

HB

15

Representative
HUGH "BUD" FATE
Finance Committee
Energy Council-Executive Committee
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Fairbanks, Alaska 99701
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Alaska State Legislature



While in Session
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House District 7

House of Representatives

Memorandum

To: Senator Ralph Seekins, Chair, Senate Judiciary Committee
Fm: Representative Hugh Fate
Cc:
Date: April 21, 2004
Re: Request to hear SCS for CS for HB 15 (L&C)

Please accept this memo and attached documents as a request for the Senate Judiciary Committee to hear Senate CS for CS for HB 15 (L&C). The current version is a rewrite of the previous bill, based on passage of similar language in Federal Legislation.

SCSCSHB 15 (L&C) is language carefully written by the Department of Law, this office and Legislative Legal to allow for enforcement of the Federal Do-Not Call list within our borders. It establishes rules for registration and fees for telemarketers and the penalties for non-compliance.

Thank you for your consideration of SCSCS for HB 15(L&C).

Attachments: Sponsor Statement, Sectional SCSCSHB 15 (L&C), SCSCSHB 15(L&C), CSHB 15 (FIN) am, House Floor Journal Text, Senate Labor and Commerce Committee Report, CSHB 15 (FIN), CS Fiscal Notes, CSHB 15 (STA), CSHB 15 (L&C), HB 15, Fiscal Notes prior to change, AARP Support for HB 15, NY Times story of 10th Circuit Decision, Response from National AARP, Referenced Alaska Statute, Public Law 108-10, Title 16 C.F.R. 310

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House of Representatives Sponsor Statement SCSCS for HB 15 (L&C)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

Committee Substitute for House Bill 15 is a combined effort of the Department of Law and our office to assure a quieter dinner hour for Alaskans. When HB 15 was introduced the intent was to bring responsibility to the telemarketing industry, and give Alaskans an opportunity to sign up for a no-call list. While working on the bill, Congress was working on similar language for the nation. H.R. 395 was passed into law, regulations have been promulgated and the National No-Call list is in effect.

The CS version of HB 15 is language that will complete the process for Alaska. It supplements the federal law by making specific. some of the language geared for a nation, rather than a state. Further, it establishes specific guidelines for telemarketers operating in state. Those guidelines include a registration fees, how telemarketers are expected to identify themselves, financial reports, and allows the Department of Law to establish penalties for non-compliance.

CS for HB 15 will accomplish what the original version sought to do, without the need for Alaskans to sign up again in state. It sends a clear message to telemarketers that these people do not wish to be called, and that there are consequences for non-compliance. It strengthens statutory language and assures Alaskans that we agree the phone should only ring during the dinner hours when it is someone we want to talk too.

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House of Representatives Sectional Analysis

SCSCS for HB 15 (L&C)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

It should be noted that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1

Changes telephonic to telephonic means. This change is throughout the bill and expands the language to include other forms of communication using telephone lines.

Section 2

Identifies the existence of a national do not call registry and that Alaskans on that list are not to be called.

Section 3

References to Section 2 and allows for a good faith error on the part of the solicitor.

Section 4

The no-call policy is expanded to all telephone numbers that are registered. Also referenced is a release from liability for the caller if the call was unintended and did not represent a reckless disregard.

Section 5

Establishes a notification policy for local phone companies to pass along to their customers. The notice will be in the annual phone directory and as an insert in the phone book each quarter.

Section 6

Defines customer to include more than residential

Section 7

Defines telephone solicitation and cites exemptions and specifics for previous contacts, charities, businesses, polls and political ideas.

Section 8

Defines National do not call registry

Section 9

Defines goods and services and includes solicitations by credit organizations offering financing arraignments

Section 10

A telephone seller may not operate in the state without registering 30 days in advance with the Department of Law

Section 11

Further requires a telephone seller not to operate in the state without receiving acknowledgement from the department that they have registered.

(b) To register under (a) of this section, a person shall file with the department (emphasis added)

Section 12

Establishes a format for the notice of intent, which must be filed, and that, at the department's discretion that intent may have to be submitted under oath or affirmation. It requires the telephone seller to detail the campaign and whether the seller has or is involved in criminal, administrative, or civil action.

