

The meeting was called to order at 1:40 p.m. in Room 213.

Senator Wilson in the Chair.

PRESENT: Chairman Wilson
Vice Chairman Blakemore
Senator Don Ashworth
Senator McCorkle
Senator Close
Senator Young
Senator Hernstadt

ALSO PRESENT: See attached guest list.

SB 14 Regulates use of automatic dialing and announcing devices on telephone lines.

Senator Carl Dodge, the introducer, stated that he feels that junk calls are an invasion of privacy; however, there is the problem of the Constitutional requirement of free speech. The Federal Communications Commission has had the regulation of these calls under review. Nevada could only regulate calls that have inception within the state. If Nevada had this kind of legislation, perhaps the other states would follow. It would only involve automatic dialing and announcing devices. People using these devices would have to make a written application to the telephone company that would include: the type of device, days of the week, hours, number of calls per hour and length. A telephone company could authorize use only if overloading would not result, would allow not more than 8 rings and would not make calls to subscribers who have specifically requested that they not receive unsolicited calls. The machine could not be used unless an announcement was made by a human operator who would state the nature and length and then identify the person, business or organization and ask if the person would listen. This bill is based on one that passed in the California Legislature. The language was taken from a ruling by the Utilities Commission.

There was discussion on where these calls come from and how to deal with them. This bill would only handle intrastate calls.

Don Rhodes, Chief Deputy Research Director, Legislative Counsel Bureau, presented a background paper on junk telephone calls (see Exhibit "A"). Mr. Rhodes explained that these devices work sequentially so that they get people who are listed and people who are not listed. If both parties don't hang up, the line can be tied up.

The FCC is having hearings and they are waiting to see what the states do.

Chairman Wilson clarified that Nevada has no jurisdiction over interstate calls. He stated that absolute prohibition would be unconstitutional but that some restraint, conditions and limitations may be constitutional.

Stan Warren, Nevada Bell, stated that the automatic device system has become about a \$6,000,000,000 business across the country. He stated that there are 25 states considering legislation.

There was discussion about whether there should be regulation. Senator Blakemore suggested that all one would need to do would be to hang up.

Mr. Warren stated that the bill does basically three things: 1) It requires the registration of these devices with the telephone company, 2) it requires certain operational procedures and 3) it says that the telephone company must maintain a list of subscribers who don't want to be called. He agrees with one and two, with the exception of a few word changes (see Exhibit "B"). In Mr. Warren's amendment there are several deletions and additions to the bill.

Senator Young raised the question of whether there has ever been an automatic device operating in Nevada. None is known.

Mr. Warren stated that none of these machines should be connected to the network until the telephone utilities determine that the equipment could effectively preclude calls to a number, or series of numbers, on a list of telephone subscribers who don't want to be called. He proposed that the enactment to assemble such a list be left to the discretion of the Nevada Public Service Commission at such time that it was proven that the machine would preclude certain numbers that were not to be called. He stated that Nevada Bell would not want the responsibility for enforcement of this bill.

Senator Ashworth asked Mr. Warren if it would be possible for a person to be put on a list if he does not want to be called, so that the person calling would have to check with the phone company for the list. Mr. Warren replied that it would be too costly, possibly for something that might not even be used. Mr. Rhodes referred to Page 2 of Exhibit "A" in answer to Senator Ashworth's question. The cost of maintaining such lists would be borne by those making the calls.

Chuck King, representing the Central Telephone Company, Las Vegas, said that he was not against this legislation but he thought that it would be very difficult to police and that it would be very difficult to compile a list of people not wanting to be called. Mr. King concurred with the information presented by Mr. Warren.

Chairman Wilson closed the public hearing on SB 14.

SB 90 An act relating to trade-marks, trade names and service marks; providing for their registration; prohibiting certain acts; providing civil remedies for infringement or dilution; and providing other matters properly relating thereto.

William D. Swackhamer, Secretary of State, made the following presentation:

Mr. Swackhamer discussed SB 90, which is a model of a Uniform Trade-mark Act. He said the Bill is being presented by a private organization, not by the Commission of Uniform Law. Mr. Swackhamer presented a letter from the Attorney General's office asking that Section 21 of the bill be deleted (see Exhibit "C"). Mr. Swackhamer stated that his office has provided in its budget for extra help to bring the records up to date.

Chairman Wilson requested that a fiscal note be attached to the bill and stated that if the Committee processes the bill, it will be re-referred to Finance.

