



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TDD
(213) 633-0901
TELEPHONE
(213) 974-1904
TELECOPIER
(213) 687-7300

Syn. No. 120
6/19/01

LLOYD W. PELLMAN
County Counsel

June 20, 2002

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN 
County Counsel

PASTOR HERRERA, JR. 
Director, Department of Consumer Affairs

RE: Report on Do-Not-Call Registry

On June 19, 2001, upon motion of Supervisor Zev Yaroslavsky, your Board instructed the Director of the Department of Consumer Affairs, in conjunction with the County Counsel, to compare existing and pending "do-not-call" legislation, and to report back regarding the advisability of supporting and/or requesting modification of certain California legislation establishing a statewide do-not-call list, and possible creation of a County do-not-call registry.

Senate Bill 771 (Figueroa) was approved and enrolled on September 20, 2001. On October 10, 2001, the Governor signed the legislation, which is codified in Business and Professions Code section 17590 et. seq.¹

¹ We reviewed the California do-not-call legislation and similar statutes from other states, as well as federal law regulating telemarketing and telephone solicitation. Members of Senator Liz Figueroa's staff, and representatives of the California Department of Consumer Affairs, Office of the Attorney General, and the Federal Trade Commission were consulted regarding do-not-call programs.

footnote continued . . .

It appears that this legislation will step into the breach left by federal consumer protection laws and provide California residents with a more comprehensive system of protections and remedies against unwanted telephone solicitation. This legislation also balances the concerns and needs of the business community with an individual's right of privacy. This statute also enhances the privacy of consumers by exempting subscriber information used by the State in preparing or maintaining the do-not-call list from disclosure under the California Public Records Act.

In contrast, a similar County program could not provide the same advantages as the State law. The County could not enforce its regulations for all its residents but would be limited to enforcement within the unincorporated areas. Nor may the County absolutely guarantee the confidentiality of subscriber information. Moreover, given the broad coverage of the State statutes, a County ordinance may be found to be invalid due to preemption of State law.

Based upon these concerns, we do not recommend the adoption of a do-not-call program by the County. Nonetheless, County residents should be informed about the forthcoming California do-not-call list, as well as other do-not-call programs discussed in this report. It is therefore recommended that your Board direct the Department of Consumer Affairs to inform Los Angeles County consumers about State and federal do-not-call laws, and methods of dealing with unsolicited and unwanted telemarketing calls.

Enclosed is a detailed description of existing and pending do-not-call programs.
(Attachment I.)

During this review, we were advised that SB 17, the do-not-call bill, was not being pursued by its author, Senator Figueroa. We later learned that the legislation was revived in a different bill, which was quickly passed through committee and enacted into law. The operation of the State do-not-call list is scheduled to commence on January 1, 2003.

If you have any questions or comments, please contact Fern Taylor, Consumer Affairs Specialist at 974-2711, or Nancy M. Takade, Senior Deputy County Counsel at 974-1202.

LWP:NMT:lm

Attachments

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

ATTACHMENT I

I. CALIFORNIA DO-NOT-CALL LEGISLATION

A. Background

In December 2000, Senator Liz Figueroa introduced SB 17, which would provide a convenient mechanism for consumers to halt annoying and unwanted telephone solicitations that intrude upon the privacy of individuals in their homes. The bill was patterned after existing or pending do-not-call laws in other states. At the time of your Board's motion, SB 17 was held in committee and not scheduled for hearing until sometime in the year 2002.

Because Senator Figueroa subsequently withdrew SB 17, it appeared that the do-not-call legislation would not be considered in the 2001-2002 legislative session. However, due to continuing consumer complaints with regard to unsolicited telephone sales calls, Senator Figueroa reintroduced the legislation by wholesale amendment of another bill, SB 771 (originally an omnibus bill pertaining to regulation of architects, contractors, and process servers). Although in late August of 2001, SB 771 barely cleared the Assembly Business and Professions Committee, the bill was approved and enrolled on September 20, 2001.