Section 13

Allows the Department to establish fees for registration.

Section 14

Requires that a written, signed contract must be received by the telephone seller, from the buyer before any charges can be assessed the buyer. The telephone seller must notify the buyer of their rights.

Section 15

Refund and replacement language if the product is not as promised, provided that the buyer returns the product and asks within seven days of receipt.

Section 16

Telephone sales become final seven days after receipt of the product and exceptions.

Section 17

Telephone sales for a service becomes final seven days after delivery and exceptions.

Section 18

Telephone sellers may not represent themselves as licensed in Alaska if they are not nor may they claim that license as an endorsement by the state or municipality.

Section 19

Requires telemarketers to identify themselves when calling, forces them to hang up if the person indicates they are not interested in the goods or service, and prevents them from harassing a person.

Section 20

Prevents a telephone seller from requesting a waiver from the buyer of the buyer's rights.

Section 21

Lists the exemptions in current statute and makes a technical correction. The list of exemptions, only apply to the registration requirements. All other applications of the no-call list must be adhered too. Penalties will also apply for non-compliance.

Section 22

Defines buyer

Section 23

Defines telephone seller

Section 24

Adds telephonic means to existing language and details what must be included as part of the registration or re registration forms.

Section 25

Adds telephonic means to existing language which defines reasons for the department not to issue a, or to suspend a license.

Section 26

Adds telephonic means to existing language in another section of statute

Section 27

Allows the department to use either a form or a format for registration

Section 28

The Department may require additional information of the telephone seller than is on the registration or renewal form and may require oath or affirmation.

Section 29

Allows the Department to establish registration fees for the permit, which must be filed with the registration forms.

Section 30

Establishes reporting requirements for each solicitation campaign including financial information.

Section 31

Makes all reports in reference to telemarketers public information

Section 32

Defines solicitation campaign as contacting two or more people

Section 33 & 34

Emphasis added language is repealed

Sec. 45.63.100. Definitions.

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010

Sec. 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 the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or (existing black dot)

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

Section 35

Effective dates for various Sections of the Bill

Section 36

Allows the department to begin the regulation process to take effect when the statute becomes law.

Section 37-39

Effective dates for various Sections of the Bill

SENATE COMMITTEE REPORT

DATE: 3/4/04

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 15(FIN) am

HB 15 SOLICITATIONS/CONSUMER PROTECTION

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Joseph DeLeon</i>	✓			
<i>George Davis</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>				✓

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 15(L&C)
 (H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Telemarketers No-Call Lists BRU Banking, Securities & Corp. (115)
 Component Banking, Securities & Corp.
 Sponsor Representative Fate
 Requester House Labor & Commerce Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone 907-269-8452
 Division Banking, Securities & Corporations Date/Time 1/28/03 5:31 PM
 Approved by: Edgar Blatchford, Commissioner Date 1/28/2003
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act establishing the Alaska No-Call List,
a data base of residential telephone customers . . ." BRU: Civil Division
Sponsor: Representative Fate Component: Fair Business Practices
Requester: House Labor & Commerce Component No.: 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	103.4	103.4	103.4	103.4	103.4	103.4
Travel	0.4	0.4	0.4	0.4	0.4	0.4
Contractual	16.5	14.5	14.5	14.5	14.5	14.5
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	13.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	135.2	120.2	120.2	120.2	120.2	120.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	135.2	120.2	120.2	120.2	120.2	120.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	135.2	120.2	120.2	120.2	120.2	120.2

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time		2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 15 requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base. Fees will be based on a sliding scale from zero, for solicitors with fewer than five employees and non-profit organizations, to a maximum of \$500, for solicitors with more than 1,000 employees. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone: (907) 465-5370
Date/Time: 2/5/03 3:27 PM
Date: 2/5/2003

FISCAL NOTE #2

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(L&C)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which Alaska's HB 15 is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, and used their experience to develop this fiscal note, making adjustments for the smaller number of residential telephone subscribers in Alaska, as compared to Colorado.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations, including holding public hearings on the draft regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. While hopefully, Alaska can piggyback on Colorado's experience, considerable time will still be required to fit our own circumstances.