Ted Quirk, an attorney from Las Vegas, asked to testify. He submitted amendments to SB 90 (see Exhibit "D"). Mr. Quirk stated that this bill is based on a Model State Trade-mark Bill enacted in December, 1964 (see Exhibit "E") which has been adopted by 41 states. These amendments would bring SB 90 back into conformity with the model act. The existing state trade-mark statute, NRS 600.010, is inconsistent with all common law of the states and at the federal level also. It is possibly unconstitutional. The existing act literally appears to tie ownership and rights to a mark, to registration. The second user of a mark who obtains registration would have the right to shut down a prior user. This is inconsistent with all trade-mark law. The existing statute also provides a perpetual registration which can result in prejudice.

Senator Close asked Mr. Quirk to explain how a state trade-mark is affected by a federal registration. Mr. Quirk stated that the federal registration would

preempt the state registration, unless the use underlying the state registration is sufficient to overcome the federal registration. Then administrative action in the patent office or in the federal courts would be required. Mr. Quirk then explained the differences between a trade-mark and a service mark; trade-mark applies to goods and a service mark applies to services such as advertising, restaurants and laundries and their names.

Mr. Quirk explained the changes, additions and deletions he is proposing in the amendments (see Exhibit "D").

Senator McCorkle asked why more than one application would have to be filed if a mark is used for more than one class of goods or services? Mr. Quirk explained that the marks are classified by a certain group of goods or services and that confusion might result if two similar marks were adopted.

Senator Close, in reference to Lines 30 and 31 of Section 22, asked if there is a penal law in the state for violating a trade-mark? Mr. Quirk explained that there is one now and it would be eliminated by this bill. Senator Close stated that since there would be no penal law, these lines in the bill would be superfluous.

There was discussion on the expiration and notification of a trade-mark or service mark. Mr. Quirk cited Subsection 3 of Section 14, which states: "The Secretary of State shall notify a registrant of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration, by writing to his last known address".

Senator Young asked about preemption between federal and state registration. Mr. Quirk explained that the first user has the preemption rights.

Gene Mulligan, Nevada Association of Realtors, offered background on the amendment submitted by the Attorney General's office (see Exhibit "C"). Mr. Mulligan stated that there is confusion to the consumer about franchises in that there may be one franchise but many brokers who use it. In turn, the brokers may have many branches. There can be a wide range of execution of the standards set by the franchise.

Chairman Wilson Closed the public hearing on SB 90.

SB 91 Reduces bonds for certain money order issuers.

Joe Sevigny, Superintendent of Banks in Nevada, stated that he supports this bill.

There was discussion on the origin of the bill. Senator Hernstadt stated that he had been on a sub-committee studying problems of small businesses. The bill could be the result of that study.

Mr. Sevigny presented proposed amendments to SB 91 (see Exhibit "F") and stated that small businesses want to be able to write small money orders as a convenience to their customers but feel restricted by the large amount of the bond required. He stated that this bill was passed two years ago as a result of the failure of the Universal Money Order Company.

Senator Close asked what protection one has if he purchases a money order and then the company which issued it fails? Mr. Sevigny cited Line 22 of Page 1 of SB 91: "For a licensee who has been in the business of issuing checks for more than one year, \$1,000 or the highest total face amount of checks issued in a quarter of the previous calendar year, whichever is higher." He explained that sometimes money orders are not cashed right away. If they build up and the company fails the money orders have no value, therefore he would add "plus outstanding checks six months old or more."

Mr. Sevigny stated that the superintendent would, once each year, examine the licensee and the licensee would pay for the man-hours expended. He added that the superintendent could suspend the license for failure to pay the annual license or examination fee.

There was discussion about the cost of the examination. Small businesses might not be able to afford the cost and the charge for writing the money orders would have to increase.

Senator McCorkle asked for clarification of the bill wherein it states that the bond would be \$1,000, and in another section, that the bond may not be more than \$10,000? Mr. Sevigny stated that the Sub-section of Section 2., which refers to the \$10,000, would be eliminated.

There was discussion about the liability of the bond. Senator Close stated that the bond should be liable for any check written during its existence.

Senator McCorkle suggested that "whichever is higher" be added to Lines 5 and 12 of Page 2 of SB 91.

Senator Wilson closed the public hearing on SB 91.

SB 92 Removes upper limit on number of directors of savings and loan associations.

Howard Ferner, representing Family Savings and Loan Association, and Lester Goddard, Commissioner of Savings Associations support SB 92.

