

SENATE BILL NO. 255—SENATORS TOWNSEND, CARE, O’CONNELL, CEGAVSKE, COFFIN, HARDY, MATHEWS, MCGINNESS, NOLAN, RAGGIO, RAWSON, SCHNEIDER, SHAFFER, TIFFANY, WASHINGTON AND WIENER

MARCH 10, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to telecommunications. (BDR 52-133)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

~

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

AN ACT relating to telecommunications; prohibiting a person from using a device for automatic dialing and announcing to disseminate a prerecorded message unless the person called consents; requiring the establishment and operation of a do-call registry composed of the telephone numbers of subscribers of noncommercial telephone service who wish to receive telemarketing calls; prohibiting a telemarketer under certain circumstances from making an unsolicited telemarketing call to a telephone number unless that number is included in the current do-call registry; providing exceptions; requiring a provider of telephone service or local telephone directories to publicize the do-call registry; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 597.812 is hereby amended to read as follows:
- 2 597.812 As used in NRS 597.812 to 597.818, inclusive,
- 3 “device for automatic dialing and announcing” means any
- 4 equipment that:



1 1. Incorporates a storage capability of telephone numbers to be
2 called and utilizes a random or sequential number generator
3 producing telephone numbers to be called; and

4 2. Is used exclusively, working alone or in conjunction with
5 other equipment, to disseminate a prerecorded message to the
6 telephone number called . ~~{to solicit a person at the telephone
7 number called to purchase goods or services.}~~

8 **Sec. 2.** NRS 597.814 is hereby amended to read as follows:

9 597.814 1. ~~{Except as otherwise provided in subsection 3 and
10 NRS 597.816, a}~~ A person shall not use a device for automatic
11 dialing and announcing to disseminate a prerecorded message in ~~{a}~~
12 *an unsolicited* telephone call unless ~~{, before}~~ :

13 (a) *Before* the message is disseminated, a ~~{recorded or}~~ *person,*
14 *speaking in his* unrecorded natural voice ~~{:~~

15 ~~—(a) Informs}~~ , *informs* the person who answers the telephone
16 call ~~{of the nature of the call, including, without limitation, the fact}~~
17 that a device for automatic dialing and announcing will be used to
18 disseminate the message if the person who answers the call remains
19 on the line; ~~{and~~

20 ~~—(b) Provides to the person who answers the telephone call the
21 name, address and telephone number of the business or
22 organization, if any, being represented by the caller.}~~

23 (b) *A person associated with the telephone number dialed has
24 given his express consent to receive prerecorded messages from
25 the person using the device for automatic dialing and
26 announcing;*

27 (c) *The person using the device for automatic dialing and
28 announcing is using the do-call registry created pursuant to
29 section 13 of this act and the telephone number called is included
30 in the current do-call registry; or*

31 (d) *The call is initiated by a state or local governmental
32 agency, or a private entity operating under contract with and at
33 the direction of such an agency, to provide:*

- 34 (1) *Information relating to public safety;*
- 35 (2) *Information relating to a police or fire emergency; or*
- 36 (3) *A warning of an impending or threatening emergency.*

37 2. A person shall not operate a device for automatic dialing and
38 announcing to place:

39 (a) A call that is received by a telephone located in this state
40 during the period between ~~{9}~~ 8 p.m. and 9 a.m.; ~~{or}~~

41 (b) A call-back or second call to the same telephone number, if a
42 person at the telephone number terminated the original call ~~{:~~

43 ~~3.—This section does not prohibit the use of a device for
44 automatic dialing and announcing to dial the number of and play a
45 recorded message to a person with whom the person using the~~



1 ~~device or another person affiliated with the person using the device~~
2 ~~has a preexisting business relationship.] ; or~~

3 (c) *A call that does not provide to the person who answers*
4 *the telephone call the name, address and telephone number of the*
5 *caller or of the business or organization, if any, represented by the*
6 *caller.*

7 **Sec. 3.** Chapter 598 of NRS is hereby amended by adding
8 thereto the provisions set forth as sections 4 to 17, inclusive, of this
9 act.

