Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent: None

Guests Present:

Bill Cozart, Nevada Association of Realtors
Joe Midmore, DeHart Associates, Washington, D.C.
Stan Warren, Nevada Bell
Will Deiss, Las Vegas Police
Pete Kelley, Nevada Retail Association
Virgil Anderson, AAA
John Holmes, Nevada Bell
Chuck King, Central Telephone
Dick Garrod, Farmers Insurance Group
Erma Edwards, Insurance
Kent Robison, Nevada Trial Lawyers
Dave Byington, Nevada State Association of Life Underwriters, Inc.
Jerry Lopez, Legal Counsel to Interim Subcommittee on Insurance
Assemblyman Peggy Westall

Chairman Hayes called the meeting to order at 8:05 a.m.

ASSEMBLY BILL NO. 179

Prohibits commercial use of telephone for soliciting persons at home to make purchases.

Mr. Sena stated the bill is not intended to tell the telephone company how to run its business, but rather seeks to prevent what has become a nuisance from becoming a more serious nuisance. He stated that many people in his constituency have expressed their concern about whether the types of telephone calls addressed by the bill are an invasion of privacy. He noted that in his research on the matter, he has not found anything which indicates whether the constitutional rights of privacy or of freedom of speech have been challenged. Mr. Sena added that in 25 states, legislation has been introduced regarding "junk" telephone calls and which deals with the problem of the use of equipment which can jam telephone circuits by means of electronic devices, so that 2,000 or 3,000 of those types of calls can be made simultaneously. He said that the 95th Session

of Congress has introduced the Telephone Privacy Act to prevent unsolicited telephone calls to private citizens from political parties, charities, and other entities.

Mr. Malone commented that this bill does not include references to charities or religious groups, to which Mr. Sena agreed, stating that he does not know why those groups were excluded.

Mr. Stewart said the bill seems to apply to using the telephone for commercial purposes or soliciting sales of goods and services.

Mr. Malone asked if Mr. Sena knew how difficult it would be to prosecute for unsolicited phone calls, and Mr. Sena stated that it would not be an easy area of enforcement. He added that he feels whether or not the Committee passes the bill, the problem will recur, and legislation will be introduced in the next session.

Mr. Horn said that it seems the telephone is the last way someone has to get into your home and invade your privacy. He added he feels this type of legislation is welcome, and amendments can be drafted so that obstacles can be overcome and a lot of people will be happy.

Mr. Sena emphasized that he would like at least to have something that could be tried for the next two years.

Stan Warren of Nevada Bell said that although he doesn't feel the bill is trying to tell the phone company how it should be run, the primary problem he sees with the bill is enforcement. He submitted a paper on junk phone calls to the Committee, attached to these minutes as Exhibit A. He said that 5 states do have laws regarding junk phone calls and the FCC is working on regulations as well. He noted 2 constitutional concerns--right of privacy, on one side, and freedom of expression, on the other side. He said, too, there are jurisdictional questions involved as to whether the call is intra- or inter-state. He noted similar legislation in the Senate was abandoned as there is no way of identifying the calls other than by using very expensive equipment, which is not marketed by the telephone company. He cited the bill language of "prior agreement" as a problem area, because those agreements are difficult to define. In summary, Mr. Warren said that the bill seems to place the telephone company in the middle, and the subject is difficult to control.

Mr. Brady asked if the bill were to become law, would responsible, legitimate businesses make those sorts of calls. Mr. Warren said he feels the problem is primarily with short-lived situations and would continue when people are unaware. Mr. Brady said that he feels the bill would enforce itself, the caller would be told off by the phone company. Mr. Warren questioned the way in which a complaint could be filed, since Nevada has no sophisticated equipment to handle the situations.

Mr. Stewart asked if there is now a law against obscene phone calls, and if so, how it is enforced. Mr. Warren said there is such a law in effect, and the complaint should be filed with a civil agency, adding, however, that if a series of obscene phone calls are received, the telephone company does have a procedure for getting information for a law enforcement agency which requests it.

In answer to Mr. Stewart's question regarding the ease of identifying commercial establishments making calls, Mr. Warren said that the identification depends on what information is volunteered.