We estimate the services of one-half of a full time attorney position and one-half of a full time paraprofessional position will be required for this implementation stage. In addition, we anticipate \$2,000 will be needed for direct case costs associated with holding public hearings on the draft regulations. As there will be no fee revenue available to pay for these start-up costs, and the Department of Law cannot absorb this activity within its existing budget, these costs would need to be paid for with general funds.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees will require 10 hours of attorney time and 10 hours of paraprofessional time, with an additional 10 hours of attorney time needed to assist in preparation of the semi-annual report to the legislature.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. We estimate the services of a half-time attorney position and a half-time paraprofessional position would be sufficient to handle all on-going maintenance and enforcement activities.

HB 15 requires that fees cover the cost of creating and maintaining the Alaska No-Call List. It is unclear whether enforcement actions would be considered creating or maintaining the data base, and we do not know if fees will be sufficient to cover any of the state's cost if that is the legislature's intent. (See subsequent discussion.) Accordingly, we have included all Department of Law anticipated costs as general funds starting in FY 2005 for the purposes of further discussion with the legislature.

ANALYSIS CONTINUATIONEXTERNAL COSTS AND REVENUES:

Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base, so are adjusted annually. In Colorado, the contract with the designated agent requires that, in a given year, surplus revenues collected by the agent be placed in escrow, to be applied against future No-Call List contracts. Surplus revenues are those over the amount of the contract between the State of Colorado and the designated agent; costs to the state have not been charged against fees to date, although the Colorado AG has asked the legislature for authority to receive \$15.0 in FY 2002, \$55.0 in FY2003, and \$50.0 in FY 2004 from fee revenue to offset part of their costs.

When the State of Colorado started the Colorado No-Call List, the number of potential telemarketers who might purchase the list was unknown. Only 40 telemarketers were registered with the Colorado Attorney General's Office. When Colorado's system was implemented, the rates were set as follows: 0-5 employees, \$0; 6-10 employees, \$100; 11-50 employees, \$200; 51-100 employees, \$300; 101-250 employees, \$350; 251-400 employees, \$400; 401-1000 employees, \$450; 1001+ employees, \$500. The list proved wildly successful.

As of November 30, 2002, there were 2,103 telemarketers registered under Colorado's No-Call program. Fees from 501, or 24 percent, of those telemarketers generated \$156,750 in revenue. The Colorado Public Utilities Commission, who administers the No-Call List, have lowered the fees in FY 2003 due to revenues collected in FY 2002 being more than the contracted price for the period of the contract. Fees were lowered from 50 to 75 percent.

Colorado has approximately 2 million residential telephone subscribers, of which more than 1,000,000 have signed up for the No-Call List as of December 31, 2002. Alaska has approximately 275,000 residential subscribers, or 14 percent of Colorado's. If Alaska's subscribers follow Colorado's example, we could expect about 137,500 subscribers to sign up to be on the No-Call List.

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. We would expect that most, if not all, of these organizations have less than 1,000 employees. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base. Assuming an average fee of \$350, \$35,000 per year in revenue might be generated. However, if the Colorado experience is repeated in Alaska and only 24 percent of these 100 entities are paying all the fees, even if all 24 percent paid the maximum, total annual revenues would only be \$12,000.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado entered into a contract with their designated agent on December 18, 2001. The web site and toll free number were required to be operational July 1, 2002, but came on line May 8, 2002. The Colorado PUC entered a three-year contract with their designated agent totaling \$126,500, and the Colorado Attorney General paid an additional \$10,500 for the development and administration of their complaint reporting system. As of September 30, 2002, the agent showed \$176,849 in expenses. Unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor resulted in an amendment to the PUC's contract for \$63,990. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) The contract amendment brings the 3-year total projected cost to \$173,990, with much of the expenditure occurring in the first year.

