

HB

109

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/11/96

FURTHER: REPORTED OUT OF SFC 5/3/96

DATE TURNED INTO OFFICE: 5-3-96

The Finance Committee considered CS FOR HOUSE BILL NO. 109(JUD)

"An Act relating to telephone solicitations, advertisements, and directory listings."

*SFC(FIN)
coming*

and recommends:

be replaced with S CS CS HB 109 (FIN)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by the House Judiciary Committee

further referral to the Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# 32

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AI
<i>Steve Rein</i>	✓	<i>Bill E. Poo</i>	✓		
		<i>Walter Buley</i>	✓		
		<i>Paul F. Zboroff</i>	✓		
		<i>Sen. Long</i>	✓		
Co-Chair:		Co-Chair: <i>[Signature]</i>	✓		
Co-Chair:		Co-Chair: <i>Rick Halsted</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#	Department	Date	Zero	Fiscal
#2	DC&ED (APUC)	2/4/96	0	
#3	DOLaw	2/7/96	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

House Judiciary Committee Letter of Intent for CSHB 109 (JUD)

CSHB 109 was passed out by the House Judiciary Committee on February 14, 1996. The committee's intent is that this bill, which makes it a violation of Alaska's consumer protection laws to telephonically solicit residential telephone users under some circumstances, not result in liability for local exchange telecommunication companies for such violations.

DATED: 2 Brian D. Porter

By: Brian D. Porter

Brian Porter, Chairman House Judiciary Committee

HOUSE ADOPTED 3/8/96

FISCAL NOTE

No. 3

Bill Version: CSHB 109(JUD)

(H) Publish Date: 2/15/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act relating to telephone directory listings and solicitations."</u>	BRU: <u>Civil Division</u>
Sponsor: <u>Representative Brown</u>	Component: <u>General Legal Services</u>
Requester: <u>Representative Brown</u>	COMPONENT SERIAL NO. <u>2087</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.01	0.01	0.01	0.01	0.01	0.01
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the state's consumer protection laws to make it unlawful to engage in telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directly as not wishing to receive telephone solicitations. The bill also requires local exchange telecommunication companies provide for the identification in their telephone directories of those residential customers who do not wish to receive telephone solicitations. Upon request by a person who engages in telephone solicitations, local exchange telephone companies would further be required to provide a list of all telephone numbers in their telephone directories of residential customers who do not wish to receive telephone solicitations. The bill should help reduce unwanted telephone solicitations once sufficient time has run to allow for the telephone directory identification process to occur. Nevertheless, some telephone solicitation organizations may choose to ignore the bill's prohibition against unwanted solicitations, resulting in complaints to the Better Business Bureau, which handles complaint taking for the state. The Department of Law is

Richard I. Peques

Prepared by: <u>Richard I. Peques, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/7/96</u>
Approved by Commissioner: <u>Bruce M. Borelho, Attorney General</u>	Date: <u>2/7/96</u>
Agency: <u>Department of Law</u>	

COMMITTEE COPY

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 109 (JUD)

ANALYSIS CONTINUATION:

The bill should help reduce unwanted telephone solicitations once sufficient time has run to allow for the telephone directory identification process to occur. Nevertheless, some telephone solicitation organizations may choose to ignore the bill's prohibition against unwanted solicitations, resulting in complaints to the Better Business Bureau, which handles complaint taking for the state. The Department of Law is available for enforcement purposes if there is a large enough number of violations to warrant enforcement. At this point we believe that, once there is efficient directory identification of those who do not wish to receive telephone solicitations, the number of violations will not be sufficient to have a fiscal impact for the Department of Law.

FISCAL NOTE

CORRECTED FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill ² Version: CSHB 109(JUD)
(H) Publish Date: 2/15/96

Revision Date: _____	Department: <u>Commerce and Economic Development</u>
<u>An act relating to telephone advertisements.</u>	BRU: <u>AK Public Utilities Commission</u>
<u>Communications and directory listings</u>	Component: <u>AK Public Utilities Commission</u>
Sponsor: <u>Rep. Kay Brown</u>	
Requestor: <u>House Judiciary</u>	COMPONENT SERIAL NO. <u> #364 </u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
4 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
This bill would have a zero fiscal impact on the Alaska Public Utilities Commission. Enforcement of this bill would be by the Department of Law.

Prepared by: <u>Robert A. Lonn, Executive Director</u>	Phone: <u>(907)276-6222</u>
Division: <u>AK Public Utilities Commission</u>	Date: <u>February 6, 1996</u>
Approved by Commissioner: <u>William L. Hensley</u> <i>W. L. Hensley</i>	Date: <u>2-6-96</u>
by: <u>Commerce and Economic Development</u>	

5/3/96

moved Sen. Rieger
w/o objection adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS042410
Cramer
5/2/96

moved Sen. Rieger

no { Frank
Sharp
Phillips

SENATE CS FOR CS FOR HOUSE BILL NO. 109()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BROWN, Navarre, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to telephone solicitations, advertisements, and directory listings
2 and relating to political polling and campaigning by telephone."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 15.13 is amended by adding a new section to read:

5 Sec. 15.13.095. FALSE STATEMENTS IN TELEPHONE POLLING AND
6 CALLS TO CONVINCING. (a) A candidate who is damaged as the result of a false
7 statement about the candidate made with knowledge that it was false, or with reckless
8 disregard for whether it was false or not, made as part of a telephone poll or an
9 organized series of calls, and made with the intent to convince potential voters
10 concerning the outcome of an election in which the candidate is running may recover
11 damages in an action in superior court under this section against the individual who
12 made the telephone call, the individual's employer, and the person who contracted for
13 or authorized the poll or calls to convince. However, the employer of the individual
14 or the person who contracted for or authorized the poll or calls to convince is liable

1 to the defamed candidate only if the employer or person authorized the statement to
2 be made, knowing that it was false or with reckless disregard for whether it was false
3 or not, as part of the poll or calls to convince.

4 (b) The court may award damages, including punitive damages. If the court
5 finds that the result of the statement places the integrity of the election process in
6 substantial doubt, the eligibility of the successful candidate to hold the office to which
7 elected shall be determined as provided in AS 15.56.110(b) or, in the case of a
8 candidate for governor or lieutenant governor, by impeachment under art. II, sec. 20,
9 Constitution of the State of Alaska.

10 * Sec. 2. AS 15.56 is amended by adding a new section to read:

11 Sec. 15.56.025. TELEPHONE CAMPAIGN MISCONDUCT. (a) A person
12 commits the crime of telephone campaign misconduct if the person makes a statement
13 about a candidate

14 (1) as part of an organized telephone poll or organized series of calls
15 to convince potential voters concerning the outcome of an election;

16 (2) that the person knows to be false; and

17 (3) that the person intends to affect the outcome of the election.

18 (b) Violation of this section is a corrupt practice. However, notwithstanding
19 AS 15.20.540, only a defeated candidate may contest the nomination or election of a
20 person for violation of this section.

21 (c) Telephone campaign misconduct is a class A misdemeanor.

22 * Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (41) failing to comply with AS 45.50.475.

24 * Sec. 4. AS 45.50 is amended by adding a new section to read:

25 Sec. 45.50.475. UNLAWFUL, UNWANTED TELEPHONE
26 ADVERTISEMENTS AND SOLICITATIONS. (a) A person is in violation of
27 AS 45.50.471(b)(41) if the person

28 (1) engages in the telephone solicitation of a residential telephone
29 customer of a telecommunications company and the customer is identified in the
30 telephone directory as not wishing to receive telephone solicitations; or

31 (2) originates a telephone call using an automated or recorded message

1 as a telephonic advertisement or solicitation.

2 (b) A local exchange telecommunications company and a company that
3 provides a telephone directory on behalf of a local exchange telecommunications
4 company shall provide for the identification in the telephone directory of those
5 residential customers who do not wish to receive telephone solicitations. The local
6 exchange telecommunications company may impose a reasonable charge for
7 identification in the directory. The charge shall be based on the cost of providing the
8 identification and is subject to the approval of the Alaska Public Utilities Commission.

9 (c) A local exchange telecommunications company shall, upon request, provide
10 to a person who engages in telephone solicitation a list of all telephone numbers
11 identified in the telephone directory as residential customers who do not wish to
12 receive telephone solicitations. If possible and if requested by the person who engages
13 in telephone solicitation, this list shall be provided in computer readable format. The
14 local exchange telephone company may impose a reasonable charge for the list. The
15 charge shall be based on the cost of providing the list and is subject to the approval
16 of the Alaska Public Utilities Commission.

17 (d) A person who employs individuals to engage in telephone solicitations is
18 not liable for the violation of AS 45.50.475 if an employee solicits a residential
19 telephone customer who is identified in the telephone directory as not wishing to
20 receive telephone solicitations if the person establishes that

21 (1) the person has adopted and implemented written procedures to
22 comply with (a) of this section including corrective actions where appropriate;

23 (2) the person has trained its personnel in the procedures established
24 under (1) of this subsection;

25 (3) the call that violated AS 45.50.475 was made contrary to the
26 procedures and policies established by the person; and

27 (4) calls on behalf of the person that result in violations of
28 AS 45.50.475 are infrequent.

29 (e) An individual who solicits a residential telephone customer who is identified
30 in the telephone directory as not wishing to receive telephone solicitations is not liable
31 for the violation of AS 45.50.475 if the individual establishes that the individual did

1 not intend to make a call in violation of AS 45.50.475 and did not recklessly disregard
2 information or policies and procedures that would have avoided the improper call.

3 (f) Local exchange telecommunications companies shall inform residential
4 customers of the provisions of this section. Notification may be made by

5 (1) annual inserts in the billing statements mailed to residential
6 customers; or

7 (2) conspicuous publication of the notice in the consumer information
8 pages of local telephone directories.

9 (g) In this section,

10 (1) "charitable organization" has the meaning given in AS 45.68.900;

11 (2) "customer" means a residential telephone customer of a
12 telecommunications company;

13 (3) "telephone solicitation"

14 (A) means the solicitation by a person by telephone of a
15 customer at the residence of the customer for the purpose of encouraging the
16 customer to purchase property, goods, or services, or make a donation;

17 (B) does not include

18 (i) calls made in response to a request or inquiry by the
19 called customer or communications made during a call made by the
20 customer;

21 (ii) calls made by a charitable organization, a public
22 agency, or volunteers on behalf of the charitable organization or public
23 agency to members of the organization or agency or to persons who,
24 within the last 24 months, have made a donation to the organization or
25 agency or expressed an interest in making a donation;

26 (iii) calls limited to ^[polling or] soliciting the expression of ideas,
27 opinions, or votes; *deleted*

28 (iv) business-to-business calls; or

29 (v) a person soliciting business from prospective
30 purchasers who have, within the last 24 months, purchased from the
31 person making the solicitation or from the business enterprise for which

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the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage;

* Sec. 5. AS 45.50.472 is repealed.

AMENDMENT #1

OFFERED IN THE SENATE
TO: CSHB 109(JUD)

1 Page 2, line 10, after "(d)":

2 Insert "A person who employs individuals to engage in telephone solicitations is not
3 liable for the violation of AS 45.50.475 if an employee solicits a residential telephone
4 customer who is identified in the telephone directory as not wishing to receive telephone
5 solicitations if the person establishes that

6 (1) the person has adopted and implemented written procedures to
7 comply with (a) of this section; *including corrective action, where appropriate*

8 (2) the person has trained its personnel in the procedures established
9 under (1) of this subsection;

10 (3) the call that violated AS 45.50.475 was made contrary to the
11 procedures and policies established by the person; and

12 (4) calls on behalf of the person that result in violations of
13 AS 45.50.475 are infrequent.

14 (e) An individual who solicits a residential telephone customer who is
15 identified in the telephone directory as not wishing to receive telephone solicitations
16 is not liable for the violation of AS 45.50.475 if the individual establishes that the
17 individual did not intend to make a call in violation of AS 45.50.475 and did not
18 recklessly disregard information or policies and procedures that would have avoided
19 the improper call.

20 (f)"

21 Reletter the following subsections accordingly.

SR
Amend.
Adopted

*Newspaper Marketing
Assoc. Amendment.
Rep. Brown*

Sectional

Amendment 9-LS0424\G.23

Offered to HB-109 in Senate Finance Committee

prepared by staff to Senator Druc Pearce

March 26, 1996

1. The amendment adds “; and relating to political polling and campaigning by telephone” to the title of the bill.
2. It adds a new section to Alaska’s elections statute, title 15, that says a candidate defamed by negative telephone polling may recover damages in Superior Court from the individual who made the call, the individual’s employer, the person who contracted for or authorized the telephone calls, and the defaming candidate. Defendants are only liable if they authorized the calls knowing with reckless disregard the statement to be false.

