telemarketer and the call does not fall within the definition of a telemarketing call.

Chairman Goldwater:

Thank you, Ms. Luetkehans. Thelma, recognizing we have been through this?

Thelma Clark, Legislative Advocate, AARP:

Yes. All I'm going to say is that AARP [American Association of Retired Persons] is in support of the original bill, the "do not call" bill, A.B. 232.

[A letter from Chris MacKenzie (Exhibit H) was distributed to the Committee members, but he did not testify.]

Assemblyman Ocegueda:

I think that we should recognize the work of our colleague in the Assembly and what he did on this. I think that he did a yeoman's job in bringing all the people together and really worked hard on this. Now that we have heard from the Attorney General, it just seems clear to me that we should go with the "do not call" list. I would recommend that this Committee take a motion to replace this bill, S.B. 255, with A.B. 232.

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS
S.B. 255.

Assemblywoman Buckley:

I just wanted to say that I applaud Senator Townsend for wanting to get so tough that we would have a "do call" registry. I just don't think it would work constitutionally, and I think it is putting all of our legislative efforts at risk. I don't like the exceptions in it either. I liked our approach [with A.B. 232] where we said let the consumer decide whether they want to be called. Letting someone who had a business relationship call would mean someone who sold me a car 15 years ago can call me for another car when I don't need one; their insurance product, when I don't need one. Those are the calls we are trying to get out of people's houses. I am pleased that it seems that the entire

Legislature wants these calls to stop. I think going with a "do not call" registry that has been tried and proven will really help the people we represent.

Chairman Goldwater:

I have just been informed by our Committee Counsel that A.B. 232 was amended [in the Senate] by deleting the entire bill and having the existing provisions of S.B. 255 inserted and that version will be on second reading on Monday.

Assemblyman Hettrick:

I probably agree with the comments of the Majority Leader, but in fact, had opposed A.B. 232 on the grounds that we did not need it because the federal government was doing the same thing. I don't disagree with the motion to amend, at this time. I will vote no, simply because I don't want to do an amend and do pass on A.B. 232. I am backing this bill.

[There was no further discussion.]

ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.

THE MOTION CARRIED. ASSEMBLYMEN BEERS, HETTRICK AND KNECHT VOTED NO. (Mr. Brown was absent.)

[There was no further business to come before the Committee.]

**MINUTES OF THE FLOOR MEETING
OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-second Session
May 21, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 2:37 p.m., on Wednesday, May 21, 2003, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary

CHAIRMAN TOWNSEND:

I have called a meeting on the Senate Floor for the purpose of voting on the following bills:

SENATE BILL 24 (2nd Reprint): Makes various changes relating to certain health care records. (BDR 54-178)

SENATOR CARLTON MOVED TO CONCUR WITH AMENDMENT NO. 620 TO S.B. 24.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senate Committee on Commerce and Labor
May 21, 2003
Page 2

SENATE BILL 183 (2nd Reprint): Requires certain policies of health insurance and health care plans to provide coverage for colorectal cancer screening under certain circumstances. (BDR 57-726)

SENATOR SHAFFER MOVED TO CONCUR WITH AMENDMENT NO. 564 TO S.B. 183.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

ASSEMBLY BILL 232 (2nd Reprint): Makes various changes relating to telecommunications. (BDR 52-1073)

SENATOR NEAL MOVED TO NOT RECEDE FROM AMENDMENT NO. 667 TO A.B. 232.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

**MINUTES OF THE FLOOR MEETING
OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-second Session
May 24, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 12:45 p.m., on Saturday, May 24, 2003, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Olivia Lodato, Committee Secretary

CHAIRMAN TOWNSEND:

The meeting is now open. I call for a motion to recede or not recede from Amendment No. 607 to Assembly Bill (A.B.) 81.

ASSEMBLY BILL 81 (2nd Reprint): Revises remedies available in certain actions relating to intellectual property. (BDR 52-366)

SENATOR NEAL MOVED TO NOT RECEDE FROM AMENDMENT NO. 607 TO A.B. 81.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senate Committee on Commerce and Labor
May 24, 2003
Page 2

CHAIRMAN TOWNSEND:

I call for a motion to recede or not recede from Amendment No. 667 to A.B. 232.

ASSEMBLY BILL 232 (2nd Reprint): Makes various changes relating to telecommunications. (BDR 52-1073)

SENATOR NEAL MOVED TO NOT RECEDE FROM AMENDMENT NO. 667 TO A.B. 232.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIRMAN TOWNSEND:

I call for a motion to recede or not recede from Amendment No. 605 to A.B. 498.

ASSEMBLY BILL 498 (2nd Reprint): Makes various changes to provisions governing manufactured home parks. (BDR 10-1296)

SENATOR HARDY MOVED TO NOT RECEDE FROM AMENDMENT NO. 605 TO A.B. 498.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIRMAN TOWNSEND:

I call for a motion to recede or not recede from Amendment No. 606 to A.B. 32.

ASSEMBLY BILL 32 (2nd Reprint): Revises certain provisions governing public utilities, alternative sellers, providers of discretionary natural gas service, providers of new electric resources and eligible customers. (BDR 58-626)

FLOOR ACTIONS

AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*
([HTTP://WWW.LEG.STATE.NV.US/SESSION/72ND2003/JOURNAL/INDEX.CFM](http://www.leg.state.nv.us/session/72nd2003/journal/index.cfm)), WHICH ARE NOT
THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE
OFFICIAL RECORD.

Floor Actions

March 17, 2003 *Assembly Daily Journal*

Excerpt:

Assembly Bill No. 232.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 37.

Amend sec. 7, page 4, line 42, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Amend sec. 7, page 5, line 13, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Amend sec. 7, page 5, line 21, by deleting “Attorney General.” and inserting “Consumer’s Advocate.”.

Amend sec. 7, page 5, line 22, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Amend sec. 7, page 5, lines 33 and 34, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Amend sec. 7, page 5, line 35, by deleting “Attorney General.” and inserting “Consumer’s Advocate.”.

Amend sec. 7, page 5, line 36, after “4.” by inserting: “If a person requests that his telephone number be included in the registry, the person must indicate whether he authorizes callers with whom he has an established business relationship, and affiliates of those callers, to make unsolicited sales calls for the sale of goods or services to him despite the inclusion of his telephone number in the registry. If the person does not indicate his choice with regard to such authorization, he shall be deemed to have chosen to authorize such calls. The person may request to change his choice with regard to such authorization using any of the procedures with which he may request to include or maintain his telephone number in the registry. The person’s choice with regard to such authorization must be included in the registry and in every list of the telephone numbers in the registry published while that choice is in effect. 5. In publishing a list of the telephone numbers in the registry, the Consumer’s Advocate shall publish the list with two distinct portions. One portion must include the telephone number of each person who has chosen to authorize callers with whom the person has an established business relationship, and affiliates of those callers, to make unsolicited sales calls for the sale of goods or services to him despite the inclusion of his telephone number in the registry. The other portion must include the telephone number of each person who has chosen not to authorize callers with whom the person has an established business relationship, and affiliates of those callers, to make unsolicited sales calls for the sale of goods or services to him.