We would expect that at least some of these start-up costs could be avoided in Alaska by using Colorado's experience as much as possible. In addition, we would not have the volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. (Colorado's designated agent had to expand their number of toll free lines from eight to 24 in the first month of operation to handle the volume of calls coming in from consumers wanting to get on the No-Call List. They had an estimated \$45,000 phone bill in that first month from those lines.)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 15 (STA)
(H) Publish Date: 3/26/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act establishing the Alaska No-Call List,
a data base of residential telephone customers ..." BRU: Civil Division
Sponsor: Representative Fate Component: Fair Business Practices
Requester: House State Affairs Committee Component No.: 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	83.3	83.3	83.3	83.3	83.3	83.3
Travel	0.3	0.3	0.3	0.3	0.3	0.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.3	96.8	96.8	96.8	96.8	96.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	103.3					
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Prog Rcpts		96.8	96.8	96.8	96.8	96.8
TOTAL	103.3	96.8	96.8	96.8	96.8	96.8

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 15 (STA) requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base, and reimbursement to the attorney general for relevant expenditures. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone (907) 465-5370
Date/Time 3/24/03 3:09 PM
Date 3/24/2003

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which this bill is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, as well as a number of other states administering No-Call laws, and used their experiences to develop this fiscal note.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. Given the number of states with this type of program that we should be able to piggyback on, we would expect our costs to be less.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees and reporting to the legislature will require 10 hours of attorney time and 10 hours of paraprofessional time.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. Idaho, which maintains its database in house, estimates they use the services of 1.5 non-enforcement staff to take complaints and maintain the data base, and three attorneys to investigate complaints and provide enforcement. Other states using vendor maintained databases that we surveyed estimated anywhere from 1.5 to 15, with most estimating two to four staff positions.

After talking to these other states, we estimate the services of a full-time paraprofessional position would be sufficient to handle the program implementation and all on-going maintenance and enforcement activities. While some attorney time will be expended, as a practical matter we anticipate this will be offset as the paraprofessional takes on some paraprofessional-level duties that attorneys are now doing themselves at the higher hourly rate due to staffing constraints.

CSHB 15 (STA) requires that fees cover the cost of creating and maintaining the Alaska No-Call database and complaint system, and relevant expenditures of the Department of Law. Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base and relevant expenditures of the attorney general, so are adjusted annually.

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base.

Discussions with other states indicate the amount of revenue generated from sale of the No-Call List is linked to enforcement. If the state actively enforces their No-Call law with hefty fines, telemarketers who wish to do business in that state have an incentive to purchase the list. We would expect this same effect in Alaska, but have no way of projecting an amount without some experience. Idaho is the only state we talked to that is near our size with a self-supporting program, but they also charge subscribers to sign up and most of their revenue derives from that source. Louisiana has a self-supporting program using a vendor, but the revenue used to support their program comes from noncompliance fines.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado anticipates paying their designated agent \$174,000 over a three-year period. This amount includes unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) Louisiana reported spending \$50,000 for their contract with a vendor.

We would expect that at least some of Colorado's start-up costs could be avoided in Alaska by using their experience as much as possible, and by virtue of our smaller size. For example, we would not have the unexpected and expensive volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. Although Connecticut too warned us to expect an initial surge of subscribers wanting to sign up all at once, the number presumably would be smaller.

In the first year, until the data base is up and running and available for purchase, there will be no fees. Once the data base is available for purchase, presumably the initial fees would be needed to pay the designated agent. Accordingly, the department's FY2004 costs are included as general funds. This fiscal note assumes the revenues will be available in the second and subsequent years to pay for the entire program. Whether this assumption proves correct will depend on variables the effect of which are difficult to predict at present. For example, we are unsure of how many telemarketers will purchase the Alaska list and how much the total costs of maintaining the data base and enforcing the program will be. If we assume 100 telemarketers would want to purchase the Alaska list, and the total costs of maintaining the data base and enforcement of its use prove to be as much as \$150,000 per year, annual fees could be as high as \$1,500. Right now, we are aware of no state that charges more than \$1,100, and most are in the \$400 to \$500 range. In addition, states around the country are concerned about what effect the advent of a federal No-Call list reported to be implemented this year will have on state No-Call List revenues.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 15(FIN)
 (H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Telemarketers No-Call Lists RDU Banking, Securities & Corp. (115)
 Component Banking, Securities & Corp.
 Sponsor Representatives Fate, et al
 Requester House Finance Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 2/13/04 2:04 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/13/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 15(FIN)
(H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations..." RDU CIVIL
Component Commercial & Fair Business
Sponsor Representative Fate
Requester House Finance Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()	76.6	76.6	76.6	76.6	76.6	76.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has two general components. First, it amends the Unfair Trade Practices and Consumer Protection Act by creating a state cause of action for violations of the national do-not-call registry. It also amends the Act's do-not call provision (the "black dot law") and provides for its repeal once the establishment and enforcement of the national registry is ensured. In addition, the bill clarifies that "goods or services" covered by the Act include consumer credit transactions and other credit transaction involving an indebtedness secured by a consumer's residence.