10 **Sec. 4.** *As used in sections 4 to 17, inclusive, of this act,*
11 *unless the context otherwise requires, the words and terms defined*
12 *in sections 4.5 to 11, inclusive, of this act have the meanings*
13 *ascribed to them in those sections.*

14 **Sec. 4.5.** *“Charitable organization” means an organization*
15 *which:*

16 1. *The Secretary of the Treasury has determined is an exempt*
17 *organization pursuant to the provisions of section 501(c) of the*
18 *Internal Revenue Code; and*

19 2. *Holds a current certificate of organization or is currently*
20 *qualified by the Secretary of State to do business in this state.*

21 **Sec. 5.** *“Device for automatic dialing” means any equipment*
22 *that:*

23 1. *Incorporates a storage capability of telephone numbers to*
24 *be called and utilizes a random or sequential number generator to*
25 *produce telephone numbers to be called;*

26 2. *Dials such a telephone number; and*

27 3. *Transfers the call to a live operator if a natural person at*
28 *the telephone number called accepts the call.*

29 **Sec. 6.** *“Device for automatic dialing and announcing” has*
30 *the meaning ascribed to it in NRS 597.812.*

31 **Sec. 7.** *“Do-call registry” means the database composed of*
32 *the telephone numbers of subscribers who have manifested their*
33 *wish to receive telemarketing calls. The term includes, without*
34 *limitation, a list produced from the database, regardless of the*
35 *format in which the list is produced.*

36 **Sec. 8.** *“Noncommercial telephone service” means telephone*
37 *service maintained by a subscriber primarily for personal, rather*
38 *than business, purposes. The term includes, without limitation,*
39 *such service to:*

40 1. *The residence of a subscriber;*

41 2. *A mobile telephone, including a cellular telephone or other*
42 *portable device; and*

43 3. *A pager, beeper or other telecommunications device.*

44 **Sec. 9.** *“Subscriber” means a natural person who subscribes*
45 *to noncommercial telephone service in this state.*



* S B 2 5 5 R 1 *

1 **Sec. 10.** *“Telemarketer” means a person who makes or*
2 *causes another person to make a telemarketing call. The term*
3 *includes, without limitation, a person registered with the*
4 *Consumer Affairs Division of the Department of Business and*
5 *Industry as a seller or salesman pursuant to chapter 599B of NRS.*

6 **Sec. 11.** *“Telemarketing call” means a telephone call,*
7 *including, without limitation, a call dialed by a device for*
8 *automatic dialing or device for automatic dialing and announcing,*
9 *the primary purpose of which is to solicit a person who accepts the*
10 *call to purchase, lease, invest in or otherwise acquire goods or*
11 *services. The term does not include a telephone call made on*
12 *behalf of a charitable organization, the primary purpose of which*
13 *is to solicit a person who accepts the call to donate money, goods*
14 *or services to the charitable organization.*

15 **Sec. 12.** *A subscriber who wishes to receive telemarketing*
16 *calls may request that his telephone number be included in the*
17 *do-call registry by complying with the requirements established by*
18 *the Attorney General pursuant to section 13 of this act.*

19 **Sec. 13.** *The Attorney General shall:*

- 20 1. *Establish and operate a do-call registry.*
- 21 2. *Adopt regulations to carry out the provisions of sections 4*
22 *to 17, inclusive, of this act.*
- 23 3. *Publicize the existence of the do-call registry.*
- 24 4. *Impose a fee, not to exceed \$250 a year, to be paid by a*
25 *telemarketer to obtain access to the do-call registry or any list*
26 *produced from the do-call registry.*

27 **Sec. 14.** 1. *A telemarketer shall not make or cause another*
28 *person to make an unsolicited telemarketing call to a telephone*
29 *number of a subscriber unless:*

30 (a) *That telephone number is included in the current do-call*
31 *registry; or*

32 (b) *The telemarketer is complying with the provisions of*
33 *section 15 of this act.*

34 2. *A telemarketer that violates this section is liable for a civil*
35 *penalty of not more than:*

- 36 (a) *For a first offense, \$500;*
- 37 (b) *For a second offense, \$2,500; and*
- 38 (c) *For a third and each subsequent offense, \$5,000.*
- 39 3. *The penalty may be recovered by civil action on a*
40 *complaint brought by the Attorney General.*

41 **Sec. 15.** 1. *The provisions of section 14 of this act do not*
42 *prohibit a telemarketer from making or causing another person to*
43 *make an unsolicited telemarketing call to a telephone number of a*
44 *subscriber if:*