6.”.

Amend sec. 7, page 5, line 38, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Floor Actions

Amend sec. 8, page 5, line 39, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 8, page 6, lines 11 and 17, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 9, page 6, line 27, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 10, page 6, line 32, by deleting “*Attorney General.*” and inserting “*Consumer’s Advocate.*”.

Amend sec. 11, page 6, line 35, by deleting “*A*” and inserting: “*Except as otherwise provided in this section, a*”.

Amend sec. 11, page 6, line 38, after “*registry.*” by inserting: “*A telephone solicitor may make an unsolicited telephone call for the sale of goods or services to a telephone number in the currently effective version of the list if:*

(a) *The telephone solicitor, or an affiliate of the telephone solicitor, has an established business relationship with the person whose telephone number is called; and*

(b) *The list indicates that the person whose telephone number is called chose to authorize callers with whom he has an established business relationship, and affiliates of those callers, to make unsolicited sales calls for the sale of goods or services to him despite the inclusion of his telephone number in the registry.*”.

Amend sec. 12, page 7, lines 4 and 5, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 12, page 7, lines 18 and 19, by deleting “*Attorney General,*” and inserting “*Consumer’s Advocate,*”.

Amend sec. 12, page 7, line 23, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 13, page 7, lines 28, 31, 32, 39 and 43, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 13, page 8, lines 1, 7, 24, 33 and 36, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 13, page 8, line 39, by deleting “*Attorney General.*” and inserting “*Consumer’s Advocate.*”.

Amend sec. 13, page 8, line 41, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 13, page 8, line 43, by deleting “*Attorney General;*” and inserting “*Consumer’s Advocate;*”.

Amend sec. 13, page 9, line 5, by deleting “*Attorney General,*” and inserting “*Consumer’s Advocate,*”.

Amend sec. 14, page 9, line 10, after “*inclusive.*” by inserting: “*For the purposes of enforcing the provisions of sections 3 to 16, inclusive, of this act, the Consumer’s Advocate may exercise the authority of the Attorney General pursuant to NRS 598.0903 to 598.0999, inclusive.*”.

Amend sec. 15, page 9, line 13, by deleting “*Attorney General.*” and inserting “*Consumer’s Advocate.*”.

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Amend sec. 15, page 9, lines 14, 22 and 29, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend sec. 16, page 9, line 34, by deleting “*Attorney General*” and inserting “*Consumer’s Advocate*”.

Amend the bill as a whole by renumbering sec. 17 as sec. 19 and adding new sections designated sections 17 and 18, following sec. 16, to read as follows:

“Sec. 17. NRS 228.300 is hereby amended to read as follows:

228.300 As used in NRS 228.300 to 228.390, inclusive, *and sections 3 to 16, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 228.302 to 228.308, inclusive, have the meanings ascribed to them in those sections.

Sec. 18. The State Treasurer shall, upon passage and approval of this act, transfer \$200,000:

1. From the account within the Attorney General’s Special Fund for money deposited pursuant to subsection 1 of NRS 598A.260; and

2. To the Registry Fund created by section 15 of this act.”.

Amend sec. 17, page 9, line 38, by deleting “regulations” and inserting: “regulations, transferring money pursuant to section 18 of this act,”.

Amend sec. 17, page 9, lines 40 and 41, by deleting “Attorney General” and inserting “Consumer’s Advocate”.

Amend the title of the bill to read as follows:

“AN ACT relating to telephone solicitation; requiring the establishment of a registry of certain telephone numbers; requiring the publication of a list of certain telephone numbers; prohibiting a telephone solicitor from making an unsolicited telephone call for the sale of goods or services to a telephone number included in the currently effective version of the list under certain circumstances; providing that the making of an unsolicited telephone call for the sale of goods and services is a deceptive trade practice under certain circumstances; creating the Registry Fund as a special revenue fund in the State Treasury; providing for money to be transferred to the Registry Fund; and providing other matters properly relating thereto.”.

Assemblyman Goldwater moved the adoption of the amendment.

Remarks by Assemblyman Goldwater.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

March 18, 2003 *Assembly Daily Journal*

Excerpt:

Assembly Bill No. 232.

Bill read third time.

The following amendment was proposed by Assemblyman Hettrick:

Amendment No. 64.

Floor Actions

Amend sec. 6, pages 3 and 4, by deleting line 44 on page 3 and lines 1 and 2 on page 4, and inserting: “or services” means an unsolicited telephone call to:”.

Amend sec. 6, page 4, line 11, after “2.” by inserting: “The term does not include:

(a) A telephone call on behalf of a charitable organization, political party or candidate for public office; or

(b) A telephone call to a person by a caller if the caller:

(1) Not earlier than 18 months before the telephone call:

(I) Rented, leased or sold a good or service to the person; or

(II) Engaged in a financial transaction with the person;

(2) Has complied with all applicable state and federal requirements for maintaining a record of each person who has requested that the caller not make unsolicited telephone calls for the sale of goods or services to the person; and

(3) Provides annually to each person with whom the caller has an established business relationship a separate written statement which:

(I) States that such a person may request that the caller not make unsolicited telephone calls for the sale of goods or services to the person;

(II) States that the separate written statement is being provided pursuant to the provisions of this paragraph;

(III) States that the person may obtain information concerning the provisions of this paragraph by contacting the Consumer’s Advocate or the caller; and

(IV) Provides the mailing address, telephone number and address for electronic mail for the Consumer’s Advocate and the caller.

3.”.

Amend sec. 6, page 4, line 35, by deleting “3.” and inserting “4.”.

Amend sec. 6, page 4, line 38, after “made;” by inserting “or”.

Amend sec. 6, page 4, by deleting lines 39 through 41.

Amend sec. 6, page 4, line 42, by deleting “(c)” and inserting “(b)”.

Assemblyman Hettrick moved the adoption of the amendment.

Remarks by Assemblymen Hettrick, Conklin and Christensen.

Amendment lost on a division of the House.

Remarks by Assemblymen Conklin, Goldwater, Brown, Beers and Knecht.

Assemblywoman Buckley rose to a point of order regarding the content of remarks.

Mr. Speaker ruled that there was improper content in remarks.

Roll call on Assembly Bill No. 232:

YEAS—37.

NAYS—Carpenter, Christensen, Hettrick, Marvel—4.

EXCUSED—Angle.

Assembly Bill No. 232 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

May 12, 2003 *Senate Daily Journal*

Excerpt:

Floor Actions

Assembly Bill No. 232.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:
Amendment No. 667.