Chairman Wilson closed the public hearing on SB 92.

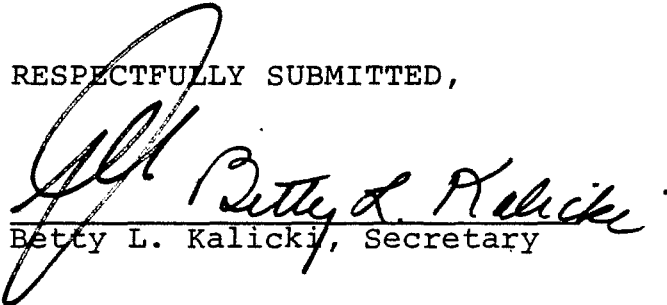
Senator Close moved that SB 92 be passed out of Committee with a "Do Pass".

Senator Hernstadt seconded the motion.

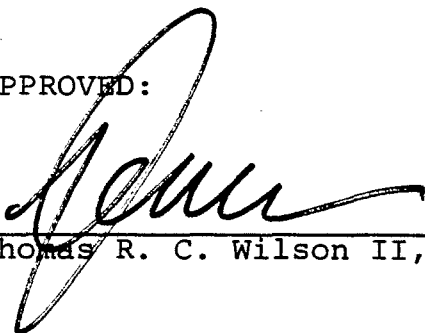
Motion carried unanimously.

There being no further business, the meeting was adjourned at 4:00 p.m.

RESPECTFULLY SUBMITTED,


Betty L. Kalicki, Secretary

APPROVED:


Thomas R. C. Wilson II, Chairman

SENATE COMMERCE AND LABOR COMMITTEE

GUEST LIST

DATE: January 29, 1979

NAME	AGENCY OR ORGANIZATION
Jim White	Ken Thompson
Wesley Wesson	WFB
Don Rhodes	Legislative Counsel Bureau
STAN WARREN	NEVADA BELL
CARY KING	CENTRAL TELEPHONE
KELLY	KCC-TV
HOWARD KIRNER	FAMILY SAVINGS
Carl Deaque	Senate
Mr. Sullivan	Sec of State
Newland Howard	Boeing Services
Alta Giddard	Sec of Labor
Joseph Longenecker	Commerce Banking
J. J.	Bureau of Services to the Blind
Tom W. Johnson	Commerce Dept
John McQuinn	Post of H.R. / Dir of A. Service

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

EXHIBIT "A".

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

EXHIBIT "A"

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. What is the proper level of government to regulate junk telephone calls? Many calls originate from outside of Nevada. In these cases some sort of interstate regulation may be necessary.
2. How can the callers' freedom of expression rights be balanced with the telephone subscribers' privacy rights? 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.

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, before 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.

Exhibit "B"

SENATE BILL NO. 14—SENATOR DODGE

JANUARY 16, 1979

Referred to Committee on Commerce and Labor

SUMMARY—Regulates use of automatic dialing and announcing devices on telephone lines. (BDR 58-544)

FISCAL NOTE: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to telephones; providing for the regulation of automatic dialing and announcing devices; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

excluded from the bill
jurisdiction of the state legislature

SECTION 1. Chapter 707 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

SEC. 2. As used in sections 2 to 5, inclusive, of this act, "automatic dialing and announcing device" means any automatic equipment which has: *Terminal*

1. The capability of storing and producing telephone numbers or of generating telephone numbers at random or sequentially; and

2. The capability, operating by itself or with other equipment, to call those telephone numbers and disseminate a recorded message to the recipients.

SEC. 3. 1. A person shall not use an automatic dialing and announcing device without having prior written authorization by the telephone company within whose service area telephone calls may be ~~received~~ *originated* as a result of the person's use of the device.

2. A person ~~must~~ *must* make written application to a telephone company for authorization to use an automatic dialing and announcing device. The application must include the following information:

(a) The type of device to be used;

(b) The days of the week during which the device will be used;

(c) The hours of the day during which the device will be used;

(d) The approximate number of calls which will be attempted per hour; and *average*

(e) The length of a completed call.

A telephone company may require additional information concerning the characteristics of the device and its proposed use.

3. A person who has been granted authorization by a telephone company to use an automatic dialing and announcing device shall not change his use of the device from the use proposed in his application or stated in his authorization unless he obtains further written authorization by the telephone company.

