

MINUTES

COMMITTEE: COMMERCE

DATE: Monday, March 5, 1973

MEMBERS PRESENT: Chairman Prince, Dr. Robinson, Messrs. Bickerstaff, Demers, Hafen, Torvinen, Wittenberg, and Dini;

MEMBERS ABSENT: Mr. Capurro

GUESTS:	<u>Name</u>	<u>Representing</u>
	Ray Knisley	TRPA
	Joe Midmore	Record Clubs Assn.
	Keith Kandarian	
	Brenna Davis	
	Kevin Roberts	
	Bill Adams	City of Las Vegas
	Dale Quinan	State Fire Marshall
	Keith Henrikson	Peace-Officers
	Pete Kelly	Retail Merchants
	Eileen Brookman	Assemblyman
	Wallie Warren	Nevada Bankers Assn.
	Milos Terzich	
	Frank Johnson	
	Mandy Pino	League of Women's Voter
	Les Kofoed	Gaming Industry Assn.

The meeting was called to order at 4:00 by Chairman Prince. He asked for any testimony on AB 275 regarding negative option merchandise plans. Mr. Midmore outlined regulations recently established by the FTC and felt that this would take care of the situation considered by AB 275, (See Exhibit "1"); that AB 275 is not necessary in view of this FTC ruling; that subscription clubs are interstate and it would be difficult for them to operate under two separate rules. Several of the Committee members did not feel that the FTC rules would solve the problems of Nevada. Mr. Demers moved, Mr. Torvinen seconded a motion that the Committee study AB 275 and consider it at a later date. The motion passed unanimously.

Regarding AB 404 which would require the use of fire retardant roofing materials in fire hazardous forested areas, Mr. Demers discussed proposed changes: That Mr. Zapatini, the Forest Warden, would supervise this regulation instead of the State Fire Marshall; to exclude areas as Lake Tahoe which are regulated

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by the TRPA by Congress; and that existing structures may be "grandfathered" into the regulation. He stated that shakes with this fire retardant material increase the cost about 30¢ to 40¢ a shake.

Mr. Henrikson of the Peace Officers and Fire Fighters Association had no comment on the bill if the Committee accepts Mr. Demers suggested amendments.

Mr. Knisley of the TRPA stated that the proposed amendments will take care of the TRPA on both the California and Nevada sides of Lake Tahoe; he has no objection so long as the TRPA retains jurisdiction.

Mr. Bill Adams, former Building Inspector of Las Vegas and present Assistant City Manager stated that this was good protection for the forested areas in the State.

There was discussion as to whether this should be placed under the counties' jurisdiction or left with the State, as AB 404 proposes. It was brought out that it would effect few counties in the State, namely the Mt. Charleston area in Clark and portions of Nye County. Mr. Demers stated that there had been nine fires in the Mt. Charleston area last summer as a result of pine needles being stuck in the shakes.

Mr. Quinan, the State Fire Marshall, stated that his office would cooperate with Mr. Zapatini; that regulations would specify the quality of fire retardant material acceptable; that there are presently no regulations covering this problem.

Regarding AB 384 requiring public announcement of fire exits in public showrooms, Mrs. Brookman testified that this announcement could cause panic in crowded showrooms; that it is not practical in lounge show areas where people are constantly coming and going. She suggested a notice being placed on menus or cards on tables in showrooms; that AB 404 is not the way to go about it.

Fire Marshall Quinan felt that one fire in one showroom would result in very bad publicity for Nevada. He cited as an example the emergency exits announcements made on airlines and said that with constant repetition, passengers respond very well in emergency situations. He felt that announcements of locations of fire exits very important and that presently one man is working with waitresses and busboys training them to help patrons in an emergency situations.

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Dr. Robinson asked if it isn't now required that all drapes and rugs be fireproof. Mr. Quinan answered to the affirmative. Mr. Bickerstaff stated that there is nothing to say that another 100 chairs cannot be placed in a room. Mr. Quinan stated that showrooms are constantly increasing their seating capacity without additions of more fire exits; that it is a natural tendency for people to attempt to leave through the same exit they came into a room; that the number of people occupying a room is established but the responsibility ends there; that this is supposed to be a self-policing regulation.

Mr. Dini suggested that the cities and counties have the option of imposing this regulation.

Mr. Henrikson stated that by a 3 to 2 vote, his Board was in favor of this bill. NRS 477.030 already established penalties for overcrowding a room.

Mr. Les Kofoed stated that his Gaming Association opposes the bill because it is not necessary. Fire exits are not posted in showrooms and this bill would be unfair to the public who enter showrooms for entertainment. He also stated that some fire chiefs oppose the measure as being unnecessary.

Chairman Prince announced that meetings on AB 129 had been completed and that the Committee would take action at a later date. Dr. Robinson moved and Mr. Demers seconded a "do pass" recommendation on the bill. Messrs. Prince, Robinson, Bickerstaff, Demers, Wittenberg and Dini voted "aye"; Mr. Torvinen voted "no"; and Mr. Hafen abstained.

Regarding AB 404, Mr. Demers moved, Mr. Torvinen seconded that the bill be passed as it will be amended. The vote was unanimous with the exception of Mr. Hafen who voted "no".

Regarding AB 384, Dr. Robinson moved and Mr. Torvinen seconded the motion that the bill be indefinitely postponed. The vote was unanimous with the exception of Mr. Demers, who voted "no".

Regarding AB 275, Mr. Bickerstaff moved, Mr. Demers seconded a motion for a "do pass" on this bill. The vote was unanimous with the exception of Mr. Hafen who voted "no".