Mr. Warren was unable to answer Mr. Malone's inquiry about how many cases have been prosecuted involving obscene phone calls. He commented that the best way to handle the calls usually is to hang up.

Chairman Hayes commented that the issue seems to boil down to the right of privacy versus that of free speech. She then asked Mr. Warren how the states with applicable laws in effect enforce those laws.

Mr. Warren responded that those states use the electronic equipment referred to earlier. He answered Chairman Hayes' additional question about possibly referring these problems to the Department of Commerce by stating his feelings that the complaints should be referred to a political subdivision and could be served better by those agencies.

Chuck King, Central Telephone Company, spoke against the bill, noting that his reason was the denial of a person's right to use the phone for a purpose which the person felt the phone was intended. He stated that in regard to harrassing phone calls, there have been cases in which the calls were "trapped" and callers have been prosecuted.

Chairman Hayes said it is her understanding that harrassing callers can be prosecuted only on the same exchange.

Mr. Sena asked Mr. King to find out about the use of automatic dialers.

Joe Midmore, representing DeHart and Associates, Washington, D.C., said that firm is interested in direct phone and mail selling. He added the company does not use automatic dialers nor pre-recorded messages, and it voluntarily makes its calls at reasonable hours and provides identification to the recipient. He stated the company opposes the bill but would not oppose legislation prohibiting automatic mailers or pre-recorded messages.

Mr. Midmore stated the hours he referred to are 9:00 a.m. to 5:30 p.m., and Mr. Brady noted that 20 per cent of the population, at least, in Nevada, works nights.

Mr. Sena asked whether there are county ordinances which cover these situations, and Mr. King answered there are not.

Pete Kelley, of the Nevada Retail Association, stated he was representing responsible members of the business community, and the bill proposed many problems for them. He cited a Penney's policy of calling customers to see if they wish to extend warranties at the end of basic warranty periods, and added that Montgomery Ward and Sears call customers regarding catalogue sales. He noted the bill may be an infringement of the first amendment of the Constitution, and that the bill seems to be discriminatory against phone calls. He indicated that this seems to be indicated from the Supreme Court decision in a case dealing with the free flow of information, which he cited as 425VS748, 1976 and offered to get copies of that decision for Committee members. He pointed out that advertising is a form of free speech.

Mr. Stewart asked if Mr. Kelley felt that he had the right to stop a salesman from coming into his home under the trespassing law and asked whether or not the right extended to stopping a salesman to intrude by telephone. Mr. Kelley said you can hang up the phone. Mr. Stewart posed the question of whether an unlisted phone would deny someone the right of free speech, and Mr. Kelley responded that he felt enforcement would be a real problem.

Next to appear was Richard Garrod, Farmers Insurance Company. He stated his company's agents use the phone to contact people to find out policy expiration dates. He said some of the agents in the Southern Nevada area had gone overboard in the recent past, and they have been replaced by the company. He questioned the portion of the bill which refers to being acquainted with the telephone salesman, citing distribution of company material at a county fair, later followed up by telephone calls. Mr. Stewart said he felt that situation would be exempt.

Mr. Sena stated that the intent of the bill was not to go after legitimate business people who advertise and that if the "prior arrangements" section of the bill were removed the bill would not harm anyone and would discourage abuses.

Mr. Brady said that he did not feel the reputable business community would be harmed by the bill but would affect the little guy who is not reputable. Mr. Garrod disagreed, saying that he did not feel the bill would affect those types of callers.

Chairman Hayes asked if the law in California had hurt Mr. Garrod's company, and he said no, because the company had never used boiler room tactics.

Bill Cozart, Nevada Association of Realtors, supported the concept of the bill but said that in its present form the bill would be devastating to the real estate industry and the way the industry normally conducts its business. He said the effect could be particularly damaging in the concept of prospecting listings. He explained that if a client sees property in a part of town, realtors will telephone home owners to see if they may be interested in selling their property. He added that in the case of commercial property, it is considered always to be on the market, though not listed, and standard practice is to contact owners of commercial property as potential sellers. He noted that if the bill provided exemptions for those industries already regulated by NRS, a solution might be reached.