Amend the bill as a whole by deleting sections 1 through 19 and adding new sections designated sections 1 through 19 and the text of repealed sections, following the enacting clause, to read as follows:

“Section 1. NRS 597.812 is hereby amended to read as follows:

597.812 As used in NRS 597.812 to 597.818, inclusive, “device for automatic dialing and announcing” means any equipment that:

1. Incorporates a storage capability of telephone numbers to be called and utilizes a random or sequential number generator producing telephone numbers to be called; and
2. Is used exclusively, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called . ~~{to solicit a person at the telephone number called to purchase goods or services.}~~

Sec. 2. NRS 597.814 is hereby amended to read as follows:

597.814 1. ~~{Except as otherwise provided in subsection 3 and NRS 597.816, a}~~ A person shall not use a device for automatic dialing and announcing to disseminate a prerecorded message in ~~{a}~~ *an unsolicited* telephone call unless ~~{, before}~~ :

(a) *Before* the message is disseminated, a ~~{recorded or}~~ *person, speaking in his unrecorded natural voice* ~~{:~~

~~{a} Informs}~~ , *informs* the person who answers the telephone call ~~{of the nature of the call, including, without limitation, the fact}~~ that a device for automatic dialing and announcing will be used to disseminate the message if the person who answers the call remains on the line; ~~{and~~

~~{b} Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, being represented by the caller.}~~

(b) *A person associated with the telephone number dialed has given his express consent to receive prerecorded messages from the person using the device for automatic dialing and announcing;*

(c) *The person using the device for automatic dialing and announcing is using the do-call registry created pursuant to section 13 of this act and the telephone number called is included in the current do-call registry; or*

(d) *The call is initiated by a state or local governmental agency, or a private entity operating under contract with and at the direction of such an agency, to provide:*

- (1) *Information relating to public safety;*
- (2) *Information relating to a police or fire emergency; or*
- (3) *A warning of an impending or threatening emergency.*

2. A person shall not operate a device for automatic dialing and announcing to place:

(a) A call that is received by a telephone located in this state during the period between ~~{9}~~ 8 p.m. and 9 a.m.; ~~{or}~~

(b) A call-back or second call to the same telephone number, if a person at the telephone number terminated the original call ~~{:~~

Floor Actions

~~3.—This section does not prohibit the use of a device for automatic dialing and announcing to dial the number of and play a recorded message to a person with whom the person using the device or another person affiliated with the person using the device has a preexisting business relationship.]; or~~

(c) A call that does not provide to the person who answers the telephone call the name, address and telephone number of the caller or of the business or organization, if any, represented by the caller.

Sec. 3. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 17, inclusive, of this act.

Sec. 4. *As used in sections 4 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4.5 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4.5. *“Charitable organization” means an organization which:*

1. The Secretary of the Treasury has determined is an exempt organization pursuant to the provisions of section 501(c) of the Internal Revenue Code; and

2. Holds a current certificate of organization or is currently qualified by the Secretary of State to do business in this state.

Sec. 5. *“Device for automatic dialing” means any equipment that:*

1. Incorporates a storage capability of telephone numbers to be called and utilizes a random or sequential number generator to produce telephone numbers to be called;

2. Dials such a telephone number; and

3. Transfers the call to a live operator if a natural person at the telephone number called accepts the call.

Sec. 6. *“Device for automatic dialing and announcing” has the meaning ascribed to it in NRS 597.812.*

Sec. 7. *“Do-call registry” means the database composed of the telephone numbers of subscribers who have manifested their wish to receive telemarketing calls. The term includes, without limitation, a list produced from the database, regardless of the format in which the list is produced.*

Sec. 8. *“Noncommercial telephone service” means telephone service maintained by a subscriber primarily for personal, rather than business, purposes. The term includes, without limitation, such service to:*

1. The residence of a subscriber;

2. A mobile telephone, including a cellular telephone or other portable device; and

3. A pager, beeper or other telecommunications device.

Sec. 9. *“Subscriber” means a natural person who subscribes to noncommercial telephone service in this state.*

Sec. 10. *“Telemarketer” means a person who makes or causes another person to make a telemarketing call. The term includes, without limitation, a person registered with the Consumer Affairs Division of the Department of Business and Industry as a seller or salesman pursuant to chapter 599B of NRS.*

Sec. 11. *“Telemarketing call” means a telephone call, including, without limitation, a call dialed by a device for automatic dialing or device for automatic dialing and announcing, the primary purpose of which is to solicit a person who accepts the call to*

Floor Actions

purchase, lease, invest in or otherwise acquire goods or services. The term does not include a telephone call made on behalf of a charitable organization, the primary purpose of which is to solicit a person who accepts the call to donate money, goods or services to the charitable organization.

Sec. 12. A subscriber who wishes to receive telemarketing calls may request that his telephone number be included in the do-call registry by complying with the requirements established by the Attorney General pursuant to section 13 of this act.

Sec. 13. The Attorney General shall:

- 1. Establish and operate a do-call registry.*
- 2. Adopt regulations to carry out the provisions of sections 4 to 17, inclusive, of this act.*
- 3. Publicize the existence of the do-call registry.*
- 4. Impose a fee, not to exceed \$250 a year, to be paid by a telemarketer to obtain access to the do-call registry or any list produced from the do-call registry.*

Sec. 14. 1. A telemarketer shall not make or cause another person to make an unsolicited telemarketing call to a telephone number of a subscriber unless:

- (a) That telephone number is included in the current do-call registry; or*
- (b) The telemarketer is complying with the provisions of section 15 of this act.*

2. A telemarketer that violates this section is liable for a civil penalty of not more than:

- (a) For a first offense, \$500;*
- (b) For a second offense, \$2,500; and*
- (c) For a third and each subsequent offense, \$5,000.*

3. The penalty may be recovered by civil action on a complaint brought by the Attorney General.

Sec. 15. 1. The provisions of section 14 of this act do not prohibit a telemarketer from making or causing another person to make an unsolicited telemarketing call to a telephone number of a subscriber if:

- (a) There is a preexisting business relationship between the telemarketer and the subscriber; and*
- (b) The telemarketer complies with the provisions of this section.*

2. Before a telemarketer may make or cause another person to make an unsolicited telemarketing call based on a preexisting business relationship, the telemarketer must establish and maintain an internal do-not-call registry that complies with federal and state law and regulations. The internal do-not-call registry must:

- (a) Include, without limitation, a list of the telephone numbers of any subscriber who has requested that the telemarketer not make or cause another person to make an unsolicited telemarketing call to a telephone number of the subscriber; and*
- (b) Upon request, be provided by the telemarketer to the Attorney General.*

3. In addition to the requirements set forth in subsection 2, at least once each year, the telemarketer shall provide written notice to each subscriber with whom the telemarketer has a preexisting business relationship. The written notice must:

- (a) Inform the subscriber that the telemarketer is providing the notice pursuant to state law;*

Floor Actions

(b) Explain to the subscriber that the subscriber may elect to be placed on the internal do-not-call list of the telemarketer and specify the procedures for making such an election; and

(c) Explain to the subscriber that the subscriber may contact the customer service department of the telemarketer or the Attorney General to obtain further information concerning the provisions of this section and provide the current address, telephone number and electronic mail address of the customer service department of the telemarketer and the Attorney General.

4. As used in this section, "preexisting business relationship" means a relationship between a telemarketer and a subscriber that is based on:

(a) The subscriber's purchase, rental or lease of goods or services from the telemarketer; or

(b) Any other financial transaction between the subscriber and the telemarketer, that occurs within the 18 months immediately preceding the date of the telemarketing call.