Court ordered penalties can include fines up to \$5,000, one year in jail, and punitive damages. The elected official may suffer the potential loss of their seat. Elections covered include Municipal, Borough, State Legislative, up to Gubernatorial races. The loss of seat would occur if the individual was found guilty by the courts and their governing body voted by a 2/3 vote to expel the slandering individual. In the case of a Governor or Lt. Governor impeachment proceedings may be instituted as determined by the State Senate.

3. Adds a new section to Alaska’s Election Offense statute that defines as a corrupt practice “Telephone Campaign Misconduct.” The act is classified as a class A misdemeanor and only the defamed candidate may bring suit.

9-LS0424/G.3
Cramer
4/26/96
Adopted
as
amended
6-0
BS absent

2

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 109(JUD)

BY SENATOR PEARCE

*See p. 2 Amend by
Sen. Frank - Adopted*

1 Page 1, line 1, following "listings":

2 Insert "; and relating to political polling and campaigning by telephone"

3 Page 1, following line 2:

4 Insert new bill sections to read:

5 **"* Section 1.** AS 15.13 is amended by adding a new section to read:

6 Sec. 15.13.095. FALSE STATEMENTS IN TELEPHONE POLLING AND
7 CALLS TO CONVINCING. (a) A candidate who is damaged as the result of a false
8 statement about the candidate made with knowledge that it was false, or with reckless
9 disregard for whether it was false or not, made as part of a telephone poll or an
10 organized series of calls, and made with the intent to convince potential voters
11 concerning the outcome of an election in which the candidate is running may recover
12 damages in an action in superior court under this section against the individual who
13 made the telephone call, the individual's employer, and the person who contracted for
14 or authorized the poll or calls to convince. However, the employer of the individual
15 or the person who contracted for or authorized the poll or calls to convince is liable
16 to the defamed candidate only if the person authorized the statement to be made,
17 knowing that it was false or with reckless disregard for whether it was false or not,
18 as part of the poll or calls to convince.

*see
motion
↓*

*for a violation of this
section.
Adopted*

19 (b) The court may award damages, including punitive damages, ^λ If the court
20 finds that the result of the statement places the integrity of the election process in
21 substantial doubt, the eligibility of the successful candidate to hold the office to which
22 elected shall be determined as provided in AS 15.56.110(b) or, in the case of a
23 candidate for governor or lieutenant governor, ^{by} _λ impeachment under art. II, sec. 20,
24 Constitution of the State of Alaska.

1 * Sec. 2. AS 15.56 is amended by adding a new section to read:

2 Sec. 15.56.025. TELEPHONE CAMPAIGN MISCONDUCT. (a) A person
3 commits the crime of telephone campaign misconduct if the person makes a statement
4 about a candidate

5 (1) as part of an organized telephone poll or organized series of calls
6 to convince potential voters concerning the outcome of an election;

7 (2) that the person knows to be false;

8 (3) that the person intends to affect the outcome of the election; and

9 ~~(4) that damages the candidate's reputation for honesty, integrity, or~~
10 ~~the candidate's qualifications to serve if elected to office.~~

SF
moved
to delete
(4)
DD Obj
Adopted
4-3 RP
DD

11 (b) Violation of this section is a corrupt practice. However, notwithstanding
12 AS 15.20.540, only a defeated candidate may contest the nomination or election of
13 a person for violation of this section.

14 (c) Telephone campaign misconduct is a class A misdemeanor."

15 Page 1, line 3:

16 Delete "Section 1"

17 Insert "Sec. 3"

18 Renumber the following bill sections accordingly.

5FC-4/29/96

SR
moved
No Obj.
Adopted

3

AMENDMENT

TO: CSHB 109 (Jud)

Page 2, lines 2-3

Delete: "A residential customer who requests to be so identified shall pay for the cost of the identification."

Insert: "The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and subject to the approval of the Alaska Public Utilities Commission."

Page 2, line 9

After "list."

Insert: "The charge shall be based on the cost of providing the list and subject to the approval of the Alaska Public Utilities Commission."

4-29-96
Amend. #4
p. 2. line 2
SF motion
to remove
(iii).
Failed
3-4
SF
BS
RP
Amend. #5
SF p. 2 lines
2+3
pending at
a.m. 4/29/96
mtg.

CS FOR HOUSE BILL NO. 109(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/15/96

Referred: Rules

Sponsor(s): REPRESENTATIVES BROWN, Navarre, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to telephone solicitations, advertisements, and directory listings."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 45.50.471(b) is amended by adding a new paragraph to read:

4 (41) failing to comply with AS 45.50.475.

5 * Sec. 2. AS 45.50 is amended by adding a new section to read:

6 Sec. 45.50.475. UNLAWFUL, UNWANTED TELEPHONE
7 ADVERTISEMENTS AND SOLICITATIONS. (a) A person is in violation of
8 AS 45.50.471(b)(41) if the person

9 (1) engages in the telephone solicitation of a residential telephone
10 customer of a telecommunications company and the customer is identified in the
11 telephone directory as not wishing to receive telephone solicitations; or

12 (2) originates a telephone call using an automated or recorded message
13 as a telephonic advertisement or solicitation.

14 (b) A local exchange telecommunications company and a company that
15 provides a telephone directory on behalf of a local exchange telecommunications

1 company shall provide for the identification in the telephone directory of those
2 residential customers who do not wish to receive telephone solicitations. A residential
3 customer who requests to be so identified shall pay for the cost of the identification.

4 (c) A local exchange telecommunications company shall, upon request, provide
5 to a person who engages in telephone solicitation a list of all telephone numbers
6 identified in the telephone directory as residential customers who do not wish to
7 receive telephone solicitations. If possible and if requested by the person who engages
8 in telephone solicitation, this list shall be provided in computer readable format. The
9 local exchange telephone company may impose a reasonable charge for the list.

10 (d) Local exchange telecommunications companies shall inform residential
11 customers of the provisions of this section. Notification may be made by

12 (1) annual inserts in the billing statements mailed to residential
13 customers; or

14 (2) conspicuous publication of the notice in the consumer information
15 pages of local telephone directories.

16 (e) In this section,

17 (1) "charitable organization" has the meaning given in AS 45.68.900;

18 (2) "customer" means a residential telephone customer of a
19 telecommunications company;

20 (3) "telephone solicitation"

21 (A) means the solicitation by a person by telephone of a
22 customer at the residence of the customer for the purpose of encouraging the
23 customer to purchase property, goods, or services, or make a donation;

24 (B) does not include

25 (i) calls made in response to a request or inquiry by the
26 called customer or communications made during a call made by the
27 customer;

28 (ii) calls made by a charitable organization, a public
29 agency, or volunteers on behalf of the charitable organization or public
30 agency to members of the organization or agency or to persons who,
31 within the last 24 months, have made a donation to the organization or

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Amend.
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SF

agency or expressed an interest in making a donation;
(iii) calls limited to ~~polling or~~ soliciting the expression
of ideas, opinions, ~~or votes~~;
(iv) business-to-business calls; or
(v) a person soliciting business from prospective
purchasers who have, within the last 24 months, purchased from the
person making the solicitation or from the business enterprise for which
the person is calling but only if the person or business enterprise has
not received a written request from the prospective purchaser asking
that telephone solicitations cease; the person or business enterprise is
presumed to have received a written request no later than 10 days after
the prospective purchaser mailed it, properly addressed and with the
appropriate postage.

Amend
4
Delete
(iii)
Failed

* Sec. 3. AS 45.50.472 is repealed.

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: _____
Sponsor: Sharp Date: _____
Logged In By: _____

moved Sen. Sharp
na { Halford
Frank
Rieger
Donley
yes { Sharp
Zharoff
Phillips
Failed
5/3/96

Proposed Amendment to CS for House Bill 109 (JUD)

Page 2, line 10: after "section" add (.) and of an industry sponsored preference service which is free consumer service to assist residential customers in decreasing unwanted commercial calls to their homes.

Page 3, line 4: after call; delete "or" and add a new subsection (V) calls made by a person regulated by and in compliance with 47 CFR part 64;

renumber existing subsection (V) as (VI).

RATIONALE FOR AMENDMENT TO CSHB 109

Alaska telephone customers are fully protected under the Federal Telephone Consumer Protection Act (TCPA) and FTC rules under the Telemarketing and Consumer Fraud and Abuse Protection Act (TSA):

1. These are tough laws and may result in a \$10,000 penalty per violation,
2. The State Attorney General has specific authority to enforce the federal law in each state,
3. It requires telemarketers to maintain "do not call" lists,
4. The Telephone Preference Service maintains a current up to date list of all customers who do not wish to receive calls and telemarketers subscribe to this service to assure compliance with the federal law,
5. Federal regulations basically require a telemarketer who receives a request from a residential telephone subscriber not to receive calls to "record the request and place the subscriber's name and telephone number on the do not call list at the time the request is made",
6. The federal law preempts state law concerning interstate telemarketing activity, this amendment simply brings CSHB 109 into compliance with federal law thereby limiting it's application to intra-state telemarketing,
7. This amendment would exempt those companies, including AT&T and MCI, who already must comply with the federal law,
8. The amendment would have the added benefit of encouraging Alaska intrastate telemarketers to comply with the federal act.



MCI Telecommunications
Corporation

707 17th Street, Suite 3900
Denver, Colorado 80202
Phone 303 291 6206
Fax 303 291 6333

Thomas F. Dixon
Senior Attorney
Western Region

TO: Gail Garey
FROM: Tom Dixon
DATE: April 19, 1996
RE: CSHB 109

Legislation (CSHB 109) has been introduced that would prohibit Alaska-based telephone solicitation to consumers identified in telephone directories as not wishing to receive telephone solicitations.

This restriction would not apply to companies conducting telephone solicitations from another state. Such calls are governed by federal law and applicable Federal Communications Commission (FCC) regulations.

In passing the Telecommunications Consumer Protection Act of 1991 (TCPA), Congress found that federal law was needed to control interstate telemarketing practices because telemarketers could evade restrictions imposed by over half of the states by simply establishing interstate operations and making calls across state lines. *Public Law 102-243, Section 2. Findings.* Congress explicitly recognized that state laws restricting telemarketing practices could only apply to calls which both originated and terminated within a given state. At the same time, the TCPA did not preempt any state law that imposes more restrictive requirements or regulations on the making of intrastate telephone solicitations. *47 U.S.C. § 227 (e)(1).*

In accordance with directions from Congress, the FCC issued rules, found at 47 C.F.R. § 1200, restricting telephone solicitation. These rules require each telemarketing company to maintain "do-not-call lists". This means that when a person requests to be placed on a telemarketing company's do-not-call list, that company must place the person's name on the list and may not call the person for a period of 10 years.

In developing its rules, the FCC considered and expressly rejected the use of special directory markings, such as proposed in the legislation, to identify a customer as not wishing to receive telephone solicitation. The FCC found that "this option [of special markings in directories] combines the disadvantages of maximum cost to all participants with minimal potential effectiveness, and therefore is not a suitable means of accomplishing the goals of the TCPA". *Decision No. FCC 92-443, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Paragraph 18 (1992).*





**MCI Telecommunications
Corporation**

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Denver, CO 80202
303 291 8696
MCI Mail ID: 368-8517
Internet: ggarey@mcimail.com

Gail Garey
Public Policy
West Division

April 24, 1996

Senator Rick Halford
Co-Chairman
Senate Finance Committee
Juneau, AK 99801

Dear Mr. Co-Chairman:

I am writing to express MCI's concerns about CSHB 109.

MCI is a long distance telecommunications provider and we view telemarketing as a vital marketing tool in providing competitive long-distance service. It is an essential outlet for businesses whose products are not sold in stores.

Telemarketing promotes one-on-one communication that gives customers time to ask questions, compare prices and select the best product. Consumers and companies alike rely on telemarketing and have a strong and mutual interest in honest and accurate telemarketing. Fraud, abuse and annoyance are in no one's best interest.

The telemarketing industry is undergoing tremendous growth with more and more businesses and organizations using telemarketing extensively. Telemarketing provides a low-cost, efficient method to advertise and educate consumers, particularly for small companies or new businesses. Without telemarketing, for example, MCI would not have been able to compete with AT&T's near-monopoly for residential long distance consumers.

MCI understands and supports a consumer's wish to not receive telephone solicitations, but CSHB 109 is unnecessary given the Federal Communications Commission (FCC) order implementing the telemarketing provision in the Telephone Consumer Protection Act of 1991.

The FCC order requires all telemarketers to maintain a list of consumers who have requested not to be called by the telemarketer. The Commission cites do-not-call lists as the most effective and efficient means for consumers to avoid unwanted telephone solicitations.