Dave Byington, Legislative Chairman of the Nevada State Association of Life Underwriters, Inc., said he appreciates the intent of the bill but that it would prohibit services to customers, adding that the industry is already regulated quite a bit by the Insurance Commission. He noted the instance of obtaining leads from people to whom insurance has already been sold, on which agents follow up by telephone. He noted phone calls are also made to "orphaned" policyholders whose agents have moved out of the area, and no prior arrangements are made before contacting either of those types of potential clientele.

At 8:55 a.m. the meeting was temporarily adjourned, as Committee members were required to attend the general session of the Assembly.

The meeting was reconvened by Chairman Hayes at 10:26 a.m.

ASSEMBLY BILL NO. 237

Requires interest on judgments from time cause of action accrues.

Kent Robison of the Nevada Trial Lawyers Association said that he understands that the bill would involve the imposition of prime interest rates which would accrue from the time of cause. He said that he feels it is the best law to impact quick settlement that he has seen, for both plaintiffs and defendants in lawsuits. He said it would be difficult to avoid settlement of lawsuit payments where someone is looking at interest accruing from the beginning of the action.

In response to Mr. Banner's question, Mr. Robison stated that the bill would not only change the interest rate from 7 per cent to the prevailing prime interest rate but it would make interest applicable from the time the action was filed, as well, rather than the present law which provides for interest from the time of judgment.

Mr. Stewart asked whether tying into the average daily prime interest rate would cause a lot of problems in having to determine

what the daily prime rate formula is and noted the additional problem of determining which are the three largest banks in the U.S. He said that tying into the prevailing prime interest rate might be unfair with regard to the previous 3 or 4 years' prevailing interest rates. Mr. Robison agreed. Mr. Stewart said consideration might be given to raising the bill's stated interest rate to 8 per cent, and Mr. Robison said that could solve the problem.

Mr. Prengaman asked if when a judgment prevails against someone whether interest on the judgment must be paid from the date the action was filed. Mr. Robison stated that interest could go back even further, i.e., if the debt was incurred on March 15, with a filing date of April 15, interest would accrue from inception of the debt under provisions of the proposed bill.

Mr. Prengaman asked how interest could be "created" on something that didn't occur until the court issued judgment. Mr. Robison said the court could state the interest applied from the date a debt was incurred. He noted that otherwise, a defendant could place the money in a time deposit certificate account and actually make money by having a lawsuit filed against him.

In answer to Mr. Prengaman's next question, Mr. Robison said the money involved is always the money of the person who sues, if that person wins; the court states the money belongs to the plaintiff and should have been paid when the debt became due. Mr. Prengaman said he would agree in the case of debts, but he did not feel the concept should apply to judgments until the court awards.

Mr. Brady stated that many businessmen do not try to collect interest on debts before filing suit and without interest there is no incentive to go to court.

Mr. Robison said that in personal injury matters, lost wages and medical bills should also be considered from the date of the accident, and there is no incentive to pay if the interest dates only from the time of judgment, rather than from the date of the accident.

Mr. Prengaman cited the recent judgment against Ford Motor Company and noted that the interest in that case would have been astronomical if the bill had applied. Mr. Robison said the court award was for 123 million dollars, but the court cut the interest to 3 per cent of the judgment; there was no appeal, and the projected medical costs are more than 1 million dollars, with no interest being paid on those costs.

Mr. Stewart offered the example of a personal injury matter in which settlement is offered at $50,000, but refused, the suit is for $100,000, but the award is for $50,000, asking what happened to the interest on the original offer and why.

Mr. Robison said that problem can be solved by an offer of judgment. The offer of judgment would not make the costs attributable to the person making the offer. That person would still be protected because in that situation the defendant had the money in some kind of an account and probably had accrued interest. Mr. Robison said he would see that kind of a situation as a "wash".

Jerry Lopez, who had served as the legal counsel to the Interim Subcommittee on Insurance stated that the bill was recommended to the Senate by the Nevada Trial Lawyers Association which pointed out to the subcommittee that personal injury actions take as long as 2 years to come to trial in the larger counties. The thinking was that there would be more incentive to settle these cases with the proposed changes regarding the interest rate and the time from which interest accrues.

Mr. Stewart commented that there is no fiscal note to the proposed bill. He said this bill could possibly increase insurance premiums paid by local governments, as the prevailing interest rate and accrual from time of filing the action would mean the insurance companies were assuming a higher risk, thus raising rates to cover that possibility.