~~4. A telephone company shall not authorize any person to use an automatic dialing and announcing device unless the device:~~

~~(a) Will be used in a manner which will not result in overloading the facilities of the telephone company.~~

~~(b) Is designed and will be used to allow not more than eight rings before disconnecting.~~

4. A telephone company shall review the information furnished on the application and if the following conditions exist, may deny the application or modify the application and grant the application as so modified:

(a) If it appears that calling patterns would create a traffic overload condition or that the service would be detrimental to the services of other customers of the company.

(b) If the automatic dialing and announcing device is designed and will be used to allow more than eight rings before disconnecting.

~~(c) Is designed and will be used in a way which precludes any telephone calls to specified numbers on a list of subscribers who do not want to receive unsolicited calls through such a device. The public service commission of Nevada may by regulation require a telephone company to maintain such a list.~~

SEC. 4. 1. A person shall not use an automatic dialing and announcing device unless the recorded message is preceded by an announcement made by a human operator who: ~~shall do all of the following:~~

(a) STATE THE ADDRESS AND TELEPHONE NUMBER OF THE BUSINESS OR ORGANIZATION BEING REPRESENTED, IF ANY.

~~b (b) State the nature and length of the recorded message;~~
~~c (c) Identify the person, business or organization which is calling; and~~
~~d (d) Ask the recipient of the call whether he is willing to listen to the recorded message.~~

(e) DISCONNECT THE AUTOMATIC DIALING-ANNOUNCING DEVICE FROM THE TELEPHONE LINE UPON THE TERMINATION OF THE CALL BY PERSON CALLED OR THE PERSON CALLING.

2. If the recipient of the call answers that he is unwilling to listen to the recorded message, the caller shall not present the recorded message and shall not call the recipient again for the purpose of presenting the same recorded message.

~~3. A telephone company may revoke its authorization to any person for use of an automatic dialing and announcing device if the design or use of the device violates section 3 or 4 of this act.~~

SEC. 5 1. A telephone company may revoke its authorization and/or disconnect any ADAD which it discovers to be designed or used in violation of Sec. 3 or 4 of this act. In addition, if use of the device results in an overload of facilities immediate disconnection can be made.

SEC. 6. The provisions of sections 1 to 5, inclusive, of this act apply to automatic dialing and announcing devices which have been installed before the effective date of this act as well as to those which are installed on or after that date.

SEC. 7. (1) THE CONNECTION OF AUTOMATIC DIALING-ANNOUNCING DEVICES TO A TELEPHONE LINE IS SUBJECT TO THE PROVISIONS OF THIS AND TO THE JURISDICTION, CONTROL, AND REGULATION OF THE PUBLIC SERVICE COMMISSION OF NEVADA.

(2) NO PERSON SHALL OPERATE AN AUTOMATIC DIALING-ANNOUNCING DEVICE EXCEPT IN ACCORDANCE WITH THESE PROVISIONS. THE USE OF SUCH A DEVICE BY ANY PERSON, EITHER INDIVIDUALLY OR ACTING AS AN OFFICER, AGENT, OR EMPLOYEE OF A PERSON OR CORPORATION OPERATING AUTOMATIC DIALING-ANNOUNCING DEVICES, IS SUBJECT TO THESE PROVISIONS.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
COMMERCE DIVISION
201 SOUTH FALL STREET
CARSON CITY 89710

RICHARD H. BRYAN
ATTORNEY GENERAL

January 29, 1979

JAMES I. BARNES
CHIEF DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: David L. Howard, Chief Deputy Secretary of State
FROM: James I. Barnes, Chief Deputy Attorney General *JIB*
RE: Senate Bill No. 90 - Sec. 21

This memorandum is a follow-up to my telephonic conversation with you of this date.

The Nevada Real Estate Advisory Commission is currently a defendant in a lawsuit entitled Century 21 Real Estate Corporation, et al. vs. Nevada Real Estate Advisory Commission, et al. This lawsuit revolves around Nevada's 50/50 advertising regulation (please see attached memorandum of Jeanne Hannafin to Governor O'Callaghan which summarizes the lawsuit). Although Section 21 of S.B. 90 is not completely clear to me, I am concerned that this section may be detrimental to the State's position in the lawsuit. Therefore I would request that Section 21 be deleted from S.B. 90.