The order states that do-not-call lists allow the consumer to selectively halt calls from telemarketers from which they do not want to hear. Do-not-call lists are also the best alternative for protecting a consumer's confidentiality because do-not-call lists would not be universally accessible.



The FCC established the following minimum standards for do-not-call lists.

1. Companies telemarketing must have a written policy, available upon demand, for maintaining a do-not-call list.
2. Personnel engaged in any aspect of telephone solicitation must be trained in the existence and use of the do-not-call list.
3. When a consumer requests to be placed on the company's do-not-call list, the telemarketing personnel must register the request and place the consumer's name and telephone number on the do-not-call list at the time. The telemarketer cannot share the list with another person or entity without the express permission of the consumer.
4. The telemarketer must provide the called party with the name of the individual caller, the name of the person or entity for whom the call is being made, and the telephone number or address at which the person/entity may be contacted.
5. A consumer's request to be placed on the do-not-call list applies to the company making the call, but will not apply to affiliated entities unless the consumer reasonably would expect them to be included.
6. A telemarketer must maintain a do-not-call list for the purpose of future telephone solicitations.

The FCC also considered other methods for restricting telephone solicitations to consumers including markings in telephone directories such as proposed in CSHB 109. The Commission decided against this option for the following reasons:

- o the time lag between when a consumer elects the option and the annual printing of directories, during which time the consumer will receive unwanted calls
- o the tremendous burden and cost to telemarketers of acquiring and reviewing thousands of telephone directories
- o telemarketing firms compile calling lists from many sources other than telephone directories
- o the consumer would be required to make an all or nothing choice about receiving telemarketing calls
- o unpublished and unlisted number could not be included in such a system

In the order, the Commission stated that the option of directory markings "combines the disadvantages of maximum cost to all participants with minimal potential effectiveness."

Language in the Telephone Consumer Protection Act of 1991 also raises serious questions about the applicability of CSHB 109 to telemarketing firms conducting telephone solicitations to Alaska consumers from another state. A memorandum prepared by MCI on that point is attached for your review.

However, if it is the Committee's intent to go forward with CSHB 109, MCI encourages you to exempt from the legislation those persons who are in compliance with the FCC rules, found at 47 CFR Part 64 and 68, promulgated pursuant to the Telephone Consumer Protection Act of 1991.

Thank you for the opportunity to express MCI's concerns regarding CSHB 109.

Sincerely,


Gail Garey

cc: Members Senate Finance Committee
Representative Kay Brown

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 1, 1996

The Honorable Kay Brown
House of Representatives
Room 517
State Capitol
Juneau, Alaska 99801-1182

Re: CSHB 109

Dear Representative Brown:

You have asked me to comment on an April 30, 1996 letter from Gail Garey of MCI Telecommunications to Senator Dave Donley. Ms. Garey's letter asserts that in my testimony before the Senate Finance Committee, I claimed that Alaska's jurisdiction over telemarketing regulation is based on the federal Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994. She further asserts that, since MCI is exempt from that act, the basis for any claim of state jurisdiction over MCI and similar entities is inaccurate.

I did not claim in my testimony that any particular federal law gives the state jurisdiction over telemarketing. It is our position that the State of Alaska has concurrent jurisdiction over telemarketing regulation unless that jurisdiction has been preempted by federal law. I stated that the issue of whether there is federal preemption falls into a grey area but that we have concluded that there is no federal preemption and that the state has jurisdiction to regulate these activities.

The reason for any doubt about this issue is that Congress has passed two federal laws regulating telemarketing: the 1991 Telephone Consumer Protection Act (TCPA) administered by the Federal Communications Commission and the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act) administered by the Federal Trade Commission. The effect of these laws on state regulation is vague and uncertain.

The Honorable Kay Brown
House of Representatives

May 1, 1996
Page 2

The 1991 TCPA specifically provides that it does not preempt state adoption of more restrictive intrastate requirements on telemarketing activities. It is silent on state regulation of interstate activities. Other language in the statement of findings, however, has been construed by some as a congressional acknowledgement that states do not have the ability to regulate interstate activities. No state or federal court, however, has actually held that the TCPA preempts state jurisdiction.

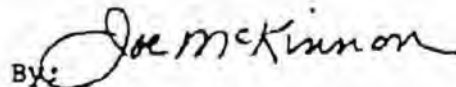
The 1994 Telemarketing Act is a much more comprehensive law regulating many aspects of telemarketing activities. The act expressly states that it does not prohibit state officials from proceeding in court to enforce the provisions of any state civil or criminal statute. When the FTC adopted the federal regulations implementing the act, it specifically stated that it agreed with the position of the National Association of Attorneys General that the 1994 act did not intend to preempt state action.

Our position is not that the 1994 Telemarketing Act provides a basis for jurisdiction, but merely that it does not preempt state regulation. The 1994 Telemarketing Act is a more recent and much more comprehensive statement of legislative purpose regarding telemarketing than the 1991 TCPA. The 1994 act expressly allows state enforcement of any state law regulating telemarketing. Because of that fact, we believe the courts would conclude that the earlier 1991 TCPA was not intended to preempt state regulation. If it had been, it is unlikely that Congress would have taken an inconsistent position in subsequent legislation addressing the same subject matter.

Our conclusion, therefore, is that neither the 1991 TCPA nor the 1994 Telemarketing Act preempt state jurisdiction. Because there is no federal preemption, the legislature may enact laws regulating out-of-state entities engaged in telemarketing activities in Alaska.

I hope this clarifies our position regarding this legislation. If you have any further questions, please do not hesitate to call me.

BRUCE M. BOTELHO
ATTORNEY GENERAL

BY: 

Joseph H. McKinnon
Assistant Attorney General

JHM/cw

FTC news

Federal Trade Commission Washington, D.C. 20580 (202) 326-2180

FOR RELEASE: 11:30 A.M., AUGUST 16, 1995

NEW FEDERAL TRADE COMMISSION RULE TO PROTECT CONSUMERS FROM DECEPTIVE AND ABUSIVE TELEMARKETING PRACTICES

Beginning Dec. 31, 1995, telemarketers must promptly tell the consumers they call several key pieces of information -- the fact that they're making a sales call, the nature of the products or services being offered, and in the case of prize-promotions, that no purchase is necessary to win. Telemarketers must also disclose cost and other information *before* they ask consumers for any money. In addition, telemarketers will be required to have consumers' express, verifiable authorization before debiting their checking accounts. The provisions are part of a new Telemarketing Sales Rule, announced by the Federal Trade Commission today, to protect consumers from deceptive and abusive telemarketing practices. The FTC promulgated the new rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, which was signed into law in August 1994.

The new rule will prohibit telemarketers from calling before 8 a.m. and after 9 p.m., and from calling consumers who have said they don't want to be called. It will prohibit misrepresentations about the cost, quantity and other aspects of the offered goods or services. And it will ban telemarketers who are offering to arrange loans, provide credit repair services or to recover money consumers lost in a telemarketing scam from seeking payment before rendering the promised services, and will prohibit credit card laundering and other forms of knowing assistance to deceptive telemarketers.

"This rule will allow consumers to choose whether telemarketers can continue calling them, and give them information that is helpful in deciding whether an offer is legitimate and the seller is above board," said FTC Bureau of Consumer Protection Director Jodie Bernstein. "Its language is flexible so that it allows us to target the deceptive and abusive practices we know

(Telemarketing Sales Rule--08/16/95)

about as well as those we have not yet seen. But it's also concise so that we've minimized the regulatory burdens on legitimate industry. The final rule reflects extensive FTC experience in targeting telemarketing fraud as well as many of the more than 700 comments we received, and the ensuing discussion at a public workshop, on our earlier drafts of the rule. This process gave all parties -- consumers, industry and other law enforcers -- a role in its development, resulting in a tough but well-targeted tool for protecting consumers from telemarketing fraud."

The Telemarketing Sales Rule will cover most types of telemarketing calls to consumers, including calls to pitch goods, services, "sweepstakes" and prize-promotion and investment opportunities. It also will apply to calls consumers make in response to postcards or other materials they receive in the mail (except catalogs), unless the materials contain the information required to be disclosed under the rule. Violations of the new rule may result in civil penalties of up to \$10,000 per violation. It is enforceable by the FTC, and also the 50 state attorneys general who, for the first time, will be able to get orders that apply nationwide against fraudulent telemarketers.

Required Disclosures:

Under the new rule, telemarketers will have to promptly disclose to consumers the fact that it's a sales call, the identity of the seller, the nature of the goods or services being offered and, if it's a prize-promotion, the fact that no purchase is necessary to win. In addition, before telemarketers can ask consumers for any credit card or bank account information or before they make arrangements for a courier to pick up payment, they will have to disclose to consumers (either orally or in writing):

- the total costs of the goods or services being offered and any material restrictions or conditions on obtaining or using them;
- the terms and conditions of any refund, exchange or repurchase policy mentioned in the offer or the fact that the sale is final and nonrefundable; and
- how to enter any prize promotion and the odds of winning.

Prohibited Misrepresentations:

The new rule contains broad prohibitions against misrepresentations regarding any of the information required to be disclosed and regarding any material aspect of the performance, efficacy, nature or central characteristics of the goods or services.

According to the FTC, almost 75 percent of its cases against telemarketing fraud since 1991 have involved either prize promotions or investment opportunities. To help combat these frauds, the new rule will impose additional prohibitions against misrepresentations in these situations. Specifically, it will prohibit telemarketers from misrepresenting any material aspect of:

- a prize promotion, including the odds of winning, the nature or value of the prize, or that payment is required to win; and
- investment opportunities, including the risk, liquidity, earnings potential or profitability.

(Telemarketing Sales Rule--08/16/95)

Collecting Payment from Consumers:

A new provision (not included in draft versions of the rule) will prohibit telemarketers from debiting a consumer's checking account without the consumer's express, verifiable authorization. For example, the authorization could be in writing, or a telemarketer could tape record the sales call, but in that instance the tape will have to evidence that the consumer received certain disclosures and the telemarketer will have to make the tape available to the consumer's bank on request. (Debiting involves using a "demand draft," a check created by the seller and imprinted with the account number provided by the consumer, to be presented to the consumer's bank for payment.)

Telemarketers will be prohibited from making false or misleading statements to induce consumers to pay for goods or services, regardless of the payment method consumers use. This provision will give law enforcers the flexibility to address new ways that telemarketers engaged in fraud might attempt to take consumers' money.

As noted above, the new rule will mandate that telemarketers make the required disclosures before making arrangements for a courier to pick up payment from a customer. The rule also retains from the earlier proposals prohibitions against seeking payment before rendering credit repair services, obtaining or arranging credit or loans, or recovering money lost or prizes not received in a prior telemarketing scam.

Assisting Telemarketing Fraud:

The Telemarketing Sales Rule will bar anyone from giving substantial assistance — such as providing "sucker" lists, scripts or promotional materials, or providing appraisals of gems, metals, art, or other goods — to a telemarketer when the person "knows or consciously avoids knowing" that the telemarketer is engaged in conduct that would violate the rule. The final rule also retains the prohibition against credit card laundering, which is how fraudulent telemarketers gain unauthorized access to the credit card system using another entity's merchant account. Fraud operators cannot get their own merchant accounts with reputable financial institutions, so they must use launderers.

Finally, the rule will require telemarketers to maintain various records that will assist the FTC and state attorneys general in enforcing the rule, but retains provisions that afford industry substantial flexibility to minimize their recordkeeping requirements. Telemarketers selling office and cleaning supplies will be exempt from these requirements so as to minimize any disparate impact the rule's requirements have on legitimate sellers in this industry compared with other business-to-business telemarketers not covered by the rule.

The Telemarketing Sales Rule will exempt calls where the transaction is completed after a face-to-face sales presentation or where the call is subject to extensive requirements under other FTC rules (such as the 900 Number Rule and the Franchise Rule), as well as calls initiated in response to advertisements in general media such as newspapers. Catalog sales also will be

(Telemarketing Sales Rule--08/16/95)

exempt, as will business-to-business calls except those involving the sale of office or cleaning supplies.

The Commission vote to issue the final rule and approve a statement of basis and purpose in support of it was 5-0, with Commissioner Mary L. Azcuenaga issuing a separate concurring statement in which she said that, although she joins the Commission in promulgating the rule, she remains concerned about the legal basis for the exemptions to the rule. She noted that the statute does not give the Commission the express authority to grant exemptions and that the better reading of the statute is that the commission does not have the authority to grant some of the exemptions included in the rule. "Although the exemptions may be reasonable as a matter of policy, the Commission does not have the authority to second-guess the Congress," she said.