Sec. 16. All fees, civil penalties and any other money collected pursuant to the provisions of sections 4 to 17, inclusive, of this act must be deposited in the State General Fund and may only be used to offset the costs of administering and enforcing those provisions.

Sec. 17. 1. A provider of telephone service shall inform a subscriber of the provisions of sections 4 to 17, inclusive, of this act:

(a) As part of the process of subscribing to telephone service;

(b) By a statement distributed, not less than annually, as an insert in a billing statement sent to the subscriber; or

(c) In any other manner authorized by the Attorney General.

2. A provider of local telephone directories, including, without limitation, a provider of telephone service, shall include in a conspicuous place in each such directory a description of the provisions of sections 4 to 17, inclusive, of this act.

3. As used in this section, "provider of telephone service" includes, without limitation:

(a) A public utility furnishing telephone service.

(b) A provider of cellular or other service to a telephone that is installed in a vehicle or is otherwise portable.

Sec. 18. NRS 597.816 and 598.0916 are hereby repealed.

Sec. 19. 1. This section and sections 3 to 13, inclusive, 16 and 17 of this act become effective upon passage and approval for the purpose of adopting regulations and on January 1, 2004, for all other purposes.

2. Sections 1, 2, 14, 15 and 18 of this act become effective upon passage and approval for the purpose of adopting regulations and on February 1, 2004, for all other purposes.

TEXT OF REPEALED SECTION

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597.816 Additional exceptions to prohibition of use. The provisions of NRS 597.814 do not prohibit the use of a device for automatic dialing and announcing by any person exclusively on behalf of:

1. A school or school district to contact the parents or guardians of a pupil regarding the attendance of the pupil or regarding other business of the school or school district.
2. A nonprofit organization.
3. A company that provides cable television services to contact its customers regarding a previously arranged installation of such services at the premises of the customer.
4. A public utility to contact its customers regarding a previously arranged installation of utility services at the premises of the customer.
5. A facility that processes or stores petroleum, volatile petroleum products, natural gas, liquefied petroleum gas, combustible chemicals, explosives, high-level radioactive waste or other dangerous substances to advise local residents, public service agencies and news media of an actual or potential life-threatening emergency.
6. A state or local governmental agency, or a private entity operating under contract with and at the direction of such an agency, to provide:
 - (a) Information relating to public safety;
 - (b) Information relating to a police or fire emergency; or
 - (c) A warning of an impending or threatening emergency.
7. A candidate for public office, committee advocating the passage or defeat of a ballot question, political party, committee sponsored by a political party or a committee for political action.

598.0916 “Deceptive trade practice” defined. A person engages in a “deceptive trade practice” when, in the course of his business or occupation, he disseminates an unsolicited prerecorded message to solicit a person to purchase goods or services by telephone and he does not have a preexisting business relationship with the person being called unless a recorded or unrecorded natural voice:

1. Informs the person who answers the telephone call of the nature of the call; and
2. Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, represented by the caller.”.

Amend the title of the bill to read as follows:

“AN ACT relating to telecommunications; prohibiting a person from using a device for automatic dialing and announcing to disseminate a prerecorded message unless the person called consents; requiring the establishment and operation of a do-call registry composed of the telephone numbers of subscribers of noncommercial telephone service who wish to receive telemarketing calls; prohibiting a telemarketer under certain circumstances from making an unsolicited telemarketing call to a telephone number unless that number is included in the current do-call registry; providing exceptions; requiring a provider of telephone service or local telephone directories to publicize the do-call registry; providing penalties; and providing other matters properly relating thereto.”.

Amend the summary of the bill to read as follows:

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“SUMMARY—Makes various changes relating to telecommunications. (BDR 52-133)”.

Senator Townsend moved the adoption of the amendment.

Remarks by Senator Townsend.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

May 14, 2003 *Senate Daily Journal*

Excerpt:

Assembly Bill No. 232.

Bill read third time.

Roll call on Assembly Bill No. 232:

YEAS—20.

NAYS—None.

EXCUSED—Townsend.

Assembly Bill No. 232 having received a two-thirds majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

June 2, 2003 *Assembly Daily Journal*

Excerpt:

Mr. Speaker:

The first Conference Committee concerning Assembly Bill No. 232, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that the amendment(s) of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. CA17, which is attached to and hereby made a part of this report.

DAVID GOLDWATER
MARCUS CONKLIN
JOSH GRIFFIN
Assembly Conference Committee

WARREN B. HARDY
ANN O'CONNELL
MAGGIE CARLTON
Senate Conference Committee

Conference Amendment No. CA17.

Amend the bill as a whole by deleting sections 1 through 19 and the text of repealed sections and adding new sections designated sections 1 through 29, following the enacting clause, to read as follows:

“Section 1. NRS 597.814 is hereby amended to read as follows:

597.814 1. Except as otherwise provided in subsection 3 and NRS 597.816, a person shall not use a device for automatic dialing and announcing to disseminate a prerecorded message in a telephone call unless, before the message is disseminated, a recorded or unrecorded natural voice:

(a) Informs the person who answers the telephone call of the nature of the call, including, without limitation, the fact that a device for automatic dialing and

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announcing will be used to disseminate the message if the person who answers the call remains on the line; and

(b) Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, being represented by the caller.

2. A person shall not operate a device for automatic dialing and announcing to place:

(a) A call that is received by a telephone located in this state during the period between ~~{9}~~ 8 p.m. and 9 a.m.; or

(b) A call-back or second call to the same telephone number ~~{-}~~ if a person at the telephone number terminated the original call.

3. This section does not prohibit the use of a device for automatic dialing and announcing to dial the number of and play a recorded message to a person with whom the person using the device or another person affiliated with the person using the device has a preexisting business relationship.

Sec. 2. NRS 598.0918 is hereby amended to read as follows:

598.0918 A person engages in a “deceptive trade practice” if , during a solicitation by telephone or sales presentation, he:

1. Uses threatening, intimidating, profane or obscene language;

2. Repeatedly or continuously conducts the solicitation or presentation in a manner that is considered by a reasonable person to be annoying, abusive or harassing;

3. Solicits a person by telephone at his residence between ~~{9}~~ 8 p.m. and ~~{8 a.m.; or}~~ 9 a.m.;

4. Blocks or otherwise intentionally circumvents any service used to identify the caller when placing an unsolicited telephone call ~~{-}~~ ; or

5. *Places an unsolicited telephone call that does not allow a service to identify the caller by the telephone number or name of the business, unless such identification is not technically feasible.*

Sec. 3. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. A person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this state or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

2. In any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this state or the Attorney General bringing the action may recover a civil penalty not to exceed \$2,500 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney’s fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

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- (a) For the first offense, is guilty of a misdemeanor.
- (b) For the second offense, is guilty of a gross misdemeanor.
- (c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

- (a) The suspension of the person's privilege to conduct business within this state; or
- (b) If the defendant is a corporation, dissolution of the corporation.