On October 10, 2001, the Governor signed the legislation, which is codified in Business and Professions Code section 17590 et seq.

B. SB 771

SB 771 requires that, by January 1, 2003, the California Attorney General must maintain and update quarterly a do-not-call list. Subscribers will be able to easily place their names on the list by means such as the Internet or a toll-free telephone number. A fee of up to \$1 per three-year period shall be charged to each subscriber requesting placement on the list.

Telephone solicitors will be required to obtain copies of the do-not-call list by paying to the Attorney General a fee not to exceed costs of preparation, maintenance, production, and distribution of the list. The Attorney General must establish a sliding fee schedule that charges no fee to any solicitor with less than five full-time employees, and a maximum fee to a solicitor with more than 1,000 employees.

The State list will contain the telephone numbers and ZIP codes of residential and wireless telephone subscribers who do not wish to receive unsolicited telephone calls. The do-not-call list will not include the names and addresses of subscribers. Placement on the do-not-call list will expire after three years unless renewed by the subscriber.

SB 771 exempts information submitted by subscribers to the Attorney General for

purposes of having their telephone numbers placed on the do-not-call list from disclosure under the California Public Records Act. The bill also prohibits entities that rent, lease, or sell telephone solicitation lists from including telephone numbers appearing on the current State do-not-call list. In addition, the bill prohibits entities obtaining a do-not-call list from using the list for any purpose other than complying with the provisions of the law.

Exempt from do-not-call requirements are charitable or political calls, as well as calls made in response to an inquiry by, or with the consent of, the subscriber, debt collection calls, calls by business specifically excluded from coverage by the subscriber, calls from small businesses or businesses with established business relationships with the subscriber.

The Attorney General or a district attorney or city attorney may enforce the do-not-call laws by bringing a civil action to enjoin violations by telephone solicitors or obtain civil penalties of up to \$500 for the first violation and up to \$1,000 for a second and each subsequent violation. A person receiving a solicitation in violation of the do-not-call laws may bring a small claims action for an injunction and award of \$1,000 from the small claims court for a violation of the injunction.

The California Office of Attorney General has estimated that 2 million Californians will register for the do-not-call list in the first year. They are currently in the process of working out the details of exactly how the new program will be implemented. In addition, they have stated that they are introducing an emergency bill to the Legislature to amend the new law which requires consumers to pay up to one dollar (\$1) to place their name on the list. The Attorney General's Office states that they now have established that it will cost approximately ten dollars (\$10) to process the registration requests and therefore will be requesting the amendment to allow consumers to register for free. In addition, since no funding was attached to SB 771, they are exploring options for funding the program. In response to concerns about the FTC's current rulemaking process to amend the Telemarketing Sales Rule and its impact on states, Attorney General Bill Lockyer has joined with 49 State attorneys to request the FTC not to preempt do-not-call programs already underway.

II. COUNTY DO-NOT-CALL ORDINANCE

Under established principles of preemption, a local regulation is invalid if it conflicts with State law. Such conflict exists if the local regulation duplicates, contradicts, or enters a field occupied by State law, either expressly or by implication. [*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-899.]

There is a strong likelihood that a County do-not-call program would be preempted by State law. A County do-not-call registry would be coextensive with the State law and thus duplicative. And, although the State statute does not expressly prohibit local regulation, there is some indication that the State intended to occupy the field of regulation of unwanted telephone

solicitations. The State law has established a comprehensive system of registration and regulation of persons making unwanted telephone solicitations. In addition, the Legislature expressed a strong and compelling state interest in protecting the privacy of telephone subscribers who wish to avoid unwanted telephone solicitations. [See Bus. & Prof. Code § 17590, subd. (a).]