Mr. Lopez agreed, but speculated that since most of those sorts of cases are not against the State or local government the fiscal note probably did not seem pertinent to the subcommittee.

Virgil Anderson of the American Automobile Association, offered a statement to the committee prepared by Mr. George Vargas, which is attached hereto as Exhibit B, opposed to the bill. In answer to Mr. Sena's question, he said that he was not present at the interim subcommittee meetings because he understands they were primarily concerned with liability insurance and the legal process itself and did not involve auto insurance.

Dick Garrod said that he finds the legislation misleading because determination of serious injuries and after-effects of those injuries may take a couple of years, until the injured party's condition stabilizes. At that time the loss occurring to the wage earner is considered, and he feels this bill would force insurance carriers to pay higher interest rates which would, in turn, be necessarily passed on to other policyholders. Mr. Banner commented that the person causing the injury should have to pay the interest costs, not the other policyholders, and to avoid that problem, perhaps the rate structures should be changed.

ASSEMBLY BILL NO. 231

Authorizes district courts to grant certain relatives of deceased parent right to visit that parent's unmarried minor child.

Assemblyman Peggy Westall appeared before the committee and explained the introduction of the bill. When the mother of a minor child had passed away, the father of the child gave the child to the maternal grandparents. Those grandparents refused to let the other grandparents see the child. When the paternal grandparents went to see a lawyer, he said there was no law to provide for visitation. Mrs. Westall noted this bill differs from the one introduced by Assemblyman Mann in that it refers to a living parent, and A.B. 231 refers to a deceased parent.

Mr. Horn asked Mrs. Westall if the bill as written permits grandparents of an adopted child to have visitation of the minor child in the same circumstances, and Mrs. Westall said the bill does not make that provision, which she feels is "a whole new ball game".

Mr. Horn then asked about the situation where parents divorce and remarry and whether the bill would permit visitation by the original grandparents, to which Mrs. Westall responded affirmatively.

Mr. Horn continued that he was concerned that the grandparents of a small child would still have a lot of love for that child but would have no rights.

Mrs. Westall stated that she would not be opposed to altering the language so that adoptive grandparents could visit the child.

Mr. Stewart stated that he feels the prime interest is for the child, and perhaps visitation in this situation could worsen things for the child.

Mrs. Westall said that the difficulty is that there is no provision in the law, no avenue to use to seek visitation, final decision for which is up to the judge, and that the child is not really involved.

Mr. Stewart disagreed, noting many divorce cases in which very small children have been severely traumatized and actually put on the witness stand.

The Committee decided not to take action on any bills heard this date, and that A.B. 255 and A.B. 237 and A.B. 231 would all be discussed on Monday, February 12, 1979.

There being no further business to come before the Committee, upon motion by Mr. Banner, Chairman Hayes adjourned the meeting at 10:50 a.m.

Respectfully submitted,

Jacqueline Belmont

Jacqueline Belmont
Secretary

Background Paper 79-2

JUNK TELEPHONE CALLS

Revised December 28, 1978

JUNK TELEPHONE CALLS

I

INTRODUCTION

For many years, various sales organizations have used the telephone to sell a variety of products and services to potential consumers. Most of these sales calls were made by persons hired to dial numbers listed in telephone directories and deliver live messages when the telephone was answered. In some instances, these live messages were augmented by recorded messages. In other cases, a recorded sales message was turned on as the phone was answered and then the sales person came back to talk to the customer after the tape had stopped.

Recently, new devices known as automated dialing and recorded message players (ADRMP) have been developed and introduced into the marketplace. These devices are designed to dial automatically a series of telephone numbers, either preselected or chosen at random, and play a prerecorded message when the phone is answered.

These new automatic dialing devices have created, according to the Federal Communications Commission, the California Department of Consumer Affairs and many others, a backlash of consumer complaints which call for the outright ban or severe restriction on telephone sales soliciting. Many persons complain that they find it an annoyance to stop whatever they are doing to run to the telephone, only to find that the caller is a machine attempting to present a prerecorded sales message. Some people believe because automatic calling devices can call numbers at random or in sequence, even unlisted telephone numbers provide no protection against unsolicited sales calls. Moreover, it has been claimed that automatic dialing devices may prevent emergency calls from getting through where the type of telephone company central office equipment is used which does not disconnect the receiving party's line until the call's originator hangs up his telephone.