The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of sections 5 to 19, inclusive, of this act, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

- (a) The suspension of the person's privilege to conduct business within this state; or*
- (b) If the defendant is a corporation, dissolution of the corporation.*

The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 3.3. NRS 598.375 is hereby amended to read as follows:

598.375 1. Except as otherwise provided in subsection 8, each seller of travel shall deposit with the Division:

(a) A bond executed by a corporate surety approved by the Commissioner and licensed to do business in this state;

(b) An irrevocable letter of credit for which the seller of travel is the obligor, issued by a bank whose deposits are federally insured; or

(c) A certificate of deposit in a financial institution which is doing business in this state and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The certificate of deposit may be withdrawn only on the order of the Commissioner, except that the interest may accrue to the seller of travel.

2. The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.

3. The amount of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be \$50,000.

4. If the seller of travel deposits a bond, the seller of travel shall keep accurate records of the bond and the payments made on the premium. The records must be open

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to inspection by the Division during business hours. The seller of travel shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.

5. The Commissioner may reject any bond, letter of credit or certificate of deposit that fails to comply with the requirements of this chapter.

6. A seller of travel may change the form of security that he has deposited with the Division. If the seller of travel changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the seller of travel as security for claims arising during the time the previous security was in effect.

7. If the amount of the deposited security falls below the amount required by this chapter for that security, the seller of travel shall be deemed not to be registered as required by NRS 598.365 for the purposes of this chapter.

8. The provisions of this section do not apply to a seller of travel who ~~is~~ :

(a) *Is* accredited by and appointed as an agent of the Airlines Reporting Corporation ~~is~~ ; or

(b) *Maintains a trust account in accordance with the provisions of section 5 of Assembly Bill No. 343 of this session.*

Sec. 3.5. NRS 598A.260 is hereby amended to read as follows:

598A.260 1. All money obtained as awards, damages or civil penalties for the State of Nevada and its agencies by the Attorney General as a result of enforcement of statutes pertaining to unfair trade practices, whether by final judgment, settlement or otherwise must be deposited in the State Treasury as follows:

(a) All attorney's fees and costs and 50 percent of all recoveries for credit to the Attorney General's Special Fund.

(b) The balance of the recoveries for credit to the State General Fund.

2. Money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 must be used for payment of the expenses of enforcing the statutes pertaining to unfair trade practices ~~and~~ *and sections 5 to 19, inclusive, of this act*. Those expenses which are in excess of the amount available in the fund must be paid out of the legislative appropriation for the support of the Office of Attorney General.

3. On June 30 of each fiscal year, any amount in excess of ~~[\$200,000]~~ *\$450,000* in the Attorney General's Special Fund of the money collected pursuant to subsection 1 reverts to the State General Fund.

4. The balance of the money in the Attorney General's Special Fund that is collected pursuant to subsection 1 must not exceed ~~[\$250,000.]~~ *\$500,000*. If money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 would cause that balance to exceed ~~[\$250,000]~~ *\$500,000* if credited to the Fund, the amount of the deposit which would cause the balance to exceed ~~[\$250,000]~~ *\$500,000* immediately reverts to the State General Fund.

Sec. 4. Chapter 228 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 19, inclusive, of this act.

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Sec. 5. *As used in sections 5 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 6, 7 and 8 of this act have the meanings ascribed to them in those sections.*

Sec. 6. *“Registry” means the registry established pursuant to section 10 of this act unless, pursuant to section 9 of this act, the part of the single national database that relates to this state is deemed to be the registry.*

Sec. 7. 1. *“Telephone solicitor” means a person who makes or causes another person or a machine to make an unsolicited telephone call for the sale of goods or services.*

2. *As used in this section:*

(a) *“Device for automatic dialing and announcing” has the meaning ascribed to it in NRS 597.812.*

(b) *“Machine” includes, without limitation, a device for automatic dialing and announcing.*

Sec. 8. 1. *“Unsolicited telephone call for the sale of goods or services” means an unsolicited telephone call, other than a telephone call on behalf of a charitable organization, religious organization or political organization, to:*

(a) *Rent, lease, sell, exchange, promote or gift any good or service;*

(b) *Solicit any act described in paragraph (a);*

(c) *Seek or obtain a donation or contribution of money or anything else of value; or*

(d) *Seek or obtain information, including, without limitation, any document, intended to be used to facilitate any act described in paragraph (a), (b) or (c).*

2. *As used in this section:*

(a) *“Charitable organization” means a person that the Secretary of the Treasury has determined to be tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).*

(b) *“Committee for political action” means a committee for political action, as defined in NRS 294A.0055, which has registered pursuant to NRS 294A.230.*

(c) *“Good or service” means:*

(1) *Any property or product, whether tangible or intangible;*

(2) *Any service, including, without limitation, financial service;*

(3) *A loan or any other extension of credit;*

(4) *Insurance;*

(5) *Any investment or opportunity for investment;*

(6) *A gift, prize, bonus or any other inducement to act; or*

(7) *Anything of value.*

(d) *“Political organization” means a committee for political action, political party or candidate for public office.*

(e) *“Religious organization” means an organization for which the primary purpose is the operation of a church, synagogue or other place of religious worship at which nonprofit religious services and activities are regularly conducted.*

(f) *“Telephone call on behalf of a charitable organization, religious organization or political organization” means a telephone call on behalf of the organization if the call is made by:*

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- (1) An employee of the organization who is paid directly by the organization; or*
- (2) A volunteer.*

3. For the purposes of this section, a telephone call is deemed to have been solicited if it is made to a person who:

(a) Expressly requested or expressly gave permission for the telephone call to be made;

(b) Had an established business relationship with the caller, if the telephone call is made solely to verify the termination of the business relationship; or

(c) Has a delinquent obligation for which payment or performance is due but has not been made, if the telephone call is made to:

(1) Collect the payment or obtain the performance; or

(2) Extend credit to allow the person to make the payment.

Sec. 9. 1. If a federal agency establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services, the Attorney General shall, to the extent consistent with federal law, examine that database and the federal law relating to that database for the purposes of sections 5 to 19, inclusive, of this act. Based upon this examination and his analysis of the applicable needs of this state, the Attorney General may issue a finding that:

(a) The part of the single national database that relates to this state is adequate to serve as the registry for the purposes of sections 5 to 19, inclusive, of this act; and

(b) It is in the best interests of this state for the Attorney General to use the part of the single national database that relates to this state as the registry for the purposes of sections 5 to 19, inclusive, of this act.

2. Except as otherwise provided in subsection 3, if the Attorney General issues the finding described in subsection 1:

(a) The part of the single national database that relates to this state shall be deemed to be the registry for the purposes of sections 5 to 19, inclusive, of this act;

(b) The Attorney General shall forward the applicable information in the registry established pursuant to section 10 of this act, if any, to the federal agency or other appropriate person who maintains the single national database;

(c) The provisions of sections 10 and 13 of this act do not apply;

(d) The provisions of paragraphs (b), (c) and (d) of subsection 1 of section 11 of this act do not apply; and

(e) The provisions of subsection 3 of section 14 of this act do not apply.