The rule and statement will be published in the Federal Register shortly.

Free copies of an FTC "Tips Sheet" and a "Bookmark" containing information about the new rule and consumers rights under it are now available, along with copies of several consumer brochures on related issues -- "Swindlers are Calling," "Telemarketing: Reloading & Double-Scamming Frauds," and "Automatic Debit Scams."

Copies of these consumer materials, the new Telemarketing Sales Rule, the statement of basis and purpose for the rule, and Commissioner Azcuenaga's statement are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580: 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest FTC news as it is announced, call the FTC's NewsPhone recording at 202-326-2710. FTC news releases and other materials also are available on the Internet at the FTC's World Wide Web Site at: <http://www.ftc.gov>

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David Torok, 202-326-3140

(FTC File No. R411001)
(trule.fin)

FEDERAL COMMUNICATIONS COMMISSION
Common Carrier Bureau
Enforcement Division
Informal Complaints and Public Inquiries Branch
Stop Code 1600A2
Washington, D.C. 20554
202-632-7553

In Reply Refer To:
ICB-IB-TCPA
March 1995

INDUSTRY BULLETIN

TELEPHONE CONSUMER PROTECTION ACT

TELEPHONE SOLICITATIONS, AUTODIALED AND ARTIFICIAL OR
PRERECORDED VOICE MESSAGE TELEPHONE CALLS, AND
THE USE OF FACSIMILE MACHINES

The Telephone Consumer Protection Act (TCPA) is a federal statute that was enacted on December 20, 1991, to address concerns about the growing volume of unsolicited telephone marketing calls and the increasing use of automated and prerecorded telephone calls. The TCPA imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded voice messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA also directs the FCC to adopt regulations to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

The FCC adopted rules and regulations, effective December 20, 1992, implementing the TCPA.¹ The FCC will be monitoring complaints about automated calls and unwanted telephone solicitations to determine whether additional action to limit or to prohibit such calls would be appropriate.

¹ On December 18, 1992, the United States District Court for the District of Oregon issued a preliminary injunction enjoining the Commission from enforcing §227(b)(1)(B) of the Telephone Consumer Protection Act of 1991 pending judicial action on a lawsuit challenging the constitutionality of the section (§227(b)(1)(B) prohibits calls using artificial or prerecorded messages to residential telephone subscribers). The injunction applied nationwide, and affected only FCC enforcement of §227(b)(1)(B). On May 21, 1993, the District Court ruled that §227(b)(1)(B) violated the First Amendment. The United States Court of Appeals for the Ninth Circuit reversed the District Court's ruling and upheld the constitutionality of §227(b)(1)(B) in an opinion issued on February 6, 1995.

Different rules and regulations apply to calls placed to residences and calls placed to businesses. Therefore, you should carefully read this entire bulletin which is intended to assist your organization in complying with the TCPA and the FCC's rules and regulations.

HOW IS THE TERM "TELEPHONE SOLICITATION" DEFINED?

The term "telephone solicitation" is defined as the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. The term does not include a call or message (1) to any person with that person's prior express invitation or permission, (2) to any person with whom the caller has an established business relationship, or (3) by a tax-exempt nonprofit organization.

WHAT IS AN "ESTABLISHED BUSINESS RELATIONSHIP?"

You have an "established business relationship" with a residential subscriber if the subscriber has made an inquiry, application, purchase or transaction with respect to your business' products or services. An established business relationship cannot be formed solely on the basis of a prior solicitation. A residential subscriber can end an established business relationship by stating that he or she does not want to receive any more calls or solicitations from your business.

HOW IS THE TERM "AUTODIALER" DEFINED?

An "autodialer" is defined as equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator.

WHAT RESTRICTIONS APPLY TO THE USE OF AUTODIALERS OR ARTIFICIAL OR PRERECORDED VOICE MESSAGES?

1) Except in emergencies or with the called party's prior express consent, autodialers or artificial or prerecorded voice message devices may not be used to call:

- * emergency telephone lines, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency

- * guest or patient rooms of a hospital, health care facility, elderly home, or similar establishment
- * paging and cellular telephone numbers or other radio common carrier services (cellular service providers may send prerecorded messages to their subscribers -- for example to "roamers" leaving the service area -- if subscribers are not charged for the call)
- * any service for which the called party is charged for the call.

2) Except in emergencies or with the called party's prior express consent, artificial or prerecorded voice message telephone calls may not be placed to residential subscribers.

A call is exempt from this prohibition if the call:

- * is not made for a commercial purpose
- * is made for a commercial purpose but does not include an unsolicited advertisement
- * is made by a caller with whom the called party has an established business relationship
- * is made by or on behalf of a tax-exempt nonprofit organization.

3) Artificial and prerecorded voice message telephone calls placed to business numbers are not prohibited.

4) No person may use an autodialer in a way that simultaneously engages two or more lines of a multi-line business.

5) Any person, business, or entity using an autodialer to transmit an artificial or prerecorded voice message, including such calls placed to business numbers, must clearly state its identity at the beginning of the message, and must clearly state its telephone number or address during or after the message. The telephone number provided cannot be the number of the autodialer or prerecorded message player which placed the call.

DID THE FCC ADOPT SPECIAL RULES FOR PRERECORDED DEBT COLLECTION CALLS PLACED TO RESIDENCES?

No. The FCC did not find it necessary to adopt specific rules for debt collection calls. Debt collectors are reminded that the Fair Debt Collection Practices Act also applies to debt collection calls. That Act is enforced by the Federal Trade Commission.

WHAT RULES APPLY TO "LIVE" SOLICITATIONS PLACED TO RESIDENTIAL TELEPHONE SUBSCRIBERS?

- 1) "Live" telephone solicitations may not be made to residential subscribers before 8 A.M. or after 9 P.M. (local time at the called party's location).
- 2) Persons or businesses making "live" telephone solicitations to residential telephone subscribers must:
 - * institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations (a "do-not-call list") before initiating any telephone solicitations
 - * have a written policy, available upon demand, for maintaining a do-not-call list
 - * train and inform personnel engaged in any aspect of telephone solicitation in the existence and use of the do-not-call list
 - * make a record of the name and telephone number of residential subscribers who request not to be called again, at the time the request is made

Requests should be forwarded to the person or entity on whose behalf the solicitation is made (where appropriate), to the party maintaining the do-not-call list (if not maintained by the caller), and to affiliated entities (where appropriate)

- * maintain the do-not-call list indefinitely for the purpose of future telephone solicitations

- * obtain a residential subscriber's prior express consent to share or to forward the residential subscriber's request not to be called to a party other than the entity on whose behalf a solicitation is made or its affiliate
- * place the residential subscriber's name and number on the do-not-call list of any affiliates or subsidiaries of the telemarketer where the residential subscriber would reasonably expect to be included on their lists given the identity of the telemarketer and the product being advertised
- * provide the called party with the name of the individual caller, the person or entity on whose behalf the call is made, and a telephone number or address at which that person or entity may be contacted.

3) The party on whose behalf a solicitation is made will ultimately be held liable for violations of the TCPA or FCC rules.

4) FCC rules do not require tax-exempt nonprofit organizations to comply with rules for making telephone solicitations.

DO THE "DO-NOT-CALL LIST" RULES APPLY TO CALLS PLACED TO BUSINESS TELEPHONE NUMBERS?

No. However, state laws may apply to calls placed within the same state.

ARE SMALL BUSINESSES OR SECOND-CLASS MAIL PERMIT HOLDERS EXEMPT FROM FCC RULES ON TELEPHONE SOLICITATIONS?

No.

DO FCC RULES BAN UNSOLICITED ADVERTISEMENTS TO TELEPHONE FACSIMILE MACHINES?

Yes. Effective December 20, 1992, FCC rules ban the transmission of unsolicited advertisements to telephone facsimile machines. An "unsolicited advertisement" is defined as a transmission

advertising the commercial availability or quality of property, goods or services without the prior express invitation or permission of the person or entity receiving the transmission.

Unsolicited advertisements may not be transmitted by any device to a telephone facsimile machine unless the person receiving the facsimile has given prior express invitation or permission to receive it. If the sender and the recipient have an established business relationship, an invitation or permission to receive unsolicited facsimile advertisements is presumed to exist. However, the recipient may end an established business relationship by requesting that no further unsolicited advertisements be sent, thus revoking any invitation or permission to receive further transmissions.

WHAT OTHER REQUIREMENTS APPLY TO THE USE OR MANUFACTURE OF TELEPHONE FACSIMILE MACHINES?

FCC rules require that each transmission to a telephone facsimile machine must clearly contain, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, (1) the date and time the transmission is sent (2) the identity of the sender and (3) the telephone number of the sender or of the sending machine.

All telephone facsimile machines manufactured on or after December 20, 1992 must have the capacity to clearly mark such identifying information on the first page or on each page of the transmission.

WHO IS RESPONSIBLE FOR COMPLIANCE WITH FCC RULES ON TELEPHONE FACSIMILE TRANSMISSIONS?

The person on whose behalf a facsimile transmission is sent will ultimately be held liable for violations of the TCPA or FCC rules.

DO THE TCPA AND THE FCC'S RULES PREEMPT STATE LAW?

The TCPA specifically preempts state law where it conflicts with the technical and procedural requirements for identification of senders of telephone facsimile messages or automated artificial or prerecorded voice messages.

The TCPA and the FCC's rules do not preempt state law which imposes more restrictive requirements or regulations for (1) the use of facsimile machines or other electronic devices to send unsolicited advertisements, (2) the use of autodialers, (3) the use of artificial or prerecorded voice messages, or (4) the making of telephone solicitations.

Thus, depending on state law, the TCPA, the FCC's rules and/or state laws could apply to your company's services. You should contact the state public utilities commission in each state where your company provides the services listed in the previous paragraph to determine what laws apply in those states.

WHAT REQUIREMENTS APPLY TO RELEASING AUTODIALED CALLS?

Autodialers used to transmit artificial or prerecorded voice messages should automatically release the called party's line within 5 seconds of the time that the called party's hang-up signal reaches the dialing system of the caller.

WHO RESOLVES DISPUTES INVOLVING VIOLATIONS OF THE TCPA AND THE FCC'S RULES?

- 1) Residential subscribers who receive telephone solicitations after requesting not to be called may directly contact the business placing the call using the telephone number or address provided in the solicitation.
- 2) The TCPA provides a person or entity with a private right of action, if permitted by state law or court rules, for any violation of the autodialer or prerecorded voice message prohibitions, for any violation of the unsolicited advertisement facsimile prohibition, and for any violation of the guidelines or solicitations. A person or entity may file suit to enjoin the violations listed below and/or file suit for actual monetary loss from violations or receive \$500 in damages for each violation (whichever is greater). In some instances the court may triple the award.

Suit may be filed when the TCPA is violated, such as when:

- * residential customers receive more than one "live" call within any 12 month period by or on behalf of the same company after making a do-not-call request (defendants that have established procedures to comply with rules regarding telephone solicitation may present such compliance efforts as an affirmative defense to any action brought against them)

- * anyone receives an autodialed or artificial or prerecorded voice message call in violation of the TCPA and the FCC's rules
 - * an autodialer simultaneously engages two or more lines of a multi-line business
 - * anyone receives an unsolicited advertisement on their facsimile machine in violation of the TCPA and the FCC's rules.
- 3) A state may initiate and file a civil action on behalf of its residents in federal district court against any person or entity it believes is engaged in a pattern or practice of violations of the TCPA or FCC rules. States retain the power to initiate action in state court for violations of state telemarketing statutes.
- 4) Persons who suspect violations of the TCPA or the FCC's rules may request FCC action. The FCC may assess penalties against parties who violate the TCPA or the FCC's rules and regulations.

WHERE CAN I ORDER A COMPLETE COPY OF THE TCPA AND THE FCC'S ORDER EXPLAINING IMPLEMENTATION OF THAT ACT?

Copies can be ordered from the FCC's contractor for public records duplication: International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone: (202) 857-3800). You should ask for copies of the Telephone Consumer Protection Act and the Report and Order in CC Docket No. 92-90 released by the Commission on October 16, 1992 (In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991).

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BELIEVE IT: OTHER THINGS WERE GOING ON

The National Center for State Courts reports that during the nine-month O.J. Simpson trial, the Los Angeles Superior Court disposed of more than 25,000 criminal cases. During the first six months of this period, 138 murder trials were started and completed. Of the 138, 18 were capital murders.