III. EXISTING AND PENDING DO-NOT-CALL PROGRAMS

A. Federal law

Two agencies oversee federal consumer protection laws regarding telemarketers: the Federal Communications Commission (FCC), which administers the Telephone Consumer Protection Act (TCPA) and its regulations, and the Federal Trade Commission (FTC), which administers the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act) and the Telemarketing Sales Rule.¹

The FCC and FTC regulations are similar in some respects, and differ in others as can be seen in the attached table. (Attachment II.)

Currently, the FTC is proposing amendments to the Telemarketing Sales Rule that, if adopted, would establish a national do-not-call registry. As proposed, the rule would provide that a consumer may call a toll-free number for placement on a national registry managed by the FTC. Telemarketers would be required to remove all telephone numbers of registered consumers from their existing telemarketing lists.

However, these changes would not affect calls made within California since the FTC has authority only over interstate calls. Moreover, the FTC does not plan to include in the proposed national registry those businesses that are already exempt from the Telemarketing Sales Rule.

B. Non-California State Law

A number of states have attempted to address unwanted telephone solicitation by establishing do-not-call lists.

¹ The TCPA and its regulations are set forth in 15 USC 227 et seq., and 47 CFR Part 64, Section 64.1200, respectively.

The Telemarketing Act and Telemarketing Sales Rule are contained in 15 USC 6101 et seq., and 16 CFR Part 310, respectively.

Approximately fourteen states (Alabama, Alaska, Arkansas, Connecticut, Florida, Georgia, Idaho, Kentucky, Maine, Missouri, New York, Oregon, Tennessee, and Wyoming) have established do-not-call lists for telephone subscribers. Several other states have either recently passed legislation to establish do-not-call lists or have such legislation pending.

As can be seen in the attached tables (Attachment III) prepared by the California Department of Consumer Affairs, about half of the fourteen states with established do-not-call lists allow a consumer to seek private civil remedies against violators. All but two states provide telemarketers lists of subscriber telephone numbers only and not subscriber names. About half of the states charge a nominal fee to subscribers, and all but one state charge telemarketers between \$50 - \$500 per year to obtain the data necessary to comply with applicable do-not-call laws. Most states provide individuals the option to subscribe online.

In October 2000, the state of New York enacted a version of "Do Not Call" into law. As of July 2001, the state had approximately 1.8 million subscribers making them by far the largest statewide registry (although California is expected to surpass this in the first year). The New York law does not require consumers to pay any fee to be included on its registry. However, exemptions to the law include: charitable organizations; religious corporations; political parties and committees; companies with which someone has a prior business relationship; and telemarketers requesting a face-to-face meeting before concluding a sales transaction. Unlike California's new law, New York's law does not provide for consumers' private right of action but does allow for up to a \$2,000 administrative fine.

The state of Florida has the oldest legislation dating back to 1990. In July 2001, the state had approximately 137,000 subscribers.

All states allow exemptions for telemarketers who have pre-existing relationships with a subscriber. Consumer advocates are concerned that given the current corporate trend toward merging large corporations, many different businesses (financial, insurance, etc.) will have the ability to bypass consumers' desire for privacy. Telemarketers could assert that they have a right to call consumers on the do-not-call list because they are an affiliate of a corporation with which the consumer already does business.

C. Telemarketers Self-Policing

In addition to governmental programs, the Direct Marketing Association (DMA), the largest trade association for users and suppliers in direct marketing including telemarketers, has established a Telephone Preference Service (TPS), which is commercially published and marketed. A consumer may add his or her name, free of charge, to the TPS list by mailing his or her name, telephone number with area code, and address including zip code to the TPS. The DMA requires that all members use the TPS on all marketing efforts. Registration is active for five years, and the list is updated quarterly.

The TPS is available free of charge to states that wish to use it. In fact, the do-not-call statutes of Connecticut, Maine and Wyoming require telemarketers to utilize the DMA's do-not-call lists.