3. Not less than biennially, the Attorney General shall reexamine the single national database and the federal law relating to that database for the purposes of sections 5 to 19, inclusive, of this act. Based upon this reexamination and his analysis of the applicable needs of this state, the Attorney General may rescind his finding issued pursuant to subsection 1. If the Attorney General rescinds his finding:

(a) Except as otherwise provided in paragraph (d), 1 month after the Attorney General rescinds his finding, the provisions of section 10 of this act apply;

(b) Five months after the Attorney General rescinds his finding, the provisions of section 13 of this act apply;

(c) Six months after the Attorney General rescinds his finding:

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(1) The provisions of paragraphs (b), (c) and (d) of subsection 1 of section 11 of this act apply;

(2) The provisions of subsection 3 of section 14 of this act apply; and

(3) The part of the single national database that relates to this state shall cease to be deemed to be the registry for the purposes of sections 5 to 19, inclusive, of this act; and

(d) Three years after the Attorney General rescinds his finding, the provisions of paragraph (d) of subsection 1 of section 10 of this act apply.

4. At any time after rescinding a finding pursuant to subsection 3, the Attorney General may again issue a finding described in subsection 1, and may rescind that finding pursuant to subsection 3.

Sec. 10. 1. The Attorney General shall:

(a) Establish and maintain, or cause to be established and maintained, a registry that includes the name and telephone number of each person in this state who has requested that his telephone number be included in the list published pursuant to this section;

(b) Provide for a toll-free telephone number that may be used to request inclusion or maintenance of a telephone number in the registry;

(c) Publish a list of the telephone numbers in the registry at least once every 6 months and ensure that no other personally identifying information contained in the registry is included in the published lists;

(d) On January 1, 2007, and every 3 years thereafter, delete from the registry every telephone number and related information, except for each telephone number and related information for which the Attorney General has received a request within the preceding 6 months to include or maintain the telephone number in the registry;

(e) During the 6-month period identified in paragraph (d), use reasonable means, including, without limitation, public service announcements, to inform the public that telephone numbers and related information in the registry will be deleted or otherwise purged unless new or renewed requests for inclusion in the registry are received by the Attorney General; and

(f) If a federal agency establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services:

(1) Include the part of the single national database that relates to this state in the registry;

(2) At least once every 6 months, add to the registry any new and applicable information that has been added to the part of the single national database that relates to this state; and

(3) At least once every 6 months, remove from the registry any applicable information that has been removed from the part of the single national database that relates to this state.

2. The Attorney General may:

(a) Contract for the establishment and maintenance of the registry;

(b) Provide for additional procedures for requesting inclusion or maintenance of a telephone number in the registry; and

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(c) Require by regulation that information in addition to names and telephone numbers be included in the registry, including, without limitation, the mailing address of each person who has requested inclusion in the registry.

3. A person may request that his telephone number be included or maintained in the registry using:

(a) A toll-free telephone number provided by the Attorney General for that purpose; or

(b) Any other method provided by the Attorney General.

4. A person may request to have his telephone number removed from the registry. Such a request must be submitted to the Attorney General in writing.

Sec. 11. 1. The Attorney General shall make information available to the public concerning the establishment and maintenance of the registry, including, without limitation:

(a) The procedures for requesting the inclusion or maintenance of a telephone number in the registry;

(b) A statement indicating that a revised version of the list of telephone numbers in the registry will be published at least once every 6 months;

(c) A statement indicating that no information contained in the registry, other than the telephone numbers, will be included on the list published pursuant to this section or otherwise disclosed to the public; and

(d) A statement indicating that all telephone numbers and related information in the registry will be deleted or otherwise purged from the registry every 3 years, except for any telephone number and related information for which the Attorney General has received a new or renewed request for inclusion in the registry within the 6 months before the potential deletion.

2. A person who publishes telephone directories for distribution to the public in this state shall ensure that each such telephone directory includes the information made available to the public by the Attorney General pursuant to subsection 1.

Sec. 12. To the extent consistent with federal law:

1. The registry is not a public record. Any list published of the telephone numbers contained within the registry is not a public record.

2. The telephone numbers in the registry must not be published or released except pursuant to the provisions of sections 5 to 19, inclusive, of this act.

3. The information in the registry other than the telephone numbers:

(a) Must not be published or released; and

(b) May only be used by the Attorney General to administer the provisions of sections 5 to 19, inclusive, of this act.

Sec. 13. Each list of telephone numbers published pursuant to section 10 of this act must be made available to a telephone solicitor upon the payment of the fee established by regulation for this purpose by the Attorney General. The fee must not exceed \$1,000 annually for each telephone solicitor, regardless of the number of revised editions of the list that are published during the calendar year.

Sec. 14. 1. Except as otherwise provided in section 15 of this act, a telephone solicitor shall not intentionally make an unsolicited telephone call for the sale of goods

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or services to a telephone number in the currently effective version of the list of telephone numbers in the registry.

2. A person who obtains a copy of or access to the registry or to any version of the list of telephone numbers in the registry shall not use that information for any purpose other than determining whether a particular telephone number is available for an unsolicited telephone call for the sale of goods or services.

3. For the purposes of this section, a version of the list of telephone numbers in the registry is deemed to be the currently effective version of the list for the period beginning on the 31st day after it is published and ending on the 30th day after the next version is published.

Sec. 15. 1. The provisions of section 14 of this act do not prohibit a telephone solicitor from making or causing another person to make an unsolicited telephone call for the sale of goods or services to a telephone number in the currently effective version of the list of telephone numbers in the registry if:

(a) There is a preexisting business relationship between the telephone solicitor and the person who is called; and

(b) The telephone solicitor complies with the provisions of this section.

2. Before a telephone solicitor may make or cause another person to make an unsolicited telephone call for the sale of goods or services based on a preexisting business relationship, the telephone solicitor must establish and maintain an internal do-not-call registry that complies with federal and state laws and regulations. The internal do-not-call registry must:

(a) Include, without limitation, a list of the telephone numbers of any person who has requested that the telephone solicitor not make or cause another person to make an unsolicited telephone call for the sale of goods or services to a telephone number of the person making the request; and

(b) Upon request, be provided by the telephone solicitor to the Attorney General.

3. In addition to the requirements set forth in subsection 2, at least once each year, the telephone solicitor shall provide written notice to each person with whom the telephone solicitor has a preexisting business relationship. The written notice must:

(a) Inform the person that the telephone solicitor is providing the notice pursuant to state law;

(b) Explain to the person that the telephone solicitor may elect to be placed on the internal do-not-call list of the telephone solicitor and specify the procedures for making such an election; and

(c) Explain to the person that the person may contact the customer service department of the telephone solicitor or the Attorney General to obtain further information concerning the provisions of this section and must provide the current address, telephone number and electronic mail address of the customer service department of the telephone solicitor and the Attorney General.

4. As used in this section, "preexisting business relationship" means a relationship between a telephone solicitor and a person that is based on:

(a) The person's purchase, rental or lease of goods or services directly from the telephone solicitor, but not from any affiliate or associate of the telephone solicitor; or

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(b) Any other financial transaction directly between the person and the telephone solicitor, but not between the person and any affiliate or associate of the telephone solicitor,

that occurs within the 18 months immediately preceding the date of the unsolicited telephone call for the sale of goods or services.