The bill also amends the Charitable Solicitations Act (CSA) and Telephone Solicitations Act (TSA) in a number of ways. It requires payment of a fee when charitable organizations, paid solicitors for charitable organizations, and telephone solicitors register, or renew their registrations, with the

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 2/23/04 8:27 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/23/2004
Agency Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 15(FIN)

ANALYSIS CONTINUATION

Department of Law as required under these Acts.

Paid solicitors for charitable organizations would be required to submit a financial report to the department at the close of each solicitation campaign. The report would include, among other information, the disclosure of gross revenue generated during the campaign and the amount provided to the charity.

In addition, the bill would specifically provide that a person may not provide false information on the registration form filed with the Department, and allow the forms to be submitted either under oath or affirmation or under penalty of unsworn falsification. Thus, prosecution for perjury or unsworn falsification could be pursued if a registrant provided inaccurate information to the Department. The bill also amends the TSA to remove an exemption from registration for solicitations for the sale of magazines, periodicals, sound recordings and books.

Because the bill no longer provides for the creation of a state do not call registry, the expenditures indicated the fiscal note for CSHB 15 STA) are no longer relevant. With the registration fees that would be established in the amendments to the TSA and CSA, it is anticipated that this bill would generate approximately \$76,600 each year. This revenue estimate is based on average fees charged by other states and the number of organizations that submitted registration in 2003:

Charitable organization: $\$40 \times 1,615 = \$64,600$
Paid Solicitors: $\$200 \times 30 = \$ 6,000$
Telephone solicitors: $\$200 \times 30 = \underline{\$ 6,000}$

\$76,600

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March 25, 2004

The Honorable Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska Capitol, Room 506
Juneau, AK 99801-1182

RE: HB 15 (Fate)—Support

Dear Chair Bunde:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the Senate Labor and Commerce Committee to support HB 15, authored by Representative Bud Fate and co-sponsored by Representatives Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker, Wilson, Foster, Kookesh, Guttenberg, and Gruenberg.

Well over half the number of people targeted by telemarketers each day are age 50 and over – and many of them are your own constituents.

AARP's perspective:

Recently the Federal Tenth Circuit Court ruled in favor of upholding the constitutionality of the National Do Not Call Registry. AARP filed an amicus brief to support the recently enacted federal legislation.

This court ruling affirms the long campaign AARP waged in Congress to put control of the telephone back where it belongs—with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing the consumer to stop calls in the first place.

Even though baby boomers have been called the most savvy and Informed consumers of any generation of Americans, many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls.

The FTC does not regulate intrastate calls. The FTC Chair has explained that it is very hard to predict how many calls the new federal registry will prevent, as telemarketers may establish in-state call centers to avoid the federal law. Therefore, state law is crucial to cover any Alaska-originated calls.

The FTC has no jurisdiction over common carriers (such as long-distance companies or airlines), banks, credit unions, or insurance companies. There is no limitation on the states to regulate these calls and state law is needed to address the exemptions to the FTC rule.

In addition, telephone calls soliciting money for charitable institutions or political organizations are not covered by the Telemarketing Sales Rule. Alaska has the authority to regulate these types of solicitation should the Legislature decide to include them:

Realistically, it may be difficult to have comprehensive federal enforcement of a national Do Not Call law covering millions of people, given the relatively small size of the FTC's staff devoted to this issue and the resources available to fight abuse of consumers. Alaska is in a much better position to detect, deter, and prosecute Do Not Call violations. AARP believes a state law that is enforceable in state court is essential to give the law some needed teeth. Without a state statute, some telemarketers may not have a strong incentive to carefully monitor, update, and follow Do Not Call lists.