II.

FEDERAL AND STATE "JUNK TELEPHONE CALL" LEGISLATION

The concern about telephone solicitation has lead to the introduction of state and federal legislation and the study of possible regulations by the Federal Communications Commission and certain states' public utility regulatory bodies.

Federal legislation considered by the 95th Congress dealing with so-called junk telephone calls include S 2193, sponsored by Senator Wendell R. Anderson, HR 9505, sponsored by Representative Les Aspen and HR 10904 whose sponsor was Representative Charles W. Whalen. None of these measures were enacted into law. The federal measures, all known as the "Telephone Privacy Act," provide for telephone subscribers to advise the telephone company that they do not want to receive unsolicited telephone calls (other than from charities, political parties, pollsters, and literary, scientific and nonprofit organizations) and prohibit anyone from making unsolicited commercial telephone calls to such persons. The bills also prohibit unsolicited commercial telephone calls to any telephone if such calls are made entirely by automatic equipment and have a duration of more than one minute. The bills specify that (1) telephone subscribers not be charged for being listed as not wishing to receive unsolicited telephone calls, (2) the telephone companies' costs of maintaining such a listing be borne by those persons or institutions obtaining the names and telephone numbers of telephone subscribers who do not wish to receive unsolicited commercial calls, and (3) violators be subject to penalties of a $1,000 fine and imprisonment of 30 days.

Also at the federal level, the Federal Communications Commission issued a Notice of Inquiry in March of 1978 to consider the need for rules to protect the public from "nuisance, annoyance and invasion of privacy resulting from the use of automated dialing devices to present unsolicited recorded messages over the public telephone network." A formal petition filed by the Citizens Communications Center suggested that the FCC rulemaking procedure:

> Consider restrictions on the use of automatic dialing devices for presenting unsolicited recorded messages to telephone subscribers;
>
> Designate means by which telephone subscribers can indicate they do not wish to receive such calls, and designate penalties to advertisers who violate subscribers' desire for privacy;
>
> Designate special tariffs for telephone sales campaigns to reflect fully their cost of service;
>
> Require users of automated dialing devices to precede each recorded message with an announcement identifying it as coming from an automated dialing device.

The White House Office of Telecommunications Policy also asked that the FCC proceedings "address all forms of soliciting by phone." The office stated, "Solicitation by phone, regardless of the method, raises serious questions concerning the infringement of individual privacy." The office's concerns are far

corporation within whose service area the calls are planned and to the California Public Utilities Commission (PUC).

The California PUC has also provided for the regulation of automatic dialing devices by its Decision No. 89397, which contains provisions similar to A.B. 2179.

Other states' measures include:

1. Florida's S.B. 806 (Chapter 78-178) which specifies, among other things:

   No person shall use a telephone or knowingly allow a telephone to be used for the purpose of offering any goods or services for sale or conveying information regarding any goods or services when such use involves an automated system for the selection and dialing of telephone numbers and the playing of a recorded message when a connection is completed to the called number;

2. Maryland's Senate Bill 24 (Chapter 422, Statutes of Maryland 1978) which prohibits the use of an automatic dialing or pushbutton or tone activated address signaling system with a prerecorded message for the sole purpose of soliciting persons to purchase goods or services; and

3. Wisconsin's A.B. 1092 (Chapter 301, Statutes of Wisconsin 1978) which prohibits the intrastate use of electronically, prerecorded messages in telephone solicitation (for the purpose of encouraging a person to purchase property, goods or services) without the consent of the person called.

Penalties specified for violation of the states' laws range from fines of up to $500 in Wisconsin to injunctive relief in Florida.

The issues involved in considering a "junk telephone call" measure are complex. Certain of the questions which might be asked in reviewing such a proposal might include:

1. <u>What is the proper level of government to regulate junk telephone calls?</u> Many calls originate from outside of Nevada. In these cases some sort of interstate regulation may be necessary.