Sec. 16. If the Attorney General has reason to believe that a person has violated any of the provisions of sections 5 to 19, inclusive, of this act or any regulation adopted pursuant thereto, he may institute an appropriate legal proceeding against the person in a court of competent jurisdiction.

Sec. 17. A violation of a provision of sections 5 to 19, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

Sec. 18. 1. The Registry Fund is hereby created as a special revenue fund in the State Treasury for the use of the Attorney General.

2. All money collected by the Attorney General pursuant to section 13 of this act must be deposited in the State Treasury for credit to the Registry Fund. The interest and income earned on the money in the Registry Fund, after deducting any applicable charges, must be credited to the Registry Fund.

3. Expenditures from the Registry Fund must be made only to administer and enforce the provisions of sections 5 to 19, inclusive, of this act.

4. The Attorney General shall administer the Registry Fund. All claims against the Registry Fund must be paid as other claims against the State are paid.

5. Any money remaining in the Registry Fund at the end of a fiscal year does not revert to the State General Fund, and the balance in the Registry Fund must be carried forward to the next fiscal year.

6. Each year, the Attorney General shall submit an itemized statement of the income and expenditures for the Registry Fund:

(a) To the Legislature, if the Legislature is in session; or

(b) To the Interim Finance Committee, if the Legislature is not in session.

Sec. 19. The Attorney General shall adopt regulations to carry out the provisions of sections 5 to 19, inclusive, of this act.

Sec. 20. Section 5 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 5. 1. Except as otherwise provided in subsection 2:

(a) A seller of travel shall maintain a trust account in a bank, credit union or savings and loan association in this state for the purpose of depositing all money that a consumer pays to the seller of travel for the purchase of travel services or a vacation certificate.

(b) If a consumer pays money to a seller of travel for the purchase of travel services or a vacation certificate, the seller of travel shall deposit all such money in the trust account maintained by the seller of travel not later than 2 business days after the date on which the consumer pays the money to the seller of travel.

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(c) The seller of travel shall pay out of the trust account the money paid to the seller of travel by the consumer as needed to complete the purchase of the travel services or vacation certificate purchased by the consumer.

2. The provisions of this section do not apply to a seller of travel who deposits security with the Division pursuant to NRS 598.375.

Sec. 21. Section 7 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 7. *1. Except as otherwise provided in subsection 5, a consumer who is eligible for recovery from the account must file a complaint with the Division or its designee not later than 1 year after the scheduled date of completion of the travel purchased by the consumer. The consumer must file the complaint on a form established for this purpose by the Division.*

2. If the Division receives a complaint pursuant to subsection 1, the Division or its designee shall hold a hearing on the complaint. The Division shall:

(a) Affix the time and place for the hearing; and

(b) Notify the interested parties, in writing, at least 10 days before the date affixed for the hearing, of the time and place of the hearing.

3. Any testimony taken at the hearing must be considered a part of the record of the hearing before the Division or its designee.

4. The hearing must be public if a request is made for a public hearing.

5. If a consumer has obtained a judgment in any court of competent jurisdiction for recovery of damages against a seller of travel, the consumer may file with the Division or its designee a complaint for recovery of the judgment from the account. The consumer must file the complaint not later than 2 years after the entry of the judgment. The consumer is eligible for recovery of the judgment from the account if:

(a) The judgment is for actual damages suffered by the consumer as a result of:

(1) Any act of fraud or misrepresentation by the seller of travel acting in his capacity as a seller of travel;

(2) The bankruptcy of the seller of travel;

(3) The breach of any contract entered into by the seller of travel in his capacity as a seller of travel; or

(4) The violation by the seller of travel of any provision of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act;

(b) The proceedings in connection with the judgment, including all appeals, have terminated;

(c) The consumer files the complaint on a form established for this purpose by the Division;

(d) The consumer submits proof satisfactory to the Division of the judgment; and

(e) Upon obtaining payment from the account, the consumer assigns his rights to enforce the judgment to the Division.

6. If a consumer files a complaint pursuant to this section, the Division or its designee shall act upon the complaint not later than 60 days after the date on which the complaint is filed with the Division, unless the Division:

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(a) Determines that the complaint involves complex issues that may not reasonably be resolved within 60 days; and

(b) Notifies the interested parties, in writing, that the time for acting on the complaint will be extended. If the Division provides such notice to the interested parties, the Division shall act upon the complaint not later than 180 days after the date on which the complaint is filed with the Division.

Sec. 22. Section 8 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 8. 1. *Except as otherwise provided in subsection 2, a consumer is eligible for recovery from the account if:*

(a) The Division or its designee, after conducting a hearing on a complaint filed pursuant to the provisions of subsection 1 of section 7 of this act, finds that the consumer suffered actual damages as a result of:

(1) Any act of fraud or misrepresentation by the seller of travel acting in his capacity as a seller of travel;

(2) The bankruptcy of the seller of travel;

(3) The breach of any contract entered into by the seller of travel in his capacity as a seller of travel; or

(4) The violation by the seller of travel of any provision of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act; or

(b) The consumer complies with the provisions of subsection 5 of section 7 of this act for the recovery of a judgment from the account.

2. *A consumer is not eligible for recovery from the account if:*

(a) The consumer is the spouse of the seller of travel or is a personal representative of the spouse of the seller of travel;

(b) The consumer was associated in a business relationship with the seller of travel other than with regard to the travel services or vacation certificate at issue;

(c) At the time the consumer paid money to the seller of travel for the purchase of the travel services or vacation certificate at issue, the seller of travel was not registered with the Division as required by NRS 598.365; or

(d) The consumer is seeking recovery of losses which were incurred by the consumer as the result of a cancellation penalty that:

(1) Was fully disclosed and agreed to by the consumer at the time the consumer entered into the contract for the purchase of the travel services or vacation certificate at issue; and

(2) Was imposed against the consumer, in accordance with the terms of the contract, after the cancellation of the travel services or vacation certificate at issue.

3. *If the Division or its designee finds that a consumer is eligible for recovery from the account pursuant to this section, the Division or its designee may pay out of the account:*

(a) If the complaint was filed pursuant to subsection 1 of section 7 of this act, the amount of actual damages suffered, but not to exceed \$10,000; or

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(b) If the complaint was filed pursuant to subsection 5 of section 7 of this act, the amount of actual damages included in the judgment and remaining unpaid, but not to exceed \$10,000.

4. If a consumer has recovered a portion of his losses from sources other than the account, the Division shall deduct the amount recovered from the other sources from the amount payable upon the claim and direct the difference to be paid from the account.

5. To the extent that payments are made from the account to a consumer, the Division is subrogated to the rights of the consumer. The Division and the Attorney General shall promptly enforce all subrogation claims.

6. The amount of recovery from the account based upon claims made against any single seller of travel:

(a) Must not exceed \$200,000; and

(b) For any single action of the seller of travel, must not exceed 20 percent of the balance of the account.