It should be much more cost-effective for Alaska to enact a Do Not Call law in 2004 since we will not have to bear the expense of collecting, updating, and disseminating the Do Not Call list. The FTC will allow consumers to register free-of-charge and will use a sliding scale to charge telemarketers for access to the list.

Other states have already taken step to make sure that their constituents can have dinner in peace. Alaska's citizens deserve no less.

AARP recommends an "AYE" vote on HB 15.

Should you have any questions about our position, please feel free to contact Patrick Luby (907.762.3314), AARP Legislative Representative; or me Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
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cc: Representative Bud Fate
Vice-Chair Ralph Seekins
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French
Marie Darlin
Patrick Luby

February 18, 2004

Do-Not-Call Registry for Telemarketing Upheld in Court

By DAVID STOUT

WASHINGTON, Feb. 17 - A federal appeals court on Tuesday upheld the government's right to help people shield themselves from unwanted telemarketing calls.

A panel of the United States Court of Appeals for the Tenth Circuit in Denver ruled that a do-not-call registry created by the federal government last fall helped to combat abusive telemarketing and "prevents the invasion of consumer privacy."

"The challenged regulations do not hinder any business's ability to contact consumers by other means, such as through direct mailings or other forms of advertising," the ruling said.

The telemarketing industry said it was considering an appeal to the United States Supreme Court. But the Supreme Court may not feel the need to take the case because it does not involve any conflicts among circuit courts, said Gregory A. Castanias, a Washington lawyer who specializes in appeals involving constitutional issues and technology law.

The chairman of the Federal Trade Commission, Timothy J. Muris, said Tuesday that the do-not-call registry had been very successful and that "we are pleased that this popular program, like America's dinner hour, will not be interrupted."

H. Robert Wientzen, president and chief executive of the Direct Marketing Association, which represents nearly 5,000 companies in the United States and elsewhere, said an appeal to the full Tenth Circuit or to the Supreme Court was possible. Meanwhile, he said, his group will follow the voluntary policy it has had for 18 years: "If people don't want to be called, we don't want to call them."

Since the F.T.C. and the Federal Communications Commission established the registry last fall, it has grown enormously. It now includes more than 50 million telephone numbers.

Telemarketing interests have maintained that the calls are a legitimate business technique, and that the new federal regulations could cost as many as 2 million jobs in an industry that now has 6.5 million workers. But the court was not swayed. "Just as a consumer can avoid door-to-door peddlers by placing a 'no solicitation' sign in his or her front yard, the do-not-call registry lets consumers avoid unwanted sales pitches that invade the home via telephone," Judge David M. Ebel wrote.

The appeals court set aside a ruling by Federal District Judge Edward W. Nottingham of Denver, who had found that the list violated the right to free speech. The appeals court said that the First Amendment did not prevent the government from giving consumers the do-not-call option. It had allowed the government to enforce the program pending the outcome of the case decided Tuesday.

The ruling combined the government's appeal of Judge Nottingham's decision with two related cases. One was a case brought against the Federal Communications Commission by Denver telemarketers, and the other was an appeal by the Federal Trade Commission of an Oklahoma ruling that said it had no authority to create and enforce a do-not-call list.

FOR IMMEDIATE RELEASE

CONTACT: David Schneier, 202-434-2561

AARP REACTION STATEMENT ON NATIONAL DO NOT CALL LIST RULING

AARP is very pleased with the Tenth Circuit's ruling today in upholding the constitutionality of the National Do Not Call Registry. The ruling of the court adheres closely to the AARP amicus brief filed in support of the do not call legislation.

This ruling affirms the long and hard campaign that AARP has waged at the state and national level to put control of the telephone back where it belongs – with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing them to stop calls in the first place.

"Baby boomers have been called the most savvy and informed consumers of any generation of Americans," said AARP Foundation Litigation senior attorney Deborah Zuckerman. "Yet many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls."

AARP will continue to advocate for state laws that compliment the federal rule in scope and jurisdiction.

#

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 the telephone solicitation of a residential telephone customer of a telecommunications company and the customer 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) A local exchange telecommunications company and a company that provides a telephone directory on behalf of a local exchange telecommunications company shall provide for the identification in the telephone directory of those residential customers who do not wish to receive telephone solicitations. 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 is subject to the approval of the Regulatory Commission of Alaska.