ATTACHMENT II

TCPA (FCC)
47 U.S.C. § 227
47 C.F.R. Part 64

Telemarketing Act (FTC)
Telemarketing Sales Rule
15 U.S.C. § 6101 et seq.
16 C.F.R. Part 310

Subject Matter	Interstate and intrastate communications; telemarketing calls, and automated and prerecorded telephone calls.	Interstate and foreign telephone solicitations; telemarketing fraud, deception and abuse.
Preemption	No preemption of state law.	No preemption of state law.
Do-Not-Call Restrictions	No calls to residential telephone subscriber unless between 8 a.m. and 9 p.m. (subscriber's local time), and a do-not-call list is maintained.	No calls to residential telephone consumer unless between 8 a.m. and 9 p.m. (subscriber's local time). Must disclose identity of seller, purpose of call to sell goods and services, nature of goods and services. No calls to consumer who has previously stated that he or she does not wish to receive calls made by or on behalf of seller whose goods or services are being offered.
Exemptions	<p>Types of calls: Express invitation or permission; prior or existing business relationship not previously terminated by either party; calls made with a commercial purpose but without unsolicited advertisement.</p> <p>Types of businesses: Tax-exempt non-profit organizations.</p>	<p>Types of calls: Pay-per-call services, sale of franchises subject to other FTC regulations; where sale not completed or payment required until face-to-face presentation by seller; calls by customer that are not result of solicitation; calls by customer in response to advertisement; business-to-business calls.</p> <p>Types of businesses: Common carriers; nonprofit organizations, investment brokers and advisors, banks, financial institutions.</p>
Defenses	Call more than 12-months after do-not-call request, or call relates different product or service sold during initial call.	Written do-not-call procedures, trained personnel in procedures, maintained do-not-call lists, and subsequent call made in error.
Judicial Relief	<p>Private persons: Civil action in state court for damages (actual monetary loss or \$500 per violation) and injunction. Treble damages for willful or knowing violations. No federal court action.</p> <p>State: Civil action in federal court for damages and injunction (same as private persons). Civil or criminal action in state court based on state law.</p>	<p>Private persons: Civil action for damages and other relief in federal court if actual damages exceed \$50,000. Does not prohibit civil action in state court based on state law.</p> <p>State: Civil action for injunction, damages or other relief in federal court. Civil or criminal action in state court based on state law.</p>

TELEMARKETING DO NOT CALL LIST LEGISLATION – OTHER STATES INFORMATION

STATE (date effective)	GOVERNING AGENCY	FINE AUTHORITY for NON-COMPLIANCE	CONSUMER FEES	TELE-MARKETER (TM) FEES	PROGRAM SELF-FUNDED?	NUMBER of TELE-MARKETERS	NUMBER of SUBSCRIBERS
New York (2001)	Consumer Protection Board. NY contracts with CBS to maintain the list and provide customer service to subscribers.	Yes, up to \$2,000	None. Consumers remain on list for 3 years.	\$500 per year. No sliding scale, but they are considering this as an option.	\$1.2 million loan for start-up, but it is estimated that the TM fees will fund the program ongoing.	400	1.8 Million. List is by phone number.
Oregon (2000)	Attorney General. Oregon contracts with CBS to maintain the list and provide customer service to subscribers.	Yes, up to \$25,000 under Unlawful Trade Practices Act	\$6.50 first year, then \$3.00 renewal fee annually.	\$10 per month, or \$120 per year.	Yes.	900	40,000. List is by phone number.
Tennessee (2001)	Tennessee Regulatory Authority	Yes, up to \$2,000.	None. Consumers may subscribe via internet or tollfree phone no. and remain on the list for 5 years.	\$500 annual fee, or \$1000 "principle" subscription w/ \$50 fee for each employee/ subsidiary given list. List is received via email or CD-ROM. Allows for \$1000/yr	Yes	530	611,000. List is by phone number.
Texas (2002) recently passed and not yet implemented	PUC implements. Both PUC and AG have enforcement authority.	Yes, up to \$1,000, as well as private right of action up to \$500.	Up to \$3 for 3 years. (Not set yet because rulemaking is not completed.) Consumers may subscribe via internet or toll free #.	Up to \$75 per year. (not set yet.) It is unknown at this point how list will be made available.	They expect it to be self-funding. Do not yet know startup costs.	Unknown. Estimating in the thousands.	Unknown. Possibly as much as 1 million.
Wyoming (2001)	Attorney General	Yes, up to \$5,000	None. Wyoming's law requires TMs to obtain and abide by DMA's "do not call" list.	None charged by the state.	Yes. Only absorbable administrative costs.	75	Approximately 6,000 subscribers on DMA's list.