CALIFORNIA GOP GETS A GRIP

Fourteen months after winning a bare majority of seats in the California Assembly, Republicans finally managed to elect the speaker of their choice. The nearly omnipotent Willie Brown last summer had master-minded the elevation of maverick Republican Doris Allen to the speakership. She won with 39 Democratic votes and her own. She resigned to face (and lose) a recall election, bequeathing her post to another renegade, Brian Setencich, again elected with Democratic votes. Only after Mr. Brown went off to be mayor of San Francisco in January was a three-term Republican, Curt Pringle, elected speaker by a vote of 40 to 37.

NOT COLOR BLIND YET

According to the Census Bureau, the number of interracial couples grew from 310,000 in 1970 to 1.2 million in 1992; and 3.4 percent of all American births in 1989 were of mixed race parents. If we're a color-blind society, who cares? Yet you can't have affirmative action if you can't tell who gets its benefits. So if daddy's black and mommy's white, what are you? OMB's 18-year-old Directive 15 allows just five (unsatisfactory) reporting categories (American Indian or Alaskan native, Asian or Pacific Islander, black, Hispanic or white). Federal statisticians are struggling to find a better way to categorize several million of us before the 2000 census; it isn't easy.

HOT ISSUE IN HAWAII

An appointed state commission in Hawaii has recommended to the state Legislature that marriage rights and



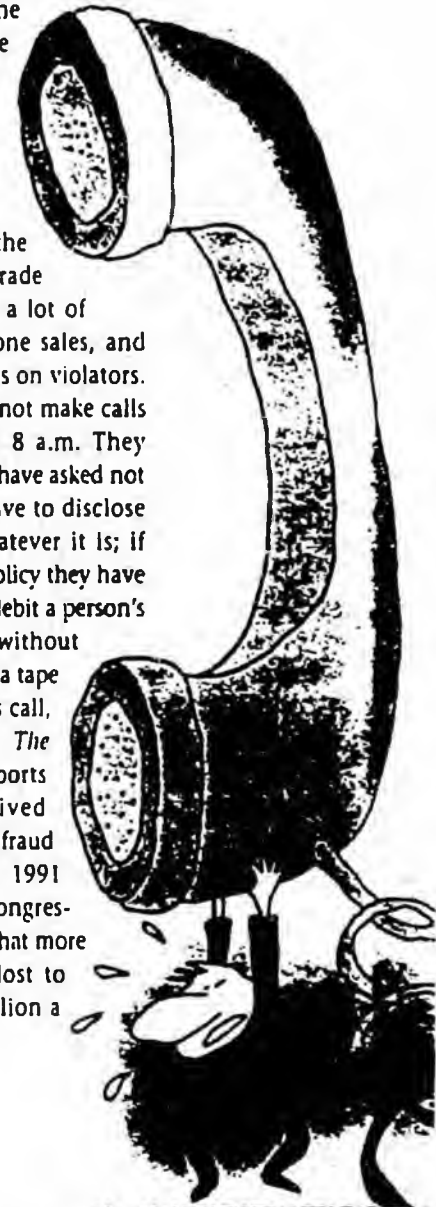
responsibilities be granted to couples of the same sex. In 1993, the Hawaii Supreme Court found that denying marriage licenses to gay couples would be unconstitutional unless the state demonstrated a compelling interest for doing so. The Legislature last year banned same-sex marriages. Because states generally agree to recognize each other's laws, the new debate will be closely watched.

CALIFORNIA BANS GENDER-BASED PRICES

As of the first of January, businesses in California may not price their services based on whether the customer is male or female. Researchers have known for some time that it is common practice to charge women more than men for a plain haircut or for laundering a shirt. A 1990 Chicago study found that white women were asked to pay \$142 more for the same new car than white men; however, the California law does not include products. In addition, a business can charge a different price if the time, difficulty or cost of the service is not the same for men and women.

FTC CURBS TELEMARKETERS

As of the first of the year, the Federal Trade Commission applies a lot of new rules to telephone sales, and can levy \$10,000 fines on violators. "Telemarketers" may not make calls between 9 p.m. and 8 a.m. They can't call people who have asked not to be called. They have to disclose the total cost of whatever it is; if there is a no-refund policy they have to say so. They can't debit a person's checking account without written permission or a tape recording of the sales call, and so on and on. *The Wall Street Journal* reports that the FTC received 47,000 telemarketing fraud complaints between 1991 and 1995, and that congressional staff estimates that more than \$40 billion is lost to fraud in the \$440 billion a year industry.



While You Were Out

To: Consumers

Caller: Federal Trade Commission

Phone: (202) 326-2222

Telephoned

Please Call

Wants You To Know

Returned Your Call

Subject: Consumer Protections -

New Telemarketing Sales Rule

1. It is illegal for a telemarketer to call you if you have asked not to be called.
2. Calling times are restricted to the hours between 8 a.m. and 9 p.m.
3. Telemarketers must tell you it's a sales call, the name of the seller, and what they are selling before they make their pitch. If it's a prize promotion, they must tell you that no purchase or payment is necessary to enter or win.
4. It's illegal for telemarketers to misrepresent any information; any facts about their goods or services; earnings potential, profitability, risk, or liquidity of an investment; or the nature of a prize in a prize-promotion scheme.
5. Before you pay, telemarketers must tell you the total cost of the goods and any fees involved in getting or using them; or that a sale is final or non-refundable. In a prize promotion, they must tell you the odds of winning, that no purchase or payment is necessary to enter, and any restrictions or conditions of receiving the prize.
6. It's illegal for a telemarketer to withdraw money from your checking account without your express, verifiable authorization.
7. Telemarketers cannot lie to get you to pay, no matter what method of payment you use.
8. You do not have to pay for credit repair, recovery room, or advance-fee loan/credit services until these services have been delivered.
9. It's illegal to help deceptive telemarketers if you know - or consciously avoid knowing - that they are breaking the law.
10. Your state law enforcement officers now have the power to prosecute fraudulent telemarketers who operate across state lines.

CURRENT STATUS: (S) FIN

	JRN-DATE	JRN-PAGE	ACTION
1	03/08/96	3033	(H) READ THE THIRD TIME CSHB 109(JUD)
2	03/08/96	3034	(H) PASSED Y34 N1 E3 A2
3	03/08/96	3034	(H) (H) ADOPTED JUD LETTER OF INTENT
4	03/08/96	3035	(H) BRICE NOTICE OF RECONSIDERATION
5	03/08/96	3035	(H) RECON TAKEN UP SAME DAY UNAN CONSENT
6	03/08/96	3036	(H) RECON TAKEN UP - IN THIRD READING
7	03/08/96	3036	(H) PASSED ON RECONSIDERATION Y36 E3 A1
8	03/08/96	3036	(H) (H) ADOPTED JUD LETTER OF INTENT
9	03/08/96	3043	(H) TRANSMITTED TO (S)
10	03/11/96		(S) READ THE FIRST TIME - REFERRAL(S)
11	03/11/96		(S) FINANCE

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL	FIRST	LAST	QUIT
4B		H						==PC	LINE 22	COL 14	

To: Alaska State Legislature

The Direct Marketing Association (DMA)
has 3600 Members nationwide
who sometimes use the telephone.....

we have members headquartered in Alaska
and with operations in Alaska

DMA opposes a state do-not-call list as proposed in HB 109
because we already serve consumers in two important ways

if you ask us not to call -- we don't

we put you on our in-house
do-not-call list

we do not trade your name
or number with
any other company

it's the law

we support and pay for an industry service to consumers
Telephone Preference Service (TPS)

a consumer can write to TPS and be deleted from
calling lists of national marketers

this service is free to consumers and paid for by
industry -- for 20 years

there are two federal laws which require a company to implement
a consumer's request not to be called again

Telephone Consumer Protection Act (FCC administered)

Telemarketing Sales Rule (FTC administered)

DMA supported both laws

these two federal laws were intended and implemented to preempt
the states as far as interstate marketing is
concerned

that means that an Alaska law would affect
only companies who call Alaskans from Alaska

this proposed Alaska law is not practical or helpful to Alaska
consumers or Alaska businesses

Representative Kay Brown

MAR 18 1996

ALASKA STATE LEGISLATURE

Legislative Information Office
716 W. 4th Ave., #420
Anchorage, AK 99501-2133
(907) 258-8162

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

TO: Senator Steve Frank
Senator Rick Halford
Co-Chairs, Senate Finance Committee

FROM: Representative Kay Brown

DATE: March 18, 1996

RE: HB 109 hearing request

I respectfully request a hearing be scheduled for CSHB 109 (Jud) at your earliest convenience.

This legislation would require telephone utilities to offer residential customers an opportunity to avoid telemarketing solicitation. Passage of this bill would relieve many Alaskans from being interrupted in the privacy of their home from unwanted or unsolicited phone sales. The increased use of telephone solicitation has become an annoyance to many people.

The bill unanimously passed the House on March 8. It has a zero fiscal note.

Senate Finance Committee previously held hearings on similar legislation, SB 239, in February.

In addition to the attached sponsor statement, fiscal notes and sectional analysis, I have also provided two amendments that I would like to put before your committee. One amendment would add language that was included in the Senate version (SB 239) making the charges for directory identification and for providing a copy of the list subject to APUC approval. The other amendment would establish a "good faith defense" provision in the event of calling errors; a similar provision is included in federal law. This amendment is requested by the Alaska Newspaper Association.

Please don't hesitate to contact me if you have any questions or concerns about this bill. I will be happy to provide additional information.

Attachments

cc: Senator Rieger
Senator Pearce

DISTRICT 15

Downtown • Fairview • Northstar • Romig • South Addition • Spenard

SPONSOR STATEMENT

CSHB 109 (JUD)

An Act relating to telephone directory listings and solicitations

The multi-billion dollar telemarketing industry has created a situation in which every telephone subscriber in Alaska is potentially part of a captive market. The rapid expansion of telemarketing has created a need for enhanced protection of our privacy rights.

CSHB 109 (JUD)

- *Would require telephone utilities to offer residential customers an opportunity to avoid telemarketing solicitations. In a practical and economic manner, it resolves shortcomings in federal regulation.*

This legislation would make it clear that a citizen's right to individual privacy includes the right to be protected from abusive or annoying misuse of telephones.

SECTIONAL ANALYSIS CSHB 109 (JUD)

An Act relating to telephone directory listings and solicitations.

Section 1.

Amends AS 45.50.471(b) to add the new unlawful unwanted telephone solicitation provisions in AS 45.50.475. Makes a violation of the provisions in this bill an "unlawful act and practice" under the unfair trade practices and consumer protection statute. The penalty is up to \$5,000 per violation.

Section 2. Adds new section. AS 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471(b)(41) if the person:

(1) engages in telephone solicitation to a residential telephone if the party is identified in the telephone directory as not wishing to receive telephone solicitations; or

(2) originates a telephone call using an automated or recorded message as a telephonic advertisement or solicitation.

(b) Local exchange telecommunications companies and companies that provide telephone directories shall provide for identification in the directory of those parties who do not wish to be solicited by telephone; only those who chose to be so identified shall pay for the cost of identification.

(c) If requested, local exchange telecommunications companies shall provide at a reasonable cost to the phone solicitors a telephone list (in computer format, if possible) of residential customers not wishing to receive telephone solicitations.

(d) Local exchange telecommunications companies shall inform subscribers by inserts in billing statements or advertising in the consumer information pages of the directory of the availability of the "no solicitation" service.

(e) Defines terms in the bill (charitable organization, customer, and telephone solicitation) and makes exemptions for charitable organizations, opinion polling, responding to inquiries, business to business calls and follow ups on previous purchases or donations (with a two year limitation for both charities and businesses).

Section 3.

Repeals 45.50.472 (junk telephone calls).

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

House Judiciary Committee Letter of Intent for CSHB 109 (JUD)

CSHB 109 was passed out by the House Judiciary Committee on February 14, 1996. The committee's intent is that this bill, which makes it a violation of Alaska's consumer protection laws to telephonically solicit residential telephone users under some circumstances, not result in liability for local exchange telecommunication companies for such violations.

DATED: 2-15-96

By:

Brian D. Porter
Brian Porter, Chairman House Judiciary Committee

HOUSE ADOPTED 3/8/96

Representative Kay Brown

APR 12 1996
ALASKA STATE LEGISLATURE

Legislative Information Office
716 W. 4th Ave., #420
Anchorage, AK 99501-2133
(907) 258-8162

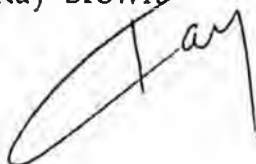
During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

TO: Senate Finance Committee members

FROM: Representative Kay Brown

DATE: April 12, 1996

RE: Telemarketers



As the sponsor of HB 109, legislation relating to telephone solicitations, I want to bring to your attention a recent consumer protection settlement between the Department of Law and an Alaska company concerning allegations of continuing telephone sales to residential and business consumers after repeatedly being told to stop.