1 (a) *There is a preexisting business relationship between the*
2 *telemarketer and the subscriber; and*
3 (b) *The telemarketer complies with the provisions of this*
4 *section.*
5 2. *Before a telemarketer may make or cause another person*
6 *to make an unsolicited telemarketing call based on a preexisting*
7 *business relationship, the telemarketer must establish and*
8 *maintain an internal do-not-call registry that complies with*
9 *federal and state law and regulations. The internal do-not-call*
10 *registry must:*
11 (a) *Include, without limitation, a list of the telephone numbers*
12 *of any subscriber who has requested that the telemarketer not*
13 *make or cause another person to make an unsolicited*
14 *telemarketing call to a telephone number of the subscriber; and*
15 (b) *Upon request, be provided by the telemarketer to the*
16 *Attorney General.*
17 3. *In addition to the requirements set forth in subsection 2, at*
18 *least once each year, the telemarketer shall provide written notice*
19 *to each subscriber with whom the telemarketer has a preexisting*
20 *business relationship. The written notice must:*
21 (a) *Inform the subscriber that the telemarketer is providing the*
22 *notice pursuant to state law;*
23 (b) *Explain to the subscriber that the subscriber may elect to*
24 *be placed on the internal do-not-call list of the telemarketer and*
25 *specify the procedures for making such an election; and*
26 (c) *Explain to the subscriber that the subscriber may contact*
27 *the customer service department of the telemarketer or the*
28 *Attorney General to obtain further information concerning the*
29 *provisions of this section and provide the current address,*
30 *telephone number and electronic mail address of the customer*
31 *service department of the telemarketer and the Attorney General.*
32 4. *As used in this section, "preexisting business relationship"*
33 *means a relationship between a telemarketer and a subscriber that*
34 *is based on:*
35 (a) *The subscriber's purchase, rental or lease of goods or*
36 *services from the telemarketer; or*
37 (b) *Any other financial transaction between the subscriber and*
38 *the telemarketer,*
39 *that occurs within the 18 months immediately preceding the date*
40 *of the telemarketing call.*
41 **Sec. 16.** *All fees, civil penalties and any other money*
42 *collected pursuant to the provisions of sections 4 to 17, inclusive,*
43 *of this act must be deposited in the State General Fund and may*
44 *only be used to offset the costs of administering and enforcing*
45 *those provisions.*



1 **Sec. 17. 1.** *A provider of telephone service shall inform a*
2 *subscriber of the provisions of sections 4 to 17, inclusive, of this*
3 *act:*

4 *(a) As part of the process of subscribing to telephone service;*
5 *(b) By a statement distributed, not less than annually, as an*
6 *insert in a billing statement sent to the subscriber; or*

7 *(c) In any other manner authorized by the Attorney General.*

8 **2.** *A provider of local telephone directories, including,*
9 *without limitation, a provider of telephone service, shall include in*
10 *a conspicuous place in each such directory a description of the*
11 *provisions of sections 4 to 17, inclusive, of this act.*

12 **3.** *As used in this section, "provider of telephone service"*
13 *includes, without limitation:*

14 *(a) A public utility furnishing telephone service.*

15 *(b) A provider of cellular or other service to a telephone that is*
16 *installed in a vehicle or is otherwise portable.*

17 **Sec. 18.** NRS 597.816 and 598.0916 are hereby repealed.

18 **Sec. 19. 1.** This section and sections 3 to 13, inclusive, 16
19 and 17 of this act become effective upon passage and approval for
20 the purpose of adopting regulations and on January 1, 2004, for all
21 other purposes.

22 **2.** Sections 1, 2, 14, 15 and 18 of this act become effective
23 upon passage and approval for the purpose of adopting regulations
24 and on February 1, 2004, for all other purposes.

TEXT OF REPEALED SECTIONS

597.816 Additional exceptions to prohibition of use. The provisions of NRS 597.814 do not prohibit the use of a device for automatic dialing and announcing by any person exclusively on behalf of:

1. A school or school district to contact the parents or guardians of a pupil regarding the attendance of the pupil or regarding other business of the school or school district.

2. A nonprofit organization.

3. A company that provides cable television services to contact its customers regarding a previously arranged installation of such services at the premises of the customer.

4. A public utility to contact its customers regarding a previously arranged installation of utility services at the premises of the customer.



5. A facility that processes or stores petroleum, volatile petroleum products, natural gas, liquefied petroleum gas, combustible chemicals, explosives, high-level radioactive waste or other dangerous substances to advise local residents, public service agencies and news media of an actual or potential life-threatening emergency.

6. A state or local governmental agency, or a private entity operating under contract with and at the direction of such an agency, to provide:

- (a) Information relating to public safety;
- (b) Information relating to a police or fire emergency; or
- (c) A warning of an impending or threatening emergency.

7. A candidate for public office, committee advocating the passage or defeat of a ballot question, political party, committee sponsored by a political party or a committee for political action.

598.0916 "Deceptive trade practice" defined. A person engages in a "deceptive trade practice" when, in the course of his business or occupation, he disseminates an unsolicited prerecorded message to solicit a person to purchase goods or services by telephone and he does not have a preexisting business relationship with the person being called unless a recorded or unrecorded natural voice:

- 1. Informs the person who answers the telephone call of the nature of the call; and
- 2. Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, represented by the caller.