* DMA = Direct Marketing Association. DMA maintains a "do not call" list voluntarily where consumers may have their name placed on this list for free.

**CBS = Computer Business Services. A privately-owned company that contracts with several states to implement their "do not call" lists.

TELEMARKETING DO NOT CALL LIST LEGISLATION – OTHER STATES INFORMATION

STATE (date effective)	GOVERNING AGENCY	FINE AUTHORITY for NON-COMPLIANCE	CONSUMER FEES	TELE-MARKETER (TM) FEES	PROGRAM SELF-FUNDED?	NUMBER of TEL-MARKETERS	NUMBER of SUBSCRIBERS
----------------------------------	-------------------------	--	----------------------	--------------------------------	-----------------------------	--------------------------------	------------------------------

STATES WITH RECENTLY PASSED "DO NOT CALL" LIST LEGISLATION NOT YET ENACTED:							
Colorado		Indiana		Louisiana		Texas	

STATES WITH LAWS SIMILAR TO THE FEDERAL TELEPHONE CONSUMER PROTECTION ACT, WITH NO STATE LIST:							
Arizona		Nebraska		Hawaii		North Carolina	
						Illinois	
							Virginia

STATES WITH PENDING OR INTRODUCED "DO NOT CALL" LIST LEGISLATION							
Delaware		Louisiana		Minnesota		New Jersey	
Illinois		Maryland		Mississippi		New Hampshire	
Iowa		Massachusetts		Montana		New Mexico	
Kansas		Michigan		Nevada		North Dakota	
						Ohio	
						Oklahoma	
						Pennsylvania	
						Rhode Island	
						South Carolina	
						South Dakota	
						Utah	
						Vermont	
							Virginia
							Washington
							West Virginia
							Wisconsin