The attached press release dated April 11 announces a consumer protection settlement with Alpine Glass of Alaska and the Department of Law. The State investigated allegations that Alpine Glass telemarketers continued to make sales calls to residential and business consumers after being repeatedly asked by the consumers not to call again. Under the terms of the settlement, Alpine Glass has paid a \$1,000 civil penalty and must adopt and implement written "do not call" procedures for its telemarketers. Harassing telemarketing calls do occur and can create problems. If you are interested, I have a copy of the Superior Court compliance order pertaining to this case that I would be happy to share with you.

Passage of HB 109 would help stop unwanted telephone solicitations. Thank you for considering this bill.

Attachment

DISTRICT 15

Downtown • Fairview • Northstar • Romig • South Addition • Spenard

PRESS RELEASE

April 11, 1996

TELEMARKETER PROMISES TO HONOR "DO NOT CALL" REQUESTS

For Immediate Release

Contact person: Daveed A. Schwartz, Assistant Attorney General
Alaska Department of Law, Anchorage Office
(907) 269-5265

Attorney General Bruce Botelho announced today that the State has entered into a consumer protection settlement with Alpine Glass of Alaska, Inc., a telemarketer of auto glass repair and replacement services in Fairbanks, Wasilla, and Anchorage. The settlement resolves the State's investigation of allegations that Alpine Glass telemarketers persisted in making sales calls to several residential and business consumers in Anchorage and Fairbanks over the last year after being repeatedly asked by the consumers not to call again. In some instances, Alpine Glass made sales calls to consumers after the State directed in writing that Alpine Glass stop calling specific phone numbers belonging to the consumers in question.

Under Alaska and federal law, a telemarketer may not initiate a sales call to persons who have previously stated that they do not wish to receive further sales calls. Telemarketing tactics of this sort are defined as "abusive" and "oppressive" practices under federal and state law. The State began its investigation of Alpine Glass after several consumers in Fairbanks, Anchorage, and Wasilla complained to the Better Business Bureau and to the State of receiving repeated unwanted sales calls despite having lodged "do not call" requests. In one instance, a consumer who had already lodged a half dozen "do not call" requests with Alpine Glass complained of receiving two additional unwanted sales calls after having extracted a promise from Alpine Glass management that its telemarketers would stop calling.

Under the settlement, which will be filed with the Alaska Superior Court, Alpine Glass must adopt and implement written "do not call" procedures to ensure that its telemarketers do not call consumers who have previously requested that Alpine Glass not call them. As part of the "do not call" procedures, Alpine Glass must establish lists of persons who may not be contacted, update the lists at the start of each business day, and distribute the lists to each of its telemarketers. Alpine Glass must also train its telemarketing representatives in the "do not call" procedures on a quarterly basis. Also under the settlement, Alpine Glass has paid a \$1,000 civil penalty to the State of Alaska.

Attorney General Botelho said: "Alaskans are too often subjected to abusive and oppressive telemarketing practices. Telemarketers should be on notice that Alaskans value their privacy, and will not tolerate unwanted telephone solicitations."

APR 09 1996

HOUSEHOLD INTERNATIONAL

Lew McMurry

April 1, 1996

Senator Rick Halford, Majority Leader
Co-Chair, Senate Finance Committee
Room 508, State Capitol
Juneau, AK 99801

Dear Senator Halford,

I am writing to express concern over House Bill 109, which now resides in your committee. As I am sure you are aware, telemarketing has grown dramatically in the last decade as an effective and low-cost means for businesses and consumers to conduct many types of transactions. Buying and selling over the telephone is the preferred method of doing business for millions of people. HB 109 would make transacting business via the telephone more difficult.

As with any growing industry, there have been problems. Unfortunately, fraud has been perpetrated by unscrupulous telemarketers. I also realize that people are simply annoyed at getting sales calls, especially at dinner time.

Various states and the federal government have dealt with the issue of regulating telemarketing in myriad ways. HB 109's way of regulating telemarketing has been the least preferred.

Two significant federal laws are in place that protect consumers from unwanted calls. The Telephone Consumer Protection Act (TCPA) gives consumers a way to avoid unwanted calls by asking to be placed on a company-specific do not call list. A consumer may bring action for violation of the TCPA. It is enforced by the Federal Communications Commission.

In 1994, the Telemarketing and Consumer Fraud and Abuse and Prevention Act was passed. This act will be enforced by the Federal Trade Commission, State Attorneys General or private parties. The FTC wrote rules that were effective December 31, 1995. The law and rules deal extensively with deceptive and abusive telemarketing, required disclosures, record keeping and penalties for violations.

HOUSEHOLD INTERNATIONAL

Lew McMurrin

Many states have also required registration or licensing of telemarketers who either reside or call into a given state. Oregon is the only state that I am aware of that has enacted a similar law to HB 109.

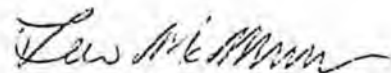
We do business as Household Finance Corporation, Household Retail Services, Household Credit Services and Household Life Insurance Company. I can tell you from experience that the Oregon law is difficult to comply with because of the need to purchase the names with asterisks from US West and then "scrub" that against our customer list. It is a simple fact of doing business that almost nobody uses the local phone book when telemarketing.

Another viable remedy for consumers is the Direct Marketing Association's Telephone Preference Service. Consumers can send their name to this service asking to be taken off telemarketing lists. It works. I send my name in annually and sales calls cease soon afterwards. To be honest with you, the telephone solicitations I get now are from non-profits.

I hope that I have made the point that consumers have many avenues to avoid unwanted sales calls. At this time there is no need for HB 109, despite its worthy purpose.

I apologize for responding to this issue so late in the process but I have been wrapping up with the Idaho and Washington legislative sessions. If you have any questions, please contact me at the address or phone number above. If need be, I would travel to Juneau to discuss this issue with you personally. Thank you for your consideration.

Sincerely,



Lew McMurrin

(S) FIN

MAR 26 1996

DIRECT SELLING ASSOCIATION

1600 K Street, NW, Suite 1010, Washington, DC 20006-2808
202/293-5760 • Fax 202/463-4569

March 21, 1996

The Honorable Rick Halford
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

I write on behalf of the Direct Selling Association (DSA) to express our concerns with H.B. 109 (telemarketing).

By way of background, DSA is the national trade association representing over 150 companies which sell their products and services by personal presentation and demonstration, primarily in the home. Our membership, with 6.3 million direct sellers, includes some of the nation's most well-known commercial names which constitute 95% of all direct selling in the United States. The home party and person-to-person sales methods used by our companies and their independent contractor salesforces have become an integral part of the American landscape.

The typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goals are simple -- to earn enough extra income for gifts, tuition, or family vacation -- in short, to supplement family income. The direct seller, as a micro-entrepreneur, is the quintessential small business person.

Alaska, like most states, have multiple local phone companies and therefore, many telephone books. A direct seller who has customers across phone company jurisdictions would be forced to consult multiple phone books before placing a call. Additionally, in many places, several different publishers will release different phone books that cover the same telephone company area. In these situations, direct sellers will be forced to consult all of these phone books before making calls to the same phone company service area. It is also possible that in the areas served by more than one phone book, some subscribers' names will be omitted from another publisher's book. Because of the hundreds of listing changes each day by local telephone companies, any state or local no-call registry would be obsolete as soon as it is printed.

Registries such as those proposed by the bill would have the effect of violating the privacy of telephone subscribers. Persons with unlisted telephone numbers who do not wish to receive commercial solicitations must have their numbers listed in a registry to prevent such calls. This listing would cause the publication of those persons who do not wish to have their numbers known by the general public.

The Honorable Rick Halford

March 21, 1996

Page 2

Additionally, registries do not allow for consumer choices. The goal of a registry is to prevent *all* unsolicited commercial telephone solicitations regardless of who is soliciting. The effect of a registry plan would prevent the consumer from determining which solicitors he or she wishes to hear from. It is possible that a consumer wants to hear about a direct seller's products but not about a charge card offer or vice versa. The preclusion of consumer choice is harmful to the consumer and to the economy.

Several years ago, the FCC in issuing regulations under the Telephone Consumer Protection Act sought to determine the best method for preventing unwanted commercial solicitations through telephone lines. The FCC considered and rejected a national no-call list citing that "...the disadvantages of such a system outweigh any possible advantages." The problems inherent in a national no-call list are applicable on a smaller scale to state or local no-call lists. Of particular concern to the FCC were the burdens such a list would place on small and start-up businesses.

In weighing the costs and benefits of all of the potential alternatives, the conclusion reached by the FCC was that a solicitor specific no-call list "...is the most effective and efficient means to permit telephone subscribers to avoid unwanted telephone solicitations." This system would allow consumers to pick and chose which solicitations to receive and which to avoid. Additionally, it would provide the lowest financial burden on solicitors, the government and the consumer. The no-call list maintained by the person or entity making the call "...represents a careful balancing of the privacy interests of residential telephone subscribers against the commercial speech rights of telemarketers and the continued viability of a valuable business service."

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

j:\legal\akrel



Shaklee Corporation
Shaklee Terraces
444 Market Street
San Francisco, CA 94111-5325

Telephone 415/954-3000

March 21, 1996

VIA FACSIMILE TRANSMITTAL

The Honorable Rick Halford
Co-Chairman, Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

RE: **Opposition to House Bill 109 and Senate Bill 239 relating to telephone solicitations**

Dear Senator Halford:

I am writing to you regarding our opposition to H.B. 109, relating to telephone solicitations, which is pending in the Senate Finance Committee. I understand that a similar bill, S.B. 239, has already been reported out of committee. These concerns apply to that bill as well. Comparable bills creating "no call" lists have been considered in several other states in recent years but all have been rejected. If you deem this legislation should move forward, I ask for your support for the attached amendment language. Similar language has been adopted in several other states that regulate telephone solicitations.

Shaklee, as you may know, is a direct selling company that markets its nutritional, personal care and household products through independent small business people, many of whom live and work in Alaska. Many of our Distributors are women who work out of their homes on a part-time basis to supplement their family's income.

Shaklee Distributors typically utilize the telephone for business purposes in the day to day management of their businesses. Most calls are made to ask if a person wants to know more about a product or to see if someone wants to schedule an appointment. The sales transaction is not completed on the telephone but rather in a later face-to-face meeting. Shaklee Distributors are typically calling their friends and neighbors or others to whom they have been referred.

The Honorable Rick Halford
March 21, 1996
Page 2

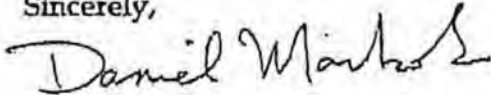
Shaklee Corporation

H.B. 109 would require our Distributors to purchase a "no call" list from the local telephone company or purchase multiple telephone directories. Before they could make a telephone call to a prospective customer, they would need to refer to the list or directory which would constantly be updated. For a small, part-time business person working out of their home, this a onerous and unnecessary requirement.

I believe that the intent of H.B. 109 is to control calls that are usually made by "boiler room" operations conducted by national telephone solicitation firms. My concern is that H.B. 109 is written so broadly and in such a way as to restrict small business people like Shaklee Distributors from making routine business calls.

Thank you for your consideration and let me know if you have any questions.

Sincerely,



Daniel Markels
Government Relations Representative

Attachment

Proposed Amendment to Alaska House Bill 109

Section 2.(e) (3)(B) does not include

(vi) Any call in which the solicitation is an isolated call and not done in the course of a pattern of repeated calls of like nature; or

(vii) Any call in which the person soliciting does not intend to complete or does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting with the solicitor and the prospective purchaser.

Key: Normal: Existing language in the bill.
****: Language in bill not shown.
(Underlined): Language added to bill.

SHAKLEE CORPORATION

Shaklee Terraces
444 Market Street
San Francisco, CA 94111
Tel: (415) 954-3000
Fax: (415) 954-3100

FACSIMILE TRANSMITTAL

**TO: The Honorable Rick Halford
Alaska State Senate
(907) 465-4928**

**FROM: Daniel Markels
Government Relations Representative
SHAKLEE CORPORATION**

DATE: March 21, 1996

RE: H.B. 109 / S.B. 239

Number of Pages being sent (including cover sheet): 4

If you have any problems receiving this transmittal, contact Jenifer at 415-954-2132

Notice of Confidentiality: This transmittal may contain confidential information intended exclusively for the person named above. Use, duplication, or further disclosure of information transmitted in error is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone at our expense, and mail the original message to us at the above address.