JIB:rms
Enclosure

MEMO

Jurn
 REAL ESTATE DIVISION
 Capitol Complex
 201 S. Fall Street
 Carson City, Nevada 89710
 (702) 885-4280

TO: Governor Mike O'Callaghan
 FROM: Jeanne Hannafin, Deputy Administrator *JH*
 SUBJECT: Century 21

DATE December 18, 1978

Century 21 is a system of over 4,000 local, independently owned and operated real estate brokerage businesses who are franchised to operate under the federally registered service mark CENTURY 21. Their national advertising program utilizes a standard service mark format which incorporates the local broker franchisee's name with the trade name Century 21 in an 80:20 ratio.

On March 30, 1976, the Nevada Real Estate Advisory Commission adopted a regulation pertaining to the Century 21 advertising ratio which states in part:

"Any broker who operates under or uses a franchise name shall incorporate in the franchise name and logo type his own name; However, the broker's name may not be less than 50% of the surface area of the entire combined area of both the broker's name and the franchise name or logo type."

This is commonly referred to as the 50:50 advertising regulation. The Commission's purpose in adopting the regulation was to secure a more orderly practice of real estate in Nevada and to protect the public from being misled.

Century 21 filed a Motion for Summary Judgment in the U.S. District Court of Nevada challenging the validity of the regulation and asked the court to grant a permanent injunction against the Real Estate Division to prevent enforcement of the regulation.

The Division filed a Motion for Summary Judgment asking the court to uphold the regulation.

On April 12, 1978, the three-judge panel of the U.S. District Court rendered their opinion and decision and granted the Division's Motion for Summary Judgment. The court found that the regulation did not suppress any speech, that the Century 21 trademark was protected, and that the regulation was aimed at providing consumers with more, not less, information. The court stated that Nevada has a state interest in ensuring that its citizens realize that they must look to the local broker and not the franchisor for recompense in the event that they are defrauded in a real estate transaction.

Subsequently, Century 21 filed an appeal with the U.S. Supreme Court and the case has been docketed with that court.

JH:sh

RECOMMENDED AMENDMENTS TO PROPOSED TRADEMARK STATUTE SB-90

SEC. 11. A mark must not be registered if it:

6. So resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned that it is [probable] likely that confusion, mistake or deception may result.

MODEL
ACT

SEC. 12.

2. The application must:

(b) Be accompanied by a specimen or facsimile of the mark in triplicate and by a filing fee of [\$15] \$25 payable to the secretary of state.

SEC. 13.

2. The certificate of registration or a copy of the certificate certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of the mark in any action or judicial proceedings in any court of this state [.] , and shall be prima facie evidence of ownership of such mark, as applied to the goods or services therein identified, in the state of Nevada.

MODEL
ACT

SEC. 17.

3. (e) The registered mark is likely to cause confusion or mistake or to deceive because of its similarity to a mark registered by another person in the United States Patent and Trademark Office, before the date of the filing of the application for registration by the registrant under sections 2 to 23, inclusive, of this act, and not abandoned. But if the registrant proves that he is the owner of a concurrent registration of his mark in the United States Patent and Trademark Office covering an area including this state, the registration with the secretary of state [may] shall not be canceled.

REGISTER
NAME

MODEL
ACT

SEC. 20. Subject to the provisions of section 21 of this act, any person:

1. Who uses, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered in this state in connection with the

sale, offering for sale or advertising of any goods or services, which use [will probably] is likely to cause confusion or mistake or result in deception as to the source of origin of such goods or services; or

2. Who reproduces, counterfeits, copies or colorably imitates any mark registered in this state and applies or causes to apply that reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in conjunction with the sale or other distribution in this state of goods or services, [and who has knowledge that that application is intended to cause confusion, mistake or deception; is liable in a civil action to the owner of the registered mark as provided in sections 21 and 22 of this act.]

shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in Section 21 and 22 hereof, except that under subsection 2. hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

SEC. 23. The rights and remedies enumerated in sections 2 to 23, inclusive, of this act, are in addition to those to which an owner of a mark is entitled [to] under the common law.

SEC. 24. NRS 225.140 is hereby amended to read as follows:

225.140 1. In addition to other fees authorized by law, the secretary of state, for services performed by him in matters relating to his official duties and the records of his office, shall charge and collect the following fees for the use of the state:

For a written copy of any law.....	\$0.25	
For certifying to any such copy.....	5.00	
For (filing and recording trade-marks and names) registering a mark.....(25.00)		[15.00] <u>25.00</u>

MODEL ACT

MODEL ACT

7/24/1977 C.R.R.