2. <u>How can the callers' freedom of expression rights be balanced with the telephone subscribers' privacy rights?</u> Legal opinions drafted in Wisconsin and California have indicated that statutes allowing persons to protect themselves against unwanted telephone advertising may be found to be constitutional.

reaching indeed, raising the question of whether charitable or political calling by telephone should also be restricted.

The Federal Communication Commission's Carrier Bureau staff briefed the commission on the results of the commission's inquiry relating to "junk telephone calls" in October, 1978. At the briefing, the commission directed the staff to prepare a further notice of inquiry to (1) gather more information on the extent of interstate unsolicited telephone calling; (2) analyze, among other things, the results of state regulatory and legislative programs; (3) elicit comments on possible forms of federal regulation; and (4) consider, in more depth, the constitutional and jurisdictional ramifications of federal actions dealing with the regulation of telephone solicitation.

According to the National Conference of State Legislatures, approximately 25 states have considered legislation relating to telephone soliciting, particularly when automatic dialing devices are used for such soliciting. Five states (Alaska, California, Florida, Maryland, and Wisconsin) have passed junk phone call legislation dealing, at least in part, with automatic dialing devices. As stated by State Senator C. Lawrence Wiser, sponsor of Maryland's law, "We're trying to make the machines illegal before people in the state put a lot of money into them."

Alaska's measure, H.B. 643 (Chapter 17 SLA 78), is direct and to the point. It says, in part, "making a junk telephone call without the prior written consent of the person called is unlawful." Alaska defines a junk telephone call as a "telephone call made for the purpose of advertising through the use of a recorded advertisement."

California's A.B. 2179 (Chapter 877, Statutes of 1978) permits the use of "automatic dialing-announcing devices" only when the person called has previously consented to receive such calls, or, as an alternative, when the device is operated by a person who is required to:

(a) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any.
(b) Inquire whether the person called consents to hear the prerecorded message of the person calling.
(c) Disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

Companies proposing to use the devices are required, by the new California law, to make written application to the telephone

Regarding this question, however, the FCC has asked:

a. How do unsolicited telephone calls compare with highway billboards, loudspeakers on automobiles, radio and TV ads, newspaper and magazine ads, "junk mail," and door to door salesmen in terms of invasion of privacy?

b. Is freedom from unsolicited telephone calls a reasonable expectation of privacy? Does the fact that telephone solicitations require a person to take positive action (answering the telephone) while most other forms of advertising may be received passively, affect one's reasonable expectation of privacy?

c. In view of the foregoing, do telephone subscribers have a right of privacy which would protect them from receiving unsolicited telephone calls? If so, does one's ability to hang up this telephone adequately protect any right to privacy?

d. Would regulation of unsolicited telephone calls infringe on the First Amendment's free speech guarantee?

e. Would regulation of only commercial solicitation, but not nonprofit or political solicitation, constitute an unconstitutional discrimination? Alternatively, is there a constitutional justification for exempting not for profit and political solicitation from regulation?

f. For constitutional purposes, is there any significant distinction between automatically dialed and manually dialed calls?

3. How should "unsolicited calls" be defined? Should the term include calls from: Polling or surveying organizations, commercial sales solicitations, political fund raising organizations, charitable fund raising organizations, organizations with which the person is currently doing business, organizations with which the called person has previously done business, organizations which have received the called person's name from a friend or relative, organizations whose advertising may have lead those called to believe that the additional information they requested would be mailed, a labor union letting its new members know that a strike is over, an airline informing its passengers that a flight has been delayed or cancelled?

4. Should unsolicited calls be prohibited from being placed to parties who have stated affirmatively their objection to receiving such calls or should unsolicited calls be allowed to be placed only to parties who have affirmatively consented to receiving such calls?

5. Once telephone subscribers have informed the telephone company of their desire to receive or not to receive unsolicited calls, how is this information to be used? Should a special symbol (such as an asterisk) be placed beside a subscriber's name in the telephone directory? Alternatively, should each telephone company be required to maintain lists of subscribers who have given notice of their desire to receive or not receive unsolicited calls?

6. Should unsolicited calls be required to be preceded by an announcement (1) identifying the caller, (2) stating that it is a prerecorded message (if that is the case), and (3) briefly describing the nature of the call?