Alaska



Newspaper Association

FOUNDING MEMBERS

Incorporated Dec 6, 1980

March 8, 1996

ROBERT B. ATWOOD

The Anchorage Times

KATHERINE FANNING

Anchorage Daily News

LOREN STEWART

Chena Valley News, Kenai

MAX SWEARINGEN

Peninsula Clarion, Kenai

GLEN COBB

The Homer Citizen, Palmer

TOM GIBBONEY

Homer News

JIM C. MARTIN

Alaska Journal of Commerce

G. KENT STURGIS

Fourmile Valley News, Homer

LEW WILLIAMS

North Star Daily News

CARL SAMPSON

Journal Express

TOM SNAPP

A.B. Alaska Weekly

Dear Legislator:

Bills to regulate Alaska businesses in their use of telephones have been introduced in both the Senate (CS SB 239) and the House (CS HB 109). Alaska Newspaper Association members in Anchorage, Fairbanks, Kenai, Juneau, and elsewhere who use telemarketing to sell their papers have serious concerns with the proposed legislation. ANA believes other businesses throughout the state will be unhappy with it as well, and encourages you not to pass this legislation.

ANA believes it is unnecessary, particularly in light of available alternatives and federal legislation addressing the same concerns. More than that, ANA believes this legislation will put Alaska businesses at a competitive disadvantage and encourage the exporting of Alaska jobs to other states that do not impose restrictions on their businesses.

If you decide that Alaska businesses need these added restrictions, we would appreciate it if you would change or clarify several provisions to make it less onerous. We do not understand that Sen. Reiger or other Senate sponsors, or Rep. Brown or other House sponsors, have any interest in making compliance with their bills any more difficult or expensive for Alaska businesses than necessary, and we appreciate their willingness to work with the affected businesses to avoid burdens where possible.

• Why the Legislation Should Not Pass We recognize that many people would like not to be bothered at home with interruptions to what they are doing, including phone calls. Most calls, of course, come from friends and family, or are requests to serve on committees or talk about neighborhood problems, or to renew charitable contributions or indicate how you'll vote. None of these calls are screened by this legislation. Existing federal legislation already prevents a second unwanted call. The only thing this legislation does is prevent a single initial call from a business or charity.

~ It Hurts Businesses and The Economy This legislation is bad for business, and will have adverse economic effects. Statistics show that enormous amounts of business are conducted by phone through "telemarketing;" it is popular, with both businesses and consumers. This legislation keeps businesses and consumers from taking full advantage of developments in technology that make commercial transactions increasingly convenient and cost-effective, and reduces the overall volume of goods and services sold. If whatever we could gain in exchange for this were very substantial, it might be different, but it is not.

Those who wish are perfectly free not to do business by phone, and, they already have the protection of federal legislation that guarantees them the right to have their name put on a "do not call" list if they don't ever want to hear again from a company that calls them. Beyond this, for no charge to consumers, the Direct Marketing Association will add their name to a service updated and distributed regularly that will delete their name from lists used by telemarketers nationwide.

In addition, those who choose to list their phone numbers already have numerous alternatives to help deal with this concern. Besides simply not answering the phone when we don't wish to, or hanging up on a caller we don't want to talk with, answering machines and "caller ID," allow us to screen and ignore calls at our convenience.¹ None of these come at the expense of government regulations of businesses in addition to those the federal government has already found adequate to address any problems in this area.

~ The Proposed Legislation Puts Alaska Businesses at A Competitive Disadvantage and Encourages Export of Alaska Jobs Federal legislation passed in 1991 dealt specifically with telemarketing, and protects consumers against unwanted repeated solicitations. Later federal legislation dealt more specifically with telemarketing fraud and abuse. All telemarketers — whether they are located in Miami, Reno, or Fairbanks — operate under these laws and the rules adopted by the Federal Communications Commission and Federal Trade Commission to implement them.

ANA believes that the state legislation being proposed can only be applied legally to Alaska businesses, and not to *interstate* telemarketing. If this is so, then Alaska businesses who continue to do their telemarketing from within Alaska will be at a competitive disadvantage, because those who call here from Outside will be subject to

¹ Other things could be done to more effectively accommodate those consumers who wish added privacy without interfering unduly with companies trying to conduct business. For example, at present, many Alaskans who wish to pay for it can subscribe to the "caller ID" feature from their phone company, but APUC regulations allow a caller to block or override this feature. A rule prohibiting telemarketers from blocking caller ID would not be objectionable; it would not restrict the rights of companies to effectively do business, but would help consumers who wish added privacy to screen their calls.

the federal regulations, but not the restrictions added by this legislation. Experience has already shown that cost is not a barrier to Alaska businesses using Outside firms for telemarketing their products and services. And, given the advantages of operating from elsewhere, it is quite predictable that many Alaska businesses will move this aspect of their operations, at a cost of many local jobs.

The state Department of Law thinks it can make a plausible defense that the law would not be unconstitutional, but it acknowledges that it cannot guarantee this. The assistant Attorney General responsible for this area testified to the House Judiciary Committee last month that "it is fair to say this is a grey area in terms of federal preemption." This appears to be a generous characterization, given that the federal statute that deals with this very same thing specifically provides that "nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, ... (D) the making of telephone solicitations." 47 U.S.C. §227(e)(1). The commentary accompanying the FCC's Report and Order adopting rules to implement the federal telephone solicitation law also notes that there is no preemption for more restrictive intrastate regulations.

The state's lawyer is willing to make the argument that despite this clear language, you can ignore it and pass more restrictive interstate requirements because a totally different federal statute passed three years later, dealing with telemarketing fraud and credit card laundering, doesn't contain the same preemption language. We realize that you have the ability to pass a bill and leave it to the federal courts to say whether Congress meant what it said. We don't pretend to have all the answers, but we don't find it that easy to ignore Congress' plain language.

- Adjustments That Should Be Made If Legislation Is Passed While ANA and other Alaska businesses would prefer not to see this additional legislation at all, they acknowledge that the burdens on them will be much less if the bill is clarified to reflect this understanding. This will enable Alaska business to comply with the legislation without putting them at the mercy of arbitrary charges by third parties with no interest in reducing their costs of doing business, and also should avoid the need to spend time and resources participating in ratemaking or other administrative proceedings to protect their interests.

~ Costs ANA believes that it is the intention and understanding of the bill's sponsors that the costs imposed on businesses by this bill should be quite minimal. However, we would request that the bill be clarified, to avoid unintended costs down the road — including costs of the lists themselves, as well as the costs of having to participate in regulatory proceedings to protect against unreasonable charges.

Specifically, it is our understanding that there are two separate costs here. One is the cost of setting up and maintaining a service that allows those consumers who wish not to be contacted even once to identify themselves in a directory. We understand that utility customers will be charged some reasonable rate for this, as they are for other optional features and services. The other cost is the cost of providing a list that all companies will have to use if this legislation passes in order to do business telephonically. The businesses forced to buy these lists should be charged only the actual, incremental costs of providing the disk, tape or other medium containing the list. ANA understands this is what is intended, but the language is not clear.

Stability If this legislation passes, ANA and other Alaska businesses hope that you will minimize the disruption and cost of compliance as much as possible by avoiding any requirement that companies must change their procedures or programming any more often than annually, as each new year's directory is published. It appears that the House bill does this; at present, the Senate bill would require frequent changes throughout each year. Using the annual publication of the phone directories as a benchmark would be a reasonable accommodation between the providing protection to the privacy interests of consumers, in addition to that already afforded by federal law, and avoiding undue burdens on the business community.

Good Faith Defense In the Event of Errors Federal law, in the form of rules implementing federal statutes governing telemarketing, assures that businesses cannot be held liable for damages as the result of infrequent or unintended errors. If someone receives a phone call despite having said they would prefer not to be contacted, because of a slip-up on the part of a business, they should not automatically be given a pot of money. Federal law recognizes that good faith compliance is a defense; state law should also. If a company engaged in telemarketing can show, in the event that an error occurs, that it has in place procedures and practices that should accommodate a consumer's wish not to be called, and has taken steps to implement these (just having procedures on paper is not enough), then occasional errors by that company should be excused.

Polling First, the prohibitions against automated polling contained in the Senate version unnecessarily restrict the use of modern polling techniques that provide for maximum statistical reliability for political and other opinion sampling. The public is not well served by this prohibition, and there is no evidence of abuse in this area that warrants or necessitates it.

Miscellaneous Matters There are a few other provisions that we think should be modified, and we will be happy to work with Rep. Brown, Sen. Reiger, and any other interested legislators or their staff members to address these concerns if the Legislature decides that this area really needs to be further regulated. We hope, however, that

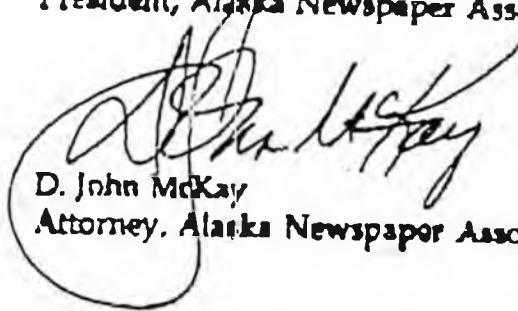
Alaskans can be satisfied to live with the substantial regulations already enacted by the federal government to deal with telemarketing.

ANA thanks you for your consideration of these comments.

Sincerely,



Ron Loesch, Publisher
Petersburg Pilot
President, Alaska Newspaper Association



D. John McKay
Attorney, Alaska Newspaper Association

HOUSE JUDICIARY STANDING COMMITTEE
February 14, 1996
1:07 p.m.

MEMBERS PRESENT

Representative Brian Porter, Chairman
Representative Joe Green, Vice Chairman
Representative Con Bunde
Representative Bettye Davis
Representative Al Vezey
Representative Cynthia Tochey
Representative David Finkelstein

MEMBERS ABSENT

None

COMMITTEE CALENDAR

HOUSE BILL NO. 109

TITLE: "An Act relating to telephone directory listings and solicitations."

- CSRB 109(JUD) PASS OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 109

SHORT TITLE: TELEPHONE DIRECTORY LISTING/SOLICITATIONS

SPONSOR(S): REPRESENTATIVE(S) BROWN, Navarre, B. Davis

JRN-DATE	JRN-PG		ACTION
01/23/95	115	(H)	READ THE FIRST TIME - REFERRAL(S)
01/23/95	116	(H)	LABOR & COMMERCE, JUDICIARY
01/26/95	148	(H)	COSPONSOR(S): B.DAVIS
04/28/95		(H)	L&C AT 3:00 PM CAPITOL 17
04/28/95		(H)	MINUTE(L&C)
05/01/95		(H)	L&C AT 3:00 PM CAPITOL 17
05/01/95		(H)	MINUTE(L&C)
05/04/95	1849	(H)	L&C RPT CS(L&C) SDP 2NR
05/04/95	1849	(H)	DP: KOTT, ROKEBERG, KUBINA, PORTER
05/04/95	1849	(H)	DP: ELTON
05/04/95	1849	(H)	NR: MASEK, SANDERS
05/04/95	1849	(H)	ZERO FISCAL NOTE (DCED)
02/12/96		(H)	JUD AT 1:00 PM CAPITOL 120
02/14/96		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DAVEED SCHWARTZ, Assistant Attorney General

Commercial Section
Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
Telephone Number: (907) 269-3697

POSITION STATEMENT: Provided information regarding HB 109

ACTION NARRATIVE

TAPE 96-20, SIDE A
Number 000

CHAIRMAN BRIAN PORTER called the House Judiciary committee meeting to order at 1:07 p.m. Members present at the call to order were Representatives Green, Bunde, Tooney, Vezey and Finkelstein. Representative Davis arrived at 1:09 p.m.

HB 109 - TELEPHONE DIRECTORY LISTING/SOLICITATIONS

CHAIRMAN PORTER informed those present that this was a continued hearing on HB 109 and invited Representative Brown to the table. He also noted that Daveed Schwartz from the Department of Law, would provide information from Anchorage by speaker phone.

Number 140

DAVEED SCHWARTZ, Assistant Attorney General, Consumer Protection Enforcement, testified that part of his responsibilities as Assistant Attorney General includes enforcing Alaska's telephonic solicitations statute at AS 45.63.00, which was enacted in 1993. Since this time, the department has had quite a lot of experience regulating telemarketers. They've found that the vast majority of these telemarketers are from outside the state. Alaska is more a victim state, rather than one which houses telemarketer operations, in contrast to state's such as Georgia, Nevada, Florida and California.