MODEL STATE TRADEMARK BILL

*as amended through
December 1964*

STATEMENT

The United States Trademark Association

Re: The Model State Trademark Bill

The Model State Trademark Bill was prepared in 1949 by The United States Trademark Association as an assistance to a special committee on trademarks of the National Association of Secretaries of State. The Model Bill was approved by NASS in 1950 and later by the Council of State Governments.

The events and conditions which prompted the drafting of the Model Bill include a lack of uniformity between state statutes, proposals to enact compulsory registration statutes, and a lack of means to remove from the register registrations which were no longer in use.

The Model Bill provides for permissive registration for a term of years based on use; provision for renewal, cancellation, assignment, and for protection of rights in marks acquired in good faith at anytime at common law.

To date it has been used as the basis for trademark registration statutes in 31 states.

On July 6, 1964, proposed amendments to provide for service marks and to require a statement of use on renewal were offered to the National Association of Secretaries of State at its annual convention. These amendments were subsequently approved by the NASS.

On December 10, 1964, the Board of Directors of The United States Trademark Association approved additional amendments, which included the following:

- (a) Relocation of the use on renewal requirement in the Model Act for purposes of clarification. This further change deleted the earlier amendment and replaced it with a new paragraph in Section 5;
- (b) Inserted a definition of the term "trade name" as Paragraph D in Section 1;
- (c) Inserted a new provision on anti-dilution as a new Section 12.

The amendments, therefore, proposed on July 6 and December 10, are incorporated in the following text. To facilitate considerations of the Secretaries of State in deliberations on possibly amending the present statutes it was felt this form would be desirable. USTA is available for consultation on these matters and would be pleased to offer help when it may be called for.

THE UNITED STATES TRADEMARK ASSOCIATION
6 EAST 45TH ST., NEW YORK, N. Y. 10017

MODEL STATE TRADEMARK BILL*
AN ACT TO PROVIDE FOR THE REGISTRATION AND
PROTECTION OF TRADEMARKS

(Be it enacted, etc.)

SECTION 1. DEFINITIONS.

(A) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(B) *The term "service mark" as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.*

(C) *The term "mark" as used herein includes any trademark or service mark entitled to registration under this Act whether registered or not.*

(D) *The term "trade name" means a word, name, symbol, device or any combination thereof used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.*

[B] (E) The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

[C] (F) The term "applicant" as used herein embraces the person filing an application for registration of a trademark under this Act, his legal representatives, successors or assigns.

[D] (G) The term "registrant" as used herein embraces the person to whom the registration of a trademark under this Act is issued, his legal representatives, successors or assigns.

[E] (H) For the purposes of this Act, a trademark shall be deemed to be "used" in this state (a) *on goods* when it is placed in any manner on the goods or their containers or *the displays associated therewith* or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state, and (b) *on services* when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

SECTION 2. REGISTRABILITY.

A [trademark] *mark* by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

- (a) consists of or comprises immoral, deceptive or scandalous matter; or
- (b) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

* KEY TO TEXT: Matter *italicized*—additions
Matter enclosed in [brackets]—deletions

- (c) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- (d) consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
- (e) consists of a mark which, (1) when applied to the goods *or services* of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods *or services* of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname provided, however, that nothing in this section (e) shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods *or services*. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods *or services*, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration; or
- (f) consists of or comprises a [trademark] *mark* which so resembles a [trademark] *mark* registered in this state or a [trademark] *mark* or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods *or services* of the applicant, to cause confusion or mistake or to deceive.

SECTION 3. APPLICATION FOR REGISTRATION.

Subject to the limitations set forth in this Act, any person who adopts and uses a [trademark] *mark* in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that [trademark] *mark* setting forth, but not limited to, the following information:

- (a) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,
- (b) the goods *or services* in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods *or services* and the class in which such goods *or services* fall,
- (c) the date when the [trademark] *mark* was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business, and
- (d) a statement that the applicant is the owner of the [trademark] *mark* and that no other person has the right to use such [trademark] *mark* in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a specimen or facsimile of such [trademark] *mark* in triplicate.

The application for registration shall be accompanied by a filing fee of dollars (\$.....), payable to the secretary of state.

SECTION 4. CERTIFICATE OF REGISTRATION.

Upon compliance by the applicant with the requirements of this Act, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the [trademark] mark, the date claimed for the first use of the [trademark] mark anywhere and the date claimed for the first use of the [trademark] mark in this state, the class of goods or services and a description of the goods or services on which the [trademark] mark is used, a reproduction of the [trademark] mark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such [trademark] mark in any action or judicial proceedings in any court of this state.