Sec. 23. Section 9 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 9. *1. A seller of travel shall display conspicuously, at each place of business of the seller of travel and on any website maintained by the seller of travel for business purposes, a legible and typewritten statement that notifies consumers that they may be eligible to recover certain financial damages from the Recovery Fund. The written statement must be in substantially the following form:*

RECOVERY FUND FOR CONSUMERS DAMAGED BY SELLERS OF TRAVEL

You may be eligible for payment from the Recovery Fund if you have paid money to a seller of travel registered in this state for the purchase of travel services or a vacation certificate and you have suffered certain financial damages as a result of the transaction. To obtain information relating to your rights under the Recovery Fund and the filing of a claim for recovery from the Recovery Fund, you may contact the Consumer Affairs Division of the Department of Business and Industry at the following locations:

*SOUTHERN NEVADA: 1850 East Sahara Avenue
Suite 101
Las Vegas, Nevada 89104
Phone: 702.486.7355
Fax: 702.486.7371
ncad@fyiconsumer.org*

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2. *The Division may impose upon a seller of travel an administrative fine of not more than:*

- (a) For the first violation of subsection 1, \$100; and*
- (b) For a second or subsequent violation of subsection 1, \$250.*

3. *The Division shall deposit any money received pursuant to this section in the account established pursuant to section 6 of this act.*

4. *The provisions of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act do not limit the authority of the Division to take disciplinary action against a seller of travel.*

Sec. 24. Section 10 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 10. 1. *The Division shall:*

(a) On or before February 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for transmittal to the appropriate legislative committee if the Legislature is in session, or to the Interim Finance Committee if the Legislature is not in session, a statement of the condition of the account that is prepared in accordance with generally accepted accounting principles.

(b) Employ accountants as necessary for the performance of the duties set forth in this section and pay any related expenses from the money in the account. Except as otherwise provided in subsection 3, the expenditures made by the Division pursuant to this paragraph must not exceed \$10,000 in any fiscal year.

(c) Employ or contract with persons and procure necessary equipment, supplies and services to be paid from or purchased with the money in the account as may be necessary to monitor or process claims filed by consumers that may result in a recovery from the account.

2. *Any interest earned on the money in the account must be credited to the account. The Division may expend the interest earned on the money in the account to increase public awareness of the account. Except as otherwise provided in subsection 3, the expenditures made by the Division for this purpose must not exceed \$50,000 in any fiscal year.*

3. *The total expenditures made by the Division pursuant to this section must not exceed 10 percent of the account in any fiscal year.*

4. *Once an initial balance of \$200,000 exists in the account, the Division shall maintain a minimum balance of \$200,000 in the account.*

5. *The Division shall adopt such regulations as are necessary to carry out the provisions of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act, including, without limitation, regulations governing:*

- (a) The disbursement of money from the account; and*
- (b) The manner in which a complaint is filed with the Division or its designee pursuant to the provisions of section 7 of this act.*

Sec. 25. Section 11 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 11. NRS 598.0999 is hereby amended to read as follows:

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598.0999 1. A person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this state or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

2. In any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this state or the Attorney General bringing the action may recover a civil penalty not to exceed \$2,500 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second offense, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, *and sections 2 to 10, inclusive, of this act*, 598.405 to 598.525, inclusive, *and section 10.5 of this act*, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this state; or

(b) If the defendant is a corporation, dissolution of the corporation.

The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 26. Section 12 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 12. NRS 598.305 is hereby amended to read as follows:

598.305 As used in NRS 598.305 to 598.395, inclusive, *and sections 2 to 10, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 598.315 to 598.356, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 27. Section 14 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

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Sec. 14. NRS 598.365 is hereby amended to read as follows:

598.365 1. Before advertising its services or conducting business in this state, a seller of travel must register with the Division by:

(a) Submitting to the Division an application for registration on a form prescribed by the Division;

(b) Paying to the Division a fee of \$25; ~~and~~

(c) Depositing the security required pursuant to NRS 598.375, if any, with the Division ~~and~~; *and*

(d) *Paying to the Division a fee of \$100 for deposit to the account established pursuant to section 6 of this act.*

2. The Division shall issue a certificate of registration to the seller of travel upon receipt of :

(a) The security in the proper form if the seller of travel is required to deposit security pursuant to NRS 598.375; and

(b) The payment of ~~the fee~~ *any fees* required by this section.

3. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A seller of travel must renew a certificate of registration issued pursuant to this section before the certificate expires by:

(a) Submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division; ~~and~~

(b) Paying to the Division a fee of \$25 ~~and~~; *and*

(c) *Paying to the Division a fee of \$100 for deposit to the account established pursuant to section 6 of this act.*

5. *The Division shall mail an application for the renewal of a certificate to the last known address of a seller of travel at least 30 days before the expiration of the certificate.*

6. *The provisions of this section do not require a person described in paragraph (a) of subsection 2 of NRS 598.335 to register with the Division.*

Sec. 28. Section 15 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 15. (Deleted by amendment.)

Sec. 29. 1. This section becomes effective upon passage and approval.

2. Sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective upon passage and approval for the purposes of adopting regulations and entering into contracts or otherwise preparing to carry out the provisions of this act.

3. Sections 3.3 and 20 to 28, inclusive, of this act become effective on October 1, 2003.

4. Sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective on January 1, 2004, for the purpose of the Attorney General making the determination described in subsection 1 of section 9 of this act.

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5. If the Attorney General makes the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective on May 1, 2004, for all other purposes.

6. If the Attorney General does not make the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective:

(a) On May 1, 2004, for the purposes of the Attorney General receiving and accepting requests to include telephone numbers in the registry established pursuant to section 10 of this act.

(b) On June 1, 2004, for the purpose of publishing the first list of telephone numbers in the registry; and

(c) On July 1, 2004, for all other purposes.”.

Amend the title of the bill to read as follows:

“AN ACT relating to trade practices; requiring the establishment of a registry of certain telephone numbers or the use of a similar federal list; requiring the publication of a list of certain telephone numbers or the use of a similar federal list; prohibiting a telephone solicitor from making an unsolicited telephone call for the sale of goods or services to a telephone number included in the currently effective version of the list under certain circumstances; providing that the making of an unsolicited telephone call for the sale of goods and services is a deceptive trade practice under certain circumstances; providing that a seller of travel may maintain a trust account or post security; and providing other matters properly relating thereto.”.

Amend the summary of the bill to read as follows:

“SUMMARY—Revises provisions relating to trade practices. (BDR 52-1073)”.

Amend the joint sponsors of the bill to read as follows:

“JOINT SPONSORS: SENATORS TOWNSEND, AMODEI, TITUS, HARDY, CARLTON, CARE, CEGAVSKE, MATHEWS, MCGINNESS, NEAL, NOLAN, O’CONNELL, RAGGIO, RAWSON, SCHNEIDER, SHAFFER, TIFFANY, WASHINGTON AND WIENER.”.

Assemblyman Goldwater moved that the Assembly adopt the report of the first Conference Committee concerning Assembly Bill No. 232.

Remarks by Assemblymen Goldwater, Conklin, and Chowning.

Motion carried by a two-thirds constitutional majority.

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT