

TELEPHONE SOLICITATION

Alaska—"Making a junk telephone call without the prior written consent of the person called is unlawful. In this section 'junk telephone call' means a telephone call made for the purpose of advertising through the use of a recorded advertisement." Alaska Stat. sec. 45.50.472.

Arizona—It is a misdemeanor to use an automated dialing device for commercial sales. Ariz. Rev. Stat. 13-2919.

Arkansas—Automatic dialing and recorded messages for sales calls are illegal. Ark. Stat. Ann. sec. 41-4162.

California—State law outlaws automatic recording devices in telephone sales, except with consent and a live operator introducing the message. Publ. Utilities Code sec. 2821-25.

Colorado—Limits use of automated sales devices. Colo. Rev. Stat. sec. 18-9-311.

Connecticut—It is unlawful to use a device that transmits an unsolicited telephone message and that does not hang up when the recipient of the solicitation hangs up. Conn. Gen. Stat. Ann. 16-256e.

Florida—State law prohibits the use of telephone solicitation systems that make use of automatic dialing devices and tape players, with limited exceptions. Fla. Stat. Ann. sec. 365.165.

Telephone sellers must identify themselves and hang up upon a negative response. Telephone customers may have a listing of "No sales solicitation calls" in the directory. Sellers may not call them, nor persons who are unlisted. 501.059. (Ch. 87-253.)

Georgia—Automatic dialing and recorded message equipment may not be used if unattended by an operator, nor after 9 p.m. A permit is required. Ga. Code Ann. 46-5-23.

Illinois—Illinois Commerce Commission Docket No. 78-0087 in effect prohibits the use of automated dialing equipment with no live operator.

Iowa—Unlawful to disturb the right of privacy of any person by repeated anonymous telephone calls. Iowa Code Ann. sec. 714.37.

Maryland—Automated dialing or push-button systems to solicit sales or request survey information and prerecorded messages for sales are prohibited. Md. Ann. Code art. 78, sec. 55C.

Massachusetts—A customer is given an opportunity to notify a telephone company and to prohibit automated sales calls. Mass. Gen. Laws Ann. ch. 159, sec. 19B-E.

Michigan—"A home solicitation sale shall not be made by telephonic solicitation using in whole or in part a recorded message." Mich. Comp. Laws Ann. sec. 445.111a. See also 484.125.

Minnesota—Automatic dialing and announcing devices may not be used without consent; there must be a live operator; and the calling system must disconnect when the customer hangs up. Minn. Stat. Ann. 325E.26-31.

Nebraska—Solicitors must have a permit from the Public Service Commission to use automated devices and must agree to use a human operator beforehand and have the device disconnect when the person called hangs up. Neb. Rev. Stat. sec. 87-307.

North Carolina—Automated devices are prohibited except with a live operator. Charitable groups and pollsters are exempt. N.C. Gen. Stat. sec. 75-30.

Oregon—A telephone solicitor must identify himself within 30 seconds and hang up upon a negative response. Ore. Rev. Stat. sec. 646.611. No telephone sales agreement is valid unless written and signed. 83.715.

• **Texas**—The Public Utility Commission must approve uses of automated devices, which may not be "used for random dialing or to dial numbers by successively increasing or decreasing integers." The sales person must identify himself and disconnect within 10 seconds of hanging up. No calls are permitted late at night or Sunday mornings. Tex. Rev. Civ. Stat. Ann. art. 1446c, sec. 87B(a).

Virginia—It is a misdemeanor to use "recorded solicitation calls which do not disengage or terminate when the party called replaces the receiver." Va. Code sec. 18.2-425.1.

Washington—A customer may collect \$500 in damages if unsolicited calls are made by automatic devices. Wash. Rev. Code Ann. 80.36.390 and 400.

Wisconsin—"No person may use an electronically pre-recorded message in telephone solicitation without the consent of the person called." Wisc. Stat. Ann. 134.72.

Wyoming—It is a misdemeanor to make sales calls with an automatic telephone system. Wyo. Stat. sec. 6-6-104.

"Compilation of State + Federal Privacy Laws"

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Robert Ellis Smith

MISCELLANEOUS

Indiana—Law enforcement authorities may use an electronic device worn by a parolee to track his whereabouts if it is "minimally intrusive upon the privacy of the offender or other persons residing in the offender's home" and if the offender and those in the household give written consent. IC 35-38-2.5, sec. 3.

Iowa—It is a misdemeanor to disclose the titles of video tapes borrowed by individuals, according to a 1988 law (HF 2336). Iowa Code Ann. sec. 22A.1.