7. How would a state law banning unsolicited commercial telephone calls be enforced? The purpose of legislation banning telephone solicitation is to protect people from the inconvenience and annoyance of "nuisance" telephone calls. People wishing to enforce their right to be free from certain nuisance telephone calls, however, may be more inconvenienced and annoyed by the criminal proceedings involved in prosecuting a violator of a statute which makes certain types of telephone solicitation a crime. Furthermore, in certain instances, the only evidence of illegal telephone solicitation might be the complainant's testimony. The evidence must prove to the judge or jury, beyond a reasonable doubt, that a person is guilty of a crime. A complainant who has merely heard someone's voice over a telephone may not be able to identify the person accused of committing the crime of telephone solicitation. The existence of a statute banning advertising and solicitation by telephone may serve to discourage junk telephone calls. Great difficulty, however, may be experienced in trying to penalize people who violate such a statute.

8. Are there technical means of dealing with unwanted telephone solicitation? Is it possible for telephone company central office equipment to identify incoming solicitation calls and then to block the completion of such calls to persons who do not wish to receive them? Can such task be performed by telephones or other equipment on the customer's premises? What alternative techniques are available for such purposes and what are their respective costs?

SUGGESTED READING

(Available in the Research Library)

"A Revolt Against Junk Calls." Business Week, (February 20, 1978), 32.

"Bell System Position Statement Automated Telephone Solicitation," March 31, 1978.

"Commercial Solicitation Telephone Calls and the First Amendment: A Preliminary Analysis." Memorandum from John Newman, legal counsel, legal services unit to Richard B. Spohn, Director of the California Department of Consumer Affairs. January 3, 1978.

"Comments of the American Telephone and Telegraph Company Before the Federal Communications Commission in the Matter of the Use of Automated Dialing Devices to Present Unsolicited Recorded Messages Over the Public Telephone Network."

Eisenberg, Ron Aaron and Michele Orwin. "And Now, Junk Mail By Telephone." The Washington Post, (August 16, 1977).

Federal Communications Commission Notice of Inquiry in the Matter of Unsolicited Telephone Calls ("Junk Phone Calls"). CC Docket No. 78-100. RM-2955; FCC 78.199, Released March 30, 1978.

"Junk Phone Calls Ring Your Bell? FCC All Ears." The Denver Post, (March 15, 1978).

Kubula, Tendazi. "Strict Limits on Junk Phone Calls Sought." The Los Angeles Times, (January 6, 1978).

Letter from Richard B. Spohn, Director, California Department of Consumer Affairs to Mr. Robert Batinovich, President of the California Public Utilities Commission, (January 4, 1978).

Letter from Richard B. Spohn, Director, California Department of Consumer Affairs to Mr. T. J. Saenger, President, Pacific Telephone and Telegraph Company, (January 4, 1978).

Morris, Hal. "California Curbs Robot Junk Calls." The Christian Science Monitor, (January 18, 1978), 29.

Petition, submitted on behalf of Walter Baer and the Citizens Communication Center, for Issuance of Notice of Inquiry and Notice of Proposed Rulemaking in the Matter of the Use of Automated Dialing Devices to Present Unsolicited Recorded Messages Over the Public Telephone Network.

Porter, Sylvia. "Pending Legislation on Phone Solicitation." The Nevada State Journal, (March 14, 1978).

Public Utilities Commission of the State of California Orders Instituting Investigations Nos. 11 and 12, Issued February 22, 1978, "Investigation on the Commission's Own Motion Into the Use of the Public Utility Telephone Systems by Automatic Dialing Announcing Devices for Solicitation."

Report By State Corporation Commission on Unsolicited Commercial Telephone Calls to the Governor and the General Assembly of Virginia. House Document No. 30. Commonwealth of Virginia, Division of Legislative Services Interstate Exchange Publications. 1978.

"Telephone Machines in Trouble." The Dallas Morning News, (March 7, 1978), 7A.

Testimony of Richard B. Spohn, Director of the California Department of Consumer Affairs, efore the California Public Utilities Commission, Regarding Automated Dialing Devices and Commercial Solicitation Telephone Calls.

Bills in Congress -- S 2193, HR 9505 and HR 10904.