COMPARISON OF SB 771 TO THE 13 STATES THAT HAVE A STATE-OPERATED "DO NOT CALL" LIST

State (Date Effective)	Number of Subscribers	Subscriber Fees	No. of Telemarketers (TMs)	TM Fees Estimate	Subscribe On-line	Subscribe Via toll free Ph No	List Available Online	List Available on CD ROM	Grace Period for TMs	Pre-Existing Business Relationship Exempt	Allow Subscribers to Exclude Certain Businesses	List By Name, Ph Number or Both	Is List Public Record	Law Restrict List Use for Do Not Call Purposes Only	Private Right of Action (up to...)	Administrative Fine Authority (up to...)
SB 771	Unknown Estimate 3-6	None or \$4 per year	Unknown	Unknown Estimate \$200-500	Unknown	Unknown	Unknown	Unknown	30 days	Yes	Yes	Phone Number	No	Yes	Yes \$500 - \$1000	No
Alabama (2000)	30,000	None	Unknown	\$500 per year	Yes	No	Yes	Yes	60 days	Yes	No	Both	No	Unresolved	Yes	\$2,000
Alaska (1996)	Unknown	\$5-15 per year	900	\$25-\$50 per year	No	No	No	No	No	Yes	No	Both	Yes	No	Yes \$500	\$5,000
Arkansas (2000)	16,000	\$5 per year	785	None	No	No	Yes	No	10 days	Yes	No	Phone Number	Yes	No	No	\$10,000
*Colorado (2002)	200,000? (not enacted yet)	None	Unknown	Sliding Scale fee up to \$500	Yes	Yes	Yes	Yes	No	Yes	No	Phone Number	Not Yet Addressed	Yes	Yes \$500	\$10,000
Florida (1990)	137,000	\$10 initial, then \$5 per year	1000	\$100 per quarter	No	No	Email	No	4-6 weeks	Yes	No	Phone Number	Yes	No	No	\$10,000
Georgia (1999)	240,000	\$5 for 2 years	2,500	\$10 per year	Yes	Yes	Yes	Yes	No	Yes	No	Phone Number	Unknown	No	Yes \$2,000	\$5,000
Idaho (2001)	28,000 households 41,000 phone #s	\$10 initial, then \$5 every 3 years	300	\$25 per quarter	Yes	No	Yes	Yes	30 days	Yes	No	Phone Number	Unknown	No	Yes \$1,000	\$5,000
Kentucky (1998)	80,000	None	40	\$400 per year	Yes	No	No	Yes	1 week	Yes	No	Phone Number	No	Yes	No	\$2,000
Missouri (2001)	800,000	None	425	\$100 per year	Yes	Yes	Yes	Yes	6 weeks	Yes	No	Phone Number	Yes	Yes	No	\$5,000
New York (2001)	1.8 Million	None	400	\$500 per year	Yes	Yes	Yes	Yes	30 days	Yes	No	Phone Number	Yes	Yes	No	\$2,000
Oregon (2002)	40,000	\$6.50 initial, then \$3 per year	900	\$10 per month/ \$120 yr.	Yes	Yes	Yes	Yes	No	Yes	No	Phone Number	No	Yes	No	\$25,000
Tennessee (2001)	611,000	None	530	\$500 per year	Yes	Yes	Email	Yes	60 days	Yes	No	Phone Number	No	Yes	No	\$2,000
Texas (2002)	Unknown (not yet enacted)	\$3 every 3 years	Unknown	\$75 per year	Yes	Yes			60 days	Yes	No	Phone Number	Yes	No	Yes \$500	\$1,000

COMPARISON OF SB 771 TO THE 13 STATES THAT HAVE A STATE-OPERATED "DO NOT CALL" LIST

• The Colorado and Texas laws were just enacted and have not yet been implemented. Many aspects of their programs are unknown at this time as their rulemaking process is not complete.

Direct Marketing Association (DMA) "do not call" list:

Connecticut, Maine, and Wyoming have "do not call" laws that require telemarketers to obtain and abide by DMA's "do not call" list. These states were not included in the above table.

Sliding Scale for Telemarketers:

Colorado is the only state to include a sliding scale fee for telemarketers. Their scale is based on the number of employees employed by the business, with the maximum fee capped at \$500. Again, it is not implemented yet, so specifics of implementation are not available. New York indicated that they are considering creating a sliding scale fee system, either a cheaper rate for smaller companies, or allowing a "per use" access fee.

**SB 771 (FIGUEROA) "DO NOT CALL" LIST
COMPARISON TO THE 12 STATES THAT HAVE
A STATE-OPERATED "DO NOT CALL" LIST**

PENALTIES/FINES

<u>HIGHEST</u>	<u>MEDIUM</u>	<u>LOWEST</u>
Oregon - \$25,000	Alaska - \$5,000	Alabama - \$2,000
Arkansas - \$10,000	Texas - \$3,000	Kentucky - \$2,000
Colorado - \$10,000	Georgia - \$5,000	New York - \$2,000
Florida - \$10,000	Idaho - \$5,000	Tennessee - \$2,000
	Missouri - \$5,000	

**SB 771 - \$500
(\$1,000 each
subsequent
fine)**

**TELEMARKETER FEES CHARGED BY STATES
WITH NO CONSUMER FEES**

HIGHEST FEES
Most Restrictive/Burdensome

- Alabama - \$500
- Colorado - (Sliding Scale – up to \$500)
- New York - \$500
- Tennessee - \$500