SECTION 5. DURATION AND RENEWAL.

Registration of a [trademark] mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of dollars (\$.....), payable to the secretary of state, shall accompany the application for renewal of the registration.

A [trademark] mark registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants of [trademarks] marks hereunder of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration, by writing to the last known address of the registrants.

Any registration in force on the date on which this Act shall become effective shall expire ten years from the date of the registration or of the last renewal thereof or one year after the effective date of this Act, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

All applications for renewals under this Act, whether of registrations made under this Act or of registrations effected under any prior act, shall include a statement that the mark is still in use in this state.

The secretary of state shall within six months after the effective date of this Act notify all registrants of [trademarks] marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this Act, by writing to the last known address of the registrants.

SECTION 6. ASSIGNMENT.

Any [trademark] mark and its registration hereunder shall be assignable with the good will of the business in which the [trademark] mark is used, or with that part of the good will of the business connected with the use of and symbolized by the [trademark] mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon

the payment of a fee of dollars (\$.....) payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this Act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

SECTION 7. RECORDS.

The secretary of state shall keep for public examination a record of all [trademarks] *marks* registered or renewed under this Act.

SECTION 8. CANCELLATION.

The secretary of state shall cancel from the register:

(1) after one year from the effective date of this Act, all registrations under prior acts which are more than ten years old and not renewed in accordance with this Act;

(2) any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(3) all registrations granted under this Act and not renewed in accordance with the provisions hereof;

(4) any registration concerning which a court of competent jurisdiction* shall find

(a) that the registered [trademark] *mark* has been abandoned,

(b) that the registrant is not the owner of the [trademark] *mark*,

(c) that the registration was granted improperly,

(d) that the registration was obtained fraudulently,

(e) that the registered [trademark] *mark* is so similar, as to be likely to cause confusion or mistake or to deceive, to a [trademark] *mark* registered by another person in the US Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his [trademark] *mark* in the US Patent and Trademark Office covering an area including this state, the registration hereunder shall not be cancelled.

(5) when a court of competent jurisdiction* shall order cancellation of a registration on any ground.

* States may wish to specify in more detailed language what is meant by the phrase "court of competent jurisdiction."

SECTION 9. CLASSIFICATION.

The following general classes of goods *and services* are established for convenience of administration of this Act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a [trademark] *mark* may include any or all goods upon which, *or services with which*, the [trademark] *mark* is actually being used comprised in a single class, but in no event shall a single application include goods *or services* upon which the [trademark] *mark* is being used which fall within different classes of goods *or services*.

The said classes are as follows:

(a) *Goods:*

1. Raw or partly prepared materials
2. Receptacles
3. Baggage, animal equipments, portfolios, and pocketbooks
4. Abrasives and polishing materials
5. Adhesives
6. Chemicals and chemical compositions
7. Cordage
8. Smokers' articles, not including tobacco products
9. Explosives, firearms, equipments, and projectiles
10. Fertilizers
11. Inks and inking materials
12. Construction materials
13. Hardware and plumbing and steam-fitting supplies
14. Metals and metal castings and forgings
15. Oils and greases
16. Paints and painters' materials
17. Tobacco products
18. Medicines and pharmaceutical preparations
19. Vehicles
20. Linoleum and oiled cloth
21. Electrical apparatus, machines, and supplies
22. Games, toys, and sporting goods
23. Cutlery, machinery, and tools, and parts thereof
24. Laundry appliances and machines
25. Locks and safes
26. Measuring and scientific appliances
27. Horological instruments
28. Jewelry and precious-metal ware
29. Brooms, brushes, and dusters
30. Crockery, earthenware, and porcelain
31. Filters and refrigerators
32. Furniture and upholstery
33. Glassware
34. Heating, lighting, and ventilating apparatus
35. Belting, hose, machinery packing, and non-metallic tires
36. Musical instruments and supplies
37. Paper and stationery
38. Prints and publications
39. Clothing
40. Fancy goods, furnishings, and notions

41. Canes, parasols, and umbrellas
42. Knitted, netted and textile fabrics, and substitutes therefor
43. Thread and yarn
44. Dental, medical, and surgical appliances
45. Soft drinks and carbonated waters
46. Foods and ingredients of foods
47. Wines
48. Malt beverages and liquors
49. Distilled alcoholic liquors
50. Merchandise not otherwise classified
51. Cosmetics and toilet preparations
52. Detergents and soaps

(b) *Services:*

100. *Miscellaneous*
101. *Advertising and business*
102. *Insurance and financial*
103. *Construction and repair*
104. *Communications*
105. *Transportation and storage*
106. *Material treatment*
107. *Education and entertainment*

SECTION 10. FRAUDULENT REGISTRATION.