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

(d) A person who employs individuals to engage in telephone solicitations is not liable for the violation of this section if an employee solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations if the person established that

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

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

(3) the call that violated this section was made contrary to the procedures and policies established by the person; and

(4) calls on behalf of the person that result in violations of this section are infrequent.

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

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

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

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

(g) In this section,

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

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

(3) "telephone solicitation"

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

(B) does not include

(i) calls made in response to a request or inquiry by the called customer or communication made during a call made by the customer;

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

(iii) calls limited to 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.

(a) In AS 45.50.471 - 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food that has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.

(b) AS 45.50.471- 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act.

AS 45.63.010. Registration.

(a) A person may not sell or attempt to sell property or services by telephonic means if the person makes substantially the same offer on substantially the same terms to two or more persons, unless the telephonic seller is registered with the Department of Law at least 30 days before the solicitation campaign.

(b) To register under (a) of this section, a person shall file with the department

(1) a notice of intent to engage in a solicitation campaign; a separate notice of intent shall be filed for each solicitation campaign;

(2) an irrevocable consent appointing the department the person's agent for the receipt of service of process in a court action or other proceeding against the person, or the successor in interest of the person, for a violation of this chapter; and

(3) a signed statement that the person has read and will comply with this chapter and the regulations adopted under this chapter.

(c) Registration under (b) of this section is not complete until the telephonic seller receives an acknowledgement from the department that the seller has complied with (b) of this section.

(d) The notice of intent must be on a form provided and established by the department by regulation. The notice of intent must include detailed information about the nature of the solicitation campaign and the identity and business practices of the telephonic seller, including information on the employees, agents, and officers affiliated with the telephonic seller. The notice of intent must disclose criminal convictions, civil judgments, orders, consent decrees, or administrative determinations involving allegations of unfair or deceptive business practices by the telephonic seller.

(e) A person may not provide false information in a notice of intent.

AS 45.63.020. Written contract required.

Until a telephonic seller receives from a buyer a signed, written contract for the purchase, the telephonic seller may not solicit payment for the purchase, charge a credit card account for the purchase, negotiate a check or other commercial instrument intended for payment of the purchase, or accept a cash payment for the purchase. The written contract must notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the information required by the department by regulation.

AS 45.63.030. Cancellation or replacement.

(a) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a telephonic seller shall give the buyer a refund, credit, or replacement, at the option of the buyer, if

(1) the property or services purchased are defective, not as represented, or not received as promised by the seller;

(2) within seven days after receiving the purchased property, the buyer returns the purchased property and makes a written request for the refund, credit, or replacement; or

(3) within seven days after paying for the purchased services and before the services are provided, the buyer makes a written request for the refund or credit.

(b) A return or request is timely under (a) of this section if the return or request is made in person within the seven days or if the return or request is mailed, properly addressed and postmarked, postage prepaid, within the seven days.

(c) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a purchase of property from a telephonic seller becomes final seven days after receipt of the property, unless the buyer requests a refund, credit, or replacement under (a) of this section, or the telephonic seller fails to obtain the contract required by AS 45.63.020.

(d) A purchase of services from a telephonic seller becomes final seven days after receipt of the contract required by AS 45.63.020, unless the buyer requests a refund or credit under (a) of this section.

AS 45.63.040. Prohibited representations.

(a) Unless the telephonic seller is asked for the information by the buyer, the seller may not state or imply that the seller has a license, consent, or other form of permission from the state.

(b) A telephonic seller may not state or imply that

(1) the seller is complying with state law; or

(2) the seller's compliance with the laws of this state or a municipality constitutes approval or endorsement by the state or municipality.

AS 45.63.050. Waiver prohibited and void.

A telephonic seller may not request or obtain from a buyer a waiver of the rights of the buyer under this chapter. A waiver of the rights of a buyer under this chapter is void.

AS 45.63.060. Criminal penalties.

(a) A person who sells or attempts to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons without complying with the registration requirements of AS 45.63.010, or who solicits, or receives, payment for a purchase before receiving the written contract required by AS 45.63.020 is guilty of a class C felony.