Mr. Torvinen stated that he had received requests from Mr. Bert Goldwater, Mr. Jim Lorigan of Farmers Insurance; and Mr. Jerry Whitehead to give more testimony before the Committee on the "no-fault" bills*. After discussion, it was agreed that since Mr. Goldwater had already appeared and his testimony would be available to the Committee by Friday, no further testimony would be taken at the meeting Friday. However, Mr. Torvinen was instructed to ask Messrs Lorigan and Whitehead to

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attend the meeting Friday, March 9 at 3:15 to give their presentations. Mr. Dini agreed to adjourn his Government Affairs Committee in time for this testimony.

Mr. Torvinen presented proposed amendments to AB 167 which he had written and after considerable discussion, Mr. Demers moved and Mr. Dini seconded that the bill be indefinitely postponed. He followed this motion with a second motion to request a new bill from the bill drafter to replace AB 167, placing mortgage banks under the Banking Division of the Real Estate Commission and removing the escrow company sections, 1 through 26, and making other changes as suggested by Mr. Torvinen. This was unanimously agreed upon by the Committee.

Mr. Hafen stated his interest in a simple escrow bill* just requiring a license and bond. Mr. Demers moved that the Committee request such a bill, Dr. Robinson seconded the motion. The vote was unanimous

There being no further business, the meeting was adjourned at 5:30 p.m.

Respectfully submitted,

PHYLLIS BERKSON, Attache

* A.B. 889 (BDR 54-1693)

ASSEMBLY

AGENDA FOR COMMITTEE ON COMMERCE

Date Mon., March 5 Time 4:00 p.m. Room 222

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
AB 282	Revises cosmetology law.	
AB 289	Progressively increases education re- quirements to obtain real estate bro- ker's license.	

*Please do not ask for counsel unless necessary.

ASSEMBLY

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AGENDA FOR COMMITTEE ON COMMERCE

Date Mon., March 5 Time 4:00 p.m. Room 222

Bills or Resolutions
to be considered

Subject

Counsel
requested*

THIS AGENDA SUPERCEDES AND CANCELS PREVIOUS AGENDA DATED MARCH 5

- | | | |
|--------|--|--|
| AB 404 | Requires use of fire retardant roofing materials in fire hazardous forested areas; | |
| AB 384 | Requires public announcement of available fire exits in public showrooms; | |
| AB 275 | Declares negative option merchandise plans void and unenforceable; | |
| AB 129 | Clarifies status of business trusts under foreign corporation law. | |

*Please do not ask for counsel unless necessary.

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

TRADE REGULATION RULE
INCLUDING
A STATEMENT OF ITS BASIS AND PURPOSE

Concerning

USE OF NEGATIVE OPTION PLANS
BY SELLERS IN COMMERCE

INTRODUCTION

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Subpart B, Part 1 of the Commission's Procedures and Rules of Practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule pertaining to the Use of Negative Option Plans by Sellers in Commerce.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views and arguments presented on the Record by interested parties in response to the notices, as prescribed by law, and has determined that the adoption of the Trade Regulation Rule and statement of its basis and purpose set forth herein is in the public interest.

THE RULE

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) that aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) the right of a contract-complete subscriber to cancel his membership at any time;

(iv) whether billing charges will include an amount for postage and handling;

(v) a disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) a disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the postal service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) the frequency with which the announcements and forms will be sent to the subscriber, and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by subparagraph (3) below:

(i) an announcement identifying the selection;

(ii) a form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, it shall constitute an unfair method of competition and an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the postal service or the subscriber postage adequate to return such selection to the seller, when:

(i) the selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) such form is received by the seller after the return date, but has been mailed by the subscriber and post-marked at least three days prior to the return date;

(iii) prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a cancelling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to Section 3009 of the Postal Reorganization Act of 1970, as adopted by the Federal Trade Commission in its Public Notice, dated September 11, 1970;

(iv) the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in subparagraphs (b)(1)(i) through (b)(1)(iv) above, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within four weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(NOTE: The Commission is aware of the fact that many of the consumer complaints received during the course of the proceeding involve allegations of erroneous or unfair billing practices of a type which would be covered by its proposed trade regulation rule involving Billing Practices Arising Out of the Administration of Customer Accounts by Credit Card Issuers and Other Retail Establishments, which proceeding has been postponed indefinitely as a result of and for the reasons stated in the Commission's announcement dated January 7, 1971. In view of the fact that the problems encountered by users of the negative option system of merchandising are no different from those contemplated by the Billing Practices proceeding which was designed to be applicable to all sellers similarly situated, the Commission has not seen fit to include provisions governing such practices in this Rule, but would instead visualize that any subsequent rule or statute on the subject would be equally applicable to the members of this industry. In the meantime, abuses in this area will be dealt with on a case by case basis.)

(c) For the purposes of this Rule:

(1) "Negative option plan" refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.

(2) "Subscriber" means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) "Contract-complete subscriber" refers to a subscriber who has purchased the minimum quantity of

merchandise required by the terms of membership in a negative option plan.

(4) "Promotional material" refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) "Selection" refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period, specified by the seller the subscriber instructs the seller not to send such merchandise.

(6) "Announcement" refers to any material sent by a seller using a negative option plan in which the selection is identified and offered to subscribers.

(7) "Form" refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

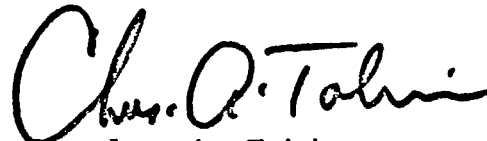
(8) "Return date" refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) "Mailing date" refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection.

Effective: [To be announced.]

Promulgated: February 15, 1973.

By the Commission.


Charles A. Tobin,
Secretary.