MR. SCHWARTZ stated that Alaska has never had their regulations challenged by out of state telemarketers, either in the area of jurisdiction which is provided for under a long arm jurisdiction statute at AS 09.05.015, or on federal pre-emption grounds. He felt as though HB 109 would attempt to regulate many of the same telemarketers which the state already regulates under AS 45.63.00, by imposing a "do not call" provision under the Consumer Protection Law. Mr. Schwartz also outlined that there were federal laws which deal with "do not call," provisions, one of which is entitled the Telephone Consumer Protection Act of 1991. This is enforced by the Federal Communications Commission. He noted a more recent act entitled, The Telemarketing and Consumer Fraud and Abuse Prevention Act, which was enacted in 1994. The provisions of this act are enforced by the Federal Trade Commission, which just promulgated regulations that went into effect December 31, 1995. Mr. Schwartz

noted that the "do not call" provisions in each of these laws are very similar.

MR. SCHWARTZ referred to questions raised in the previous meeting of the House Judiciary Committee, as to whether or not federal law would preempt the state of Alaska's regulating their interstate calls. He felt as though this was grey area at best. In Congress's most recent pronouncement outlined in The Telemarketing and Consumer Fraud and Abuse Prevention Act, Congress regulates through the federal Trade Commission, interstate calls. They do have a "do not call" provision in this act. Additionally, part of this federal statute says that, "Nothing contained therein, shall prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state." This is Congress's pronouncement concerning possible preemption in relation to regulating interstate calls. Under this particular statute it would be a fair interpretation to say that states can also enact (indisc.), which would have an effect of regulating interstate as well as, out-of-state calls.

Number 430

MR. SCHWARTZ said he was unable to find any cases which indicated that there was some type of federal pre-emption of a state's efforts to prohibit telemarketers from calling those individuals who do not wish to receive calls. Florida, among other states, has a statute which does much of what CSFB 109 seeks to do. This Florida law has been on the books since 1991 and was actually enacted prior to the Federal Telephone Consumer Protection Act. There has never been a challenge to the Florida law on either jurisdictional or federal pre-emption grounds. Although, there's no iron-clad guarantee that Alaska can insulate themselves from a federal pre-emption attack, he thought that it was fair to say that this is a grey area in terms of federal pre-emption and an argument could certainly be paid that Alaska can, like other states, under their telephonic registration acts, regulate interstate calls for this purpose. In terms of asserting jurisdiction, as long as the telemarketer consummates a sale of goods over the phone, there shouldn't be any problem asserting jurisdiction allowed under AS 09.05.015.

Number 593

REPRESENTATIVE AL VEZEY asked Mr. Schwartz to explain Alaska's long-arm intervention statute. How does this work and what success has Alaska had in trying to impose these laws on these non-resident businesses.

MR. SCHWARTZ answered that the state has had quite a lot of success in imposing their telephonic solicitation registration requirements on out-of-state telemarketers. He used an illustration of a San

Diego, California telemarketer who attempted to continue their efforts without registering with the Alaska Department of Law, which is required under AS 45.63.00. He went to court against this company and obtained a permanent injunction against them in March of last year. They have now challenged a portion of this injunction in the Alaskan Supreme Court, but in raising the many other arguments in relation to this suit, they have not raised a challenge to Alaska's jurisdiction over them. AS 09.05.015 which relates to personal jurisdiction allows the state to serve an out-of-state defendant and then bring them into court to answer and defend against law suits the state might bring. This company was served in San Diego through the rules of civil procedure. It's a recognized principle in civil procedure across the nation that if a state can serve an out-of-state defendant and if this state's statute permits this assertion of jurisdiction over an out-of-state defendant to the maximum extent allowed under the due process clause of the 14th amendment of the U.S. Constitution, which the Alaska statute does, then jurisdiction is appropriate under these circumstances.

Number 825

CHAIRMAN PORTER asked where a hearing is required to take place when the telemarketer is from out-of-state.

MR. SCHWARTZ pointed out that as long as Alaska can establish service on the out-of-state telemarketer, the hearing would take place in Alaska, by filing a complaint in state Superior Court. This is done routinely.

CHAIRMAN PORTER asked how does Alaska then enforce this judgment after they are able to prevail.

MR. SCHWARTZ said that they obtain an injunction from the court under the Consumer Protection Act. This injunction usually prohibits a telemarketer from engaging in telephonic solicitations to Alaska without first registering with the Department of Law. If the telemarketer continues to violate this law, as well as the court's injunction, instead of subjecting itself to a civil penalty of up to \$5,000 per violation, they can subject themselves to a civil penalty of up to \$25,000 per violation of a court injunction. The court would impose a civil penalty in the form of a judgment and then the state would be in the position to execute on this judgment if the telemarketer did not pay the civil penalty. Alaska is able to do this even if a defendant is located out-of-state.

Number 1111

REPRESENTATIVE VEZEY asked if this San Diego Case was the only case that he had taken to court.

MR. SCHWARTZ pointed out that the telemarketing law has been on the

books since 1993. This San Diego case was the first and only case which the state has had to bring because on every other occasion other telemarketers have relented. Mr. Schwartz has sent over 100 cease and desist, warning letters to telemarketers, all of whom were located out-of-state and he's obtained more than \$430,000 in refunds for consumers in Alaska in the last 12 months or so from these telemarketers. The state has filed many assurances of voluntary compliance documents with the court, in which the telemarketers agree to do all sorts of things to help consumers as a result of their violations of the law. This San Diego case is on appeal at the Alaska Supreme Court, but not related to the issues of federal pre-emption or personal jurisdiction under Alaska's long arm statute.

Number 1035

REPRESENTATIVE TOCHEY asked Mr. Schwartz how the state obtained the names of these telemarketing companies.

MR. SCHWARTZ noted that after the state Attorney General's lost most of their funding for consumer protection complaint investigations, they negotiated a complaint referral and information sharing agreement with the Better Business Bureau of Alaska in 1991. This agreement is still in effect. The state has a long standing working relationship with the Better Business Bureau which handles most of the individual complaints from consumers in Alaska, they then refer patterns of complaints to the attorney general's office for enforcement, where the Better Business Bureau is unable to mediate complaints. The department immediately acts to send a cease and desist warning letter whenever they receive a referral from the bureau.

Number 1035

REPRESENTATIVE VEZEY wondered how they are able to get an address of where these telemarketers are located.

MR. SCHWARTZ said that typically what happens is the people who complain to the Better Business Bureau are those who have actually made a purchase or have at least received some literature from the telemarketer.

Number 1268

REPRESENTATIVE KAY BROWN responded to some concerns from the previous committee meeting regarding HB 109. She noted the two pieces of correspondence distributed at this same meeting from ATU Communications and the Alaska Telephone Association. She offered amendment number 1, (F3) which would rectify the areas of concerns outlined by these two firms. These amendments would apply to the version (F) of HB 109. The language changes outlined in amendment 1 would read as follows:

Page 1, line 12: Delete "uses" and insert, "originates a telephone call using";

Page 2, line 2, after ".":, insert, "A residential customer who requests to be so identified shall pay for the cost of the identification;

Page 3, line 57, after".":, insert, "The local exchange telecommunications company may impose a reasonable cost for the list";

Page 2, line 15 after "1)", insert, "'charitable organization" has the meaning given in AS 45.58.900."

REPRESENTATIVE BROWN outlined that the first portion of this amendment dealt with rectifying a situation where a company might want to insert an advertisement on a recording that a caller could hear. This legislation's intent is not to regulate businesses from using their own phones for advertisements, hence the change as outlined.

REPRESENTATIVE BROWN spoke to the remainder of the changes outlined in this amendment number 1, and stated the language used was implicit and certainly has addressed conversations of record all along. Representative Brown said she did not have a problem clarifying these issues further. In regards to defining a charitable organization, she stated for the record that under AS 45.58.900 a charitable organization is a "non-profit organization that is (a) operated for the relief of poverty, distress or other condition of public concern in the state, or (b) the Internal Revenue Service determines to be a tax-exempt organization under 26 USC 501.C3 Internal Revenue Code." She stated that this bill builds in a prior relationship exception both for the commercial operations and for the charities. She felt it made sense to pick up these other non-profits as well, as accomplished by the reference to this definition of a charitable organization in statute.

Number 1525

REPRESENTATIVE CON BUNDE made a motion to move amendment number 1, (F3) as described by the sponsor. Hearing no objection it was so adopted.

REPRESENTATIVE BROWN pointed out that amendment number 2 was put forward as a consideration of policy matters. Mr. Schwartz pointed out that some of these telemarketers might continue to abuse persons over a long period of time. Representative Brown looked for a reasonable side-board on this exception. She pointed out that what these two proposals outlined in amendment number 2 would accomplish, would add to both the charitable organization exception and the to the prior commercial relationship exception the requirement that this prior relationship needs to be made current in the last 24 months. This language would serve as a further limitation. This amendment number 2 would read as follows:

Page 2, line 27, after "who," insert, "within the last 24 months," and on Page 3, line 3 delete "previously," and insert, ", within the last 24 months."

REPRESENTATIVE GREEN made a motion to adopt version (F) for CSHB 109 as the working draft of the bill before the committee. Hearing no objection it was so moved. Representative Bunde moved again amendment number 1. Hearing no objection it was so moved.

Number 1645

REPRESENTATIVE BUNDE made a motion that amendment number 2 be moved. Hearing no objection, it was so adopted.

Number 1656

REPRESENTATIVE BROWN stated that amendment number 3 was a letter of intent at the request of the Alaska Telephone Association. They would like the record to reflect that the legislature doesn't intend that any violation of this law would put any liability on them. She pointed out that it doesn't make sense to put this language in the statute because it's a non-issue in her opinion. She used the following illustration to make her point in the context of this intent, say for example, under a criminal statute they wouldn't add, "if anybody uses the phone for the commission of a crime the phone company's not at fault. Even if someone wanted to bring suit against the phone company, the amount of money they would have paid would be so small for this exclusion service.

Number 1721

REPRESENTATIVE FINKELSTEIN moved that CSHB 109 (F) be passed from the Judiciary Committee with individual recommendations and fiscal notes as attached with amendments. Hearing no objection, it was so moved.

Number 1752

REPRESENTATIVE DAVIS made a motion to move the letter of intent as outlined. Hearing no objection, the letter of intent was adopted.

ADJOURNMENT

CHAIRMAN PORTER adjourned the meeting at 1:35 p.m.

By Sharp

CS HB 109 (Jud)

Amendment:

pg. 293, Delete sub-paragraph (ii)
on lines 28-31 pg 2 and pg 3
line 1

Replace with:

Insert: (ii) calls made

by charitable organization
volunteers on behalf of the
charitable organization

A M E N D M E N T

*New lang. 4/29
from
Rep. Brown*

OFFERED IN THE SENATE

TO: CSHB 109(JUD)

1 Page 1, line 11:

2 Delete "telephone solicitations; or"

3 Insert

4 "(A) commercial telephone solicitations; or

5 (B) any telephone solicitations; or"

6 Page 2, line 2, following "receive":

7 Insert "commercial telephone solicitations and of those residential customers who do

8 not wish to receive any"

9 Page 2, line 3:

10 Delete "so identified"

11 Insert "identified as not wishing to receive commercial telephone solicitations or as

12 not wishing to receive any telephone solicitations"

13 Page 2, line 7, following "receive":

14 Insert "commercial telephone solicitations or of those residential customers who do

15 not wish to receive any"

16 Page 2, following line 17:

17 Insert a new paragraph to read:

18 "(2) "commercial telephone solicitation"

19 (A) means the solicitation by a person by telephone of a

20 customer at the residence of the customer for the purpose of encouraging the

21 customer to purchase property, goods, or services;

1 (B) does not include permitted telephone solicitations;"

2 Renumber the following paragraph accordingly.

3 Page 2, following line 19:

4 Insert a new paragraph to read:

5 "(4) "permitted telephone solicitations" means

6 (A) calls made in response to a request or inquiry by the called
7 customer or communications made during a call made by the customer;

8 (B) calls made by a charitable organization, a public agency,
9 or volunteers on behalf of the charitable organization or public agency to
10 members of the organization or agency or to persons who, within the last 24
11 months, have made a donation to the organization or agency or expressed an
12 interest in making a donation;

13 (C) calls limited to polling or soliciting the expression of ideas,
14 opinions, or votes;

15 (D) business-to-business calls; or

16 (E) a person soliciting business from prospective purchasers
17 who have, within the last 24 months, purchased from the person making the
18 solicitation or from the business enterprise for which the person is calling but
19 only if the person or business enterprise has not received a written request
20 from the prospective purchaser asking that telephone solicitations cease; the
21 person or business enterprise is presumed to have received a written request
22 no later than 10 days after the prospective purchaser mailed it, properly
23 addressed and with the appropriate postage;"

24 Renumber the following paragraph accordingly.

25 Page 2, line 24, following "include":

26 Insert "permitted telephone solicitations;"

27 Page 2, line 25, through page 3, line 13:

1'

Delete all material.