LOWEST FEES
Least Restrictive/Burdensome

Kentucky - \$400
**SB 771 – (Fees estimated
to be between \$200 to \$500)**

Missouri - \$100

**SB 771 (FIGUEROA) "DO NOT CALL" LIST
COMPARISON TO THE 12 STATES THAT HAVE
A STATE-OPERATED "DO NOT CALL" LIST**

PRE-EXISTING BUSINESS RELATIONSHIP EXEMPTION

PRE-EXISTING RELATIONSHIP EXEMPTION	NO PRE-EXISTING EXEMPTION
--	----------------------------------

Alabama	Kentucky	NONE
Alaska	Missouri	
Arkansas	New York	
Colorado	Oregon	
Florida	Tennessee	
Georgia	Texas	
Idaho	SB 771	

PRIVATE RIGHT OF ACTION

HIGHEST FINES for PRIVATE RIGHT of ACTION		LOWEST FINES for PRIVATE RIGHT of ACTION	NO PRIVATE RIGHT of ACTION
Georgia - \$2,000	Idaho - \$1,000	Alaska - \$500	Arkansas
SB 771		Colorado - \$500	Kentucky
\$500-\$1,000		Texas - \$500	Missouri
			New York
			Oregon
			Tennessee

COMPARISON OF TELEMARKETER EXEMPTIONS FROM "DO NOT CALL" LISTS

STATE	EXEMPT TELEPHONE CO.	EXEMPT CABLE	EXEMPT NEWSPAPERS	EXEMPT POLITICAL CALLS	EXEMPT CHARITABLE / NONPROFIT
Alabama	YES	YES	YES	YES	YES
Alaska	NO	NO	NO	YES	YES
Arkansas	NO	NO	YES	NO	YES
Colorado	NO	NO	NO	NO	NO
Connecticut	NO	NO	NO	NO	YES
Florida	NO	NO	YES	YES	YES
Georgia	NO	NO	NO	YES	YES
Idaho	NO	NO	YES	NO	YES
Kentucky	YES (described as merchants regulated by the Public Service Commission or FCC)	YES	YES	YES	YES
Maine					
Missouri	YES	NO	NO	NO	YES
New York	NO	NO	NO	YES	YES
Oregon	NO	NO	NO	YES	YES
Tennessee	NO	NO	NO	NO	YES
Texas	NO	NO	NO	NO	NO
Wyoming	NO	NO	YES	NO	YES

**Agenda Item
VII**

Proposed Amendments to SB 771, to include but not limited to:

- A. A General Fund Loan for Implementation of the mandates of SB 771.
- B. Specific language allowing an Agency to develop regulations for implementation.
- C. Authority for an Agency to contract with a vendor to develop and implement database, lists and/or program.
- D. Enforcement authority for cite and fine.
- E. Provision to prohibit re-sale of list.
- F. Removal of language regarding subscriber self-declared exemptions (page 3, lines 4-14).
- G. Removal of language requiring consumer fees and replacing with "permissive authority" for consumer fees.
- H. Removal of language allowing telemarketers the option to make quarterly payments for list.
- I. Revise language allowing an Agency to charge telemarketers for the cost of "maintaining" the SB 771 program in addition to the preparation, production and distribution of the list.
- J. Revise language that requires an Agency to utilize *the best available, cost-effective technology*.
- K. Expand the definition of pre-existing business relationship to include the length of time of last transaction to be considered a pre-existing relationship.

TELEMARKETING DO NOT CALL LIST LEGISLATION – OTHER STATES INFORMATION

STATE (date effective)	GOVERNING AGENCY	FINE AUTHORITY for NON-COMPLIANCE	CONSUMER FEES	TELE-MARKETER (TM) FEES	PROGRAM SELF-FUNDED?	NUMBER OF TELE-MARKETERS	NUMBER OF SUBSCRIBERS
Alabama (2000)	Public Service Commission / Attorney General enforces	Fine authority up to