Kentucky—Monitoring devices that indicate *only* whether an offender on parole is home or not are authorized; devices that provide information as to the activities of an offender inside the home are prohibited. Ky. Rev. Stat. sec. 532.200 (5).

Maryland—Video rentals stores may not disclose the

identity of customers and their choices of video tapes. Md. Ann. Code art. 27, sec. 58310-616c. Ch. 631 Acts of 1988.

Rhode Island—The names of persons buying or renting audio and video tapes, "and the like," are confidential. The law seems to cover purchases in bookstores. R.I. Gen. Laws sec. 11-18-32. P.L. of 1988, Ch. 94.

Federal law—The Video Privacy Protection Act permits a customer to sue in federal court if a video rental or sales outlet discloses what tapes a person borrows or buys, or releases other "personally identifiable information." A store may rent customer lists if the customer has a chance to prohibit such disclosure and if the list does not reveal the titles or descriptions of tapes used. Customer lists must be destroyed within one year after they are no longer needed. 18 U.S.C. 2711. PL 100-618. 102 Stat. 3195.

POLYGRAPHS IN EMPLOYMENT

Federal law—The Employee Polygraph Protection Act of 1988 prohibits most polygraph tests by private employers. Tests may be administered (1) when the examinee may terminate the test at any time, (2) when no questions are asked about religion, race, politics, sex, or union activities, (3) when there is no medical reason why the employee should be excused, (4) when the examinee has written notice and an opportunity to hire a lawyer, (5) when the employee is informed in advance of the nature of the test, (6) when the employer or employee has an opportunity to record the ses-

sion, (7) when the employee receives a statement saying that the test may not be a condition of employment nor contrary to law, (8) and when the examinee is given a copy of all questions asked and of any opinion or conclusion rendered. Companies in the security business and in drug manufacturing or sales may test *applicants*, in some cases, under the conditions described above. An employer may "request" a polygraph test as part of an ongoing investigation based on "a reasonable suspicion that the employee was involved" in misconduct. 29 U.S.C. 2001, P.L. 100-347, 102 Stat. 646.

TELEPHONE SOLICITATION

Indiana—Telephone solicitors must be registered. IC 24-5-12.

Rhode Island—Telephone sales devices must hang up when the consumer does. R.I. Gen. Laws. sec. 11-35-26. Solicitors must be registered. 5-61-1.

Tennessee—Telephone sales devices must hang up when the consumer does. Tenn. Code Ann. sec. 39-6-1102.

TESTING IN EMPLOYMENT

Iowa—See MEDICAL RECORDS for law on AIDS testing.

Louisiana—The state worker compensation law regulates drug testing indirectly. La. Rev. Stat. Ann. sec. 23:1601.

Nebraska—Testing of breath or bodily fluids of employees is regulated; tests are permissible if the results are confirmed. Employees have a right to a re-test. There are limits on disclosure. Tampering with specimens is a misdemeanor. Employees may be fired for refusing to take a urine

or breath test. Neb. Rev. Stat. sec. 48-1901. LB 582, Laws of 1988.

Vermont—State law prohibits AIDS testing as a condition of employment and prohibits discrimination based on a positive test result. Vt. Stat. Ann. tit. 21, sec. 495 (6) and (7).

Washington—Similar to Vermont's. Wash. Rev. Code Ann. sec. 49.60.172.

ICA looks at legislation

Consumer Credit Legislation Pending in Congress

A variety of bills have been introduced that could affect the credit industry if enacted during the 1990 Session. The following is a partial list:

- Rep. Clay Shaw (R-FL) has introduced HR 909 amending the Fair Credit Reporting Act to require prompt, accurate and full written disclosure by consumer reporting agencies to a consumer of adverse information received relating to that consumer. The disclosure must be available without charge and the consumer's address verified before mailing the disclosure notice.
- Rep. Leon Panetta (D-CA) introduced HR 989 which would amend the Equal Credit Opportunity Act to prohibit discrimination by creditors against a member of the armed forces on the basis of the military grade of an applicant for credit.
- Rep. Barney Frank (D-MA) introduced HR 1566 which would amend the Truth in Lending Act to provide for the establishment of standards on the types and amount of information that creditors may require borrowers to provide in connection with loan applications.
- Rep. Matthew Rinaldo (R-NJ) introduced HR 3740 which prohibits prescreening and requires greater disclosure of personal information collected on consumers by creditors, credit bureaus and others. In addition, Rep. Chuck Schumer (D-NY) is planning to introduce legislation that could prohibit prescreening and restrict certain legitimate credit bureau activities.
- Rep. Richard Lehman (D-

CA) is expected to introduce legislation early in 1990 to amend the Fair Credit Reporting Act in order to provide greater disclosure to consumers of information contained in credit bureau files and to require disclosure of such information to third parties.