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any [trademark] *mark* in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

SECTION 11. INFRINGEMENT.

Subject to the provisions of Section 14 hereof of any person who shall

- (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a [trademark] *mark* registered under this Act in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or
- (b) reproduce, counterfeit, copy or colorably imitate any such [trademark] *mark* and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services;

shall be liable to a civil action by the owner of such registered [trademark] *mark* for any or all of the remedies provided in Section 13 hereof, except that under subsection (b) hereof the registrant shall not be entitled to recover profits

or damages unless the acts have been committed with knowledge that such [trademark] mark is intended to be used to cause confusion or mistake or to deceive.

SECTION 12. INJURY TO BUSINESS REPUTATION; DILUTION.

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this Act, or a mark valid at common law, or a trade name valid at common law, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

SECTION [12] 13. REMEDIES.

Any owner of a [trademark] mark registered under this Act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

SECTION [13] 14. COMMON LAW RIGHTS.

Nothing herein shall adversely affect the rights or the enforcement of rights in [trademarks] marks acquired in good faith at any time at common law.

SECTION [14] 15. SEVERABILITY.

If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act shall not be affected thereby.

SECTION [15] 16. TIME OF TAKING EFFECT — REPEAL OF PRIOR ACTS.

This Act shall be in force and take effect after its enactment but shall not affect any suit, proceeding or appeal then pending. All acts relating to [trademarks] marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this Act, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this Act takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.

SENATE BILL NO.91

SEC. 3 1. A licensee who engages in the business of issuing checks in one location only shall have in force a surety bond payable to the State of Nevada for the use and benefit of any holder of any outstanding check sold or issued by the licensee in the normal course of business and for value in an amount calculated in accordance with this section.

delete

[2. The superintendent may not require any bond under this section in a principal sum of more than \$10,000.]

3. The superintendent shall calculate the minimum principal sum of the bond as follows:

(a) For a licensee who has been in the business of issuing checks for more than 1 year, \$1,000, or the highest total face amount of checks issued in any quarter of the previous calendar year plus outstanding checks 6 months old or more, whichever is higher.

(b) For a licensee who has been in the business of issuing checks for less than 1 year, \$1,000 or the highest total face amount of checks issued during any calendar quarter plus outstanding checks 6 months old or more.

(c) For a person who is seeking a new license to issue checks in one location, \$1,000 or an amount which the superintendent determines to be an approximation of the average quarterly sales of checks for that licensee, considering the type of business, location and other relevant factors. The minimum amount established under this paragraph must be adjusted upward after any quarter in which the face value of sales exceeds the amount of the bond then in force.

CHAPTER 671

ISSUERS OF INSTRUMENTS FOR TRANSMISSION OR PAYMENT OF MONEY

671.180 Suspension, revocation, denial or renewal of license: Notice; hearing; order; grounds; judicial review.

3. The grounds for suspension, revocation or denial of renewal of a license are:

- (a) Failure to pay the annual license fee or examination fee;
- (b) Failure to maintain in effect the required bond or securities;
- (c) Fraud, misrepresentation or omission of any material fact in any application, statement or report;
- (d) Failure to pay any judgment arising from the licensee's business within 30 days after the judgment becomes final or within 30 days after the expiration of a stay of execution on the judgment; or
- (e) Violation of any provision of this chapter or any regulation adopted or order issued by the superintendent pursuant to this chapter.

Issuers of Instruments for Transmission or Payment of Money

671.120 Examination of licensee by superintendent; entry, access.

1. Once each year the superintendent shall examine the financial accounts of each licensee and any other documents relevant to the conduct of the licensee's business, and the superintendent may conduct such examinations at additional times.

2. For the purpose of such examinations, the superintendent is entitled to enter upon any of the business premises of a licensee or his agents and obtain access to the relevant documents. Any obstruction or denial of such entry or access is a violation of this chapter.

3. For each examination the superintendent shall charge and collect from the licensee the reasonable cost for each man hour expended in conducting the examination and in preparing and typing the examination report.