(b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A misdemeanor.

AS 45.63.070. Remedies not exclusive.

The remedies in this chapter are in addition to other remedies available to a buyer or the department.

AS 45.63.080. Exemptions.

This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.900 from regulation under AS 45.55;

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a magazine, periodical, sound recording, book, or membership in a book or record club

(A) where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and

(B) that is regulated by the Federal Trade Commission as a negative option plan under 16 CFR 425;

(11) of services provided by a cable television system operating under a franchise issued by a municipality;

(12) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

(13) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(14) of property from a mail order catalog that is published on a regular, periodic basis and that describes or pictures the items for sale and prominently provides the specific price of each item;

(15) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(17) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(18) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

AS 45.63.090. Regulations.

The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

AS 45.63.100. Definitions.

In this chapter,

(1) "buyer" means a person who buys from or is solicited by a telephonic seller;

(2) "department" means the Department of Law;

(3) "notice of intent" means the notice of intent required by AS 45.63.010 to engage in a solicitation campaign;

(4) "solicitation campaign" means a sale or attempt to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons;

(5) "telephonic means" means a telephone or another method using telephone lines, and includes a facsimile machine and electronic communication between electronic computing devices; "telephonic means" includes a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means;

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010.

Public Law 108-10
108th Congress

An Act

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

Mar. 11, 2003

[H.R. 395]

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

SECTION 1. SHORT TITLE.

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

Do-Not-Call
Implementation
Act.
15 USC 6101
note.

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

15 USC 6101
note.

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

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

15 USC 6101
note.

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

Deadline.

SEC. 4. REPORTING REQUIREMENTS.

15 USC 6101
note.
Deadline.

(a) **REPORT ON REGULATORY COORDINATION.**—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) proposals to remedy any such inconsistencies.

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

(1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;

(2) the number of consumers who have placed their telephone numbers on the registry;

(3) the number of persons paying fees for access to the registry and the amount of such fees;

(4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;

(5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

Approved March 11, 2003.

LEGISLATIVE HISTORY—H.R. 395:

HOUSE REPORTS: No. 108-8 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD Vol. 149 (2003):

Feb. 12, considered and passed House.

Feb. 13, considered and passed Senate.

○

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Sec. 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

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Sec. 310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney General means the chief legal officer of a State.

(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) Commission means the Federal Trade Commission.

(e) Credit means the right granted by a creditor to a debtor to defer payment

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of debt or to incur debt and defer its payment.

(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) Credit card sales draft means any record or evidence of a credit card transaction.

(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) Person means any individual, group, unincorporated association,

limited or general partnership, corporation, or other business entity.

(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) Prize promotion means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further solicitation does not include providing the customer with information about, attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

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Sec. 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays \1\ for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

\1\ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by Sec. 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; \2\

\2\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.3(a)(1)(i) of this Rule.

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize

that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
- (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
- (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or
- (vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

- (i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or
- (ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

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- (A) The date of the draft(s);
- (B) The amount of the draft(s);
- (C) The payor's name;
- (D) The number of draft payments (if more than one);
- (E) A telephone number for customer inquiry that is answered during normal business hours; and
- (F) The date of the customer's oral authorization; or
- (iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:
 - (A) All of the information contained in Secs. 310.3(a)(3)(ii)(A)-(F); and
 - (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and
- (4) Making a false or misleading statement to induce any person to pay for goods or services.
 - (b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Secs. 310.3(a) or (c), or Sec. 310.4 of this Rule.
 - (c) Credit card laundering. Except as expressly permitted by the

applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

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Sec. 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in

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obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating Sec. 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with Sec. 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to Sec. 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with Sec. 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

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Sec. 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

\3\

\3\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.5(a)(3) of this Rule.

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by Sec. 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by Sec. 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by

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written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such

agreement exists, the seller shall be responsible for complying with Secs. 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with Sec. 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

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Sec. 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, ' 16 CFR part 308;

(b) The sale of franchises subject to the Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, ' 16 CFR part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in Sec. 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that Sec. 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

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Sec. 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this section shall prohibit any attorney general or

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other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

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Sec. 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.