We expect further hearings to take place on these and other related bills next year. Some consumer credit amendments may pass Congress and be signed into law.

Rep. Thomas Luken (D-OH) introduced HR 1354, a bill designed to strengthen the authority of the FTC with regard to fraud committed in connection with telemarketing. The House Energy and Commerce Committee voted in favor of the bill in October 1989, but due to the controversial nature of the legislation and significant opposition by the credit and banking industries, the bill did not get to the floor of the House. The bill is expected to be amended, following review by the House Banking Committee and the House Judiciary Committee before getting to the floor of the House for a vote next year. Meanwhile, Senator Richard Bryan (D-NV) is expected to introduce a significantly different bill dealing with telemarketing fraud, and it is possible, but not certain, that such legislation will pass Congress in 1990.

In 1989, Rep. Frank Annunzio (D-IL) reintroduced HR 56 to prevent consumer abuse by credit repair organizations. The bill amends the Consumer

Credit Protection Act to require credit repair organizations to provide prospective customers with information necessary to make an informed decision regarding purchase of these services and to prohibit unfair or deceptive advertising. The bill has significant support and it is possible that such legislation could be passed in 1990 as part of a larger consumer protection bill.

Over the years, Congress has gradually eliminated traditional consumer interest deductions from individuals' tax returns. In 1987, Congress capped the allowable deduction on both first mortgages and home equity loans. In 1989, Representatives Marge Roukema (R-NJ) and Les Aucoin (D-OR) introduced a resolution opposing any limitation to the home mortgage interest deduction, and this resolution was supported by more than half the members of the House. A similar resolution was introduced in the Senate by Senator Donald Riegle (D-MI). In 1990, faced with continued budget deficits, we expect Congress to attempt to restrict the mortgage interest deduction as part of a broader tax bill. While it is highly unlikely that Congress will take the political risk of trying to eliminate the home mortgage interest deduction, it may attempt to lower the cap on deductibility, place limits on second homes and perhaps attempt to phase out a portion of the interest over time.

Prepared by ICA Legislative Committee

101ST CONGRESS
1ST SESSION

H. R. 628

To amend the Communications Act of 1934 to prohibit certain practices involving commercial uses of automatic telephone dialing systems.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1989

Mr. FRANK introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to prohibit certain practices involving commercial uses of automatic telephone dialing systems.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title II of the Communications Act of 1934 is amended
4 by inserting after section 224 (47 U.S.C. 224) the following
5 new section:

6 “RESTRICTIONS ON THE USE OF TELEPHONE
7 AUTODIALING SYSTEMS

8 “SEC. 225. (a) As used in this section the term ‘auto-
9 matic telephone dialing system’ means telephone terminal
10 equipment which has the capacity—

1 “(1) to store or produce numbers to be called,
2 using a random or sequential number generator;

3 “(2) to dial such numbers; and

4 “(3) to deliver a prerecorded message to the
5 number dialed, with or without manual assistance.

6 “(b) It shall be unlawful for any person, in the District
7 of Columbia or in interstate or foreign communications by
8 means of telephone—

9 “(1) to use any automatic telephone dialing
10 system to place any call to any person whose number
11 is listed by a common carrier pursuant to subsection (c)
12 as the telephone number of a person who objects to re-
13 ceiving messages from automatic telephone dialing sys-
14 tems; or

15 “(2) to use any automatic telephone dialing
16 system that does not comply with the technical stand-
17 ards prescribed under subsection (d).

18 “(c) Each common carrier shall maintain, in accordance
19 with regulations prescribed by the Commission, a list of the
20 telephone numbers of customers of that common carrier who
21 notify the carrier that they object to receiving messages from
22 automatic telephone dialing systems. Such regulations
23 shall—

1 “(1) specify the methods by which a customer
2 may give or revoke such notification to a common car-
3 rier;

4 “(2) prohibit any customer from being charged for
5 giving or revoking such notification or for being carried
6 on such list; and

7 “(3) specify the methods by which such list shall
8 be made available to users of automatic telephone dial-
9 ing systems and the costs to be recovered from such
10 users.

11 “(d) The Commission shall prescribe technical standards
12 for automatic telephone dialing systems. Such standards shall
13 require that such systems will, within 5 seconds after the
14 called party hangs up, automatically create a disconnect
15 signal or on-hook condition which allows the called party's
16 line to be released.

17 “(e) The regulations required by this section shall be
18 prescribed within 6 months after the date of enactment of this
19 section.

20 “(f) The requirements of this section shall take effect 30
21 days after the date that such regulations are prescribed.”.

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