Bills in the States --

Chapter 17 SLA 78, Alaska;
A.B. 2179 (Chapter 877, Statutes of 1978) California;
S.B. 806 (Chapter 78-178) Florida;
S.B. 24 (Chapter 422, Statutes of 1978) Maryland;
H.F. 1747, Minnesota;
H.B. 930, H.B. 1578, H.B. 1686 and S.B. 724, Missouri;
S.B. 375, S.B. 1363 and H.B. 2580, Pennsylvania;
H.B. 1248, Texas;
H.B. 1136, Virginia;
A.B. 1092 (Chapter 301, Statutes of 1978) Wisconsin.

February 7, 1979

To The Assembly Judiciary Committee

Re: Opposition to Assembly Bill 237

The undersigned, George L. Vargas, is filing this written statement in opposition to Assembly Bill 237 for the reason that conflicting hearings may prevent my presentation of oral opposition.

A.B. 237 would radically change the current Nevada law and would impose an almost impossible burden on the citizens of Nevada whether they are purchasing insurance for protection or whether they are "going bear."

Under present law there is no such thing in Nevada as "pre-judgment interest" on unliquidated claims. N.R.S. 17.130, dealing with this subject, provides as follows: "When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment shall draw interest at the rate of 7% per annum from the time of the entry of the judgment until satisfied."

A.B. 237 would not only propose to change this rate, but would provide that interest must be assessed FROM THE TIME THE CAUSE OF ACTION ACCRUED until the judgment is satisfied.

This means, in the case of a tort liability, interest would start running against one, assuming the plaintiff ultimately prevailed in the case, from the very moment that the claimed cause of action occurred, even though there may be a delay in asserting that claim by the filing of a suit up to almost two to four years (depending upon the applicable statute of limitations) before the party against whom the claim is asserted may even be aware that such a potential claim exists.

Even worse, this bill sets the rate of interest at the "prevailing rate" which means THE AVERAGE OF THE LOWEST DAILY PRIME RATE PREVAILING AT THE THREE LARGEST UNITED STATES BANKING INSTITUTIONS ON THE DATE OF THE JUDGMENT.

At the present moment, this would establish an interest rate of 11 1/2%. Therefore, if one had a perspective sizeable claim, damage wise, that claim could be substantially increased by simply not bringing suit until just before the

expiration of the statute of limitations. If the plaintiff should ultimately prevail, this would mean that for a period of years interest could be running at the rate of 11 1/2% assuming this prime rate existed on the date of the entry of judgment. As can be readily seen, this proposal is therefore deliberately designed to substantially increase a plaintiff's recovery. It thereupon becomes obvious that this suggestion is proposed by a member or members of the so-called plaintiff's bar.

Against this background, the committee should consider the effect of such a really inflationary proposal upon the cost of insurance. The cost of insurance today, without the effect of this type of inflationary legislation, is quite obviously a factor in the problem of so many uninsured vehicles on the highways. During the last legislature it was estimated by Commissioner Rottman's office that some 37-40% of the cars on Nevada highways were uninsured. This problem, without being enhanced by the inflationary proposal under consideration, is presently of such a serious nature that there are now five bills pending in this legislature attempting to deal with the problem of the uninsured motorist and attempting to create some sort of a law to force automobile owners to obtain the compulsory insurance currently required. Three of these bills are in the Assembly and two are in the Senate and they are the subject matter of a joint hearing before the Senate and Assembly Transportation Committee on Tuesday, February 13.

The adoption of A.B. 237 will do nothing but increase the seriousness of this uninsured motorist problem.

Referring to the old truism, "There is no free lunch." The citizens of Nevada will be bearing the burden of the increased cost and of the anticipated increased volume of uninsured motorists which this bill will most certainly generate.

It is a bill which is to the obvious, special interest advantage of the so-called plaintiff's lawyer and not in the interest of the general public.

This Judiciary Committee has introduced A.B. 255 which would increase the rate from 7 to 8%. There probably should be this increase in the rate but again, this bill would provide for interest from the time the cause of action arises and hence, is subject to all of the same problems

in that respect as A.B. 237. Should so-called pre-judgment interest be imposed, its cost will simply have to be added to the premium and hence, will fall right back on the people of this state.

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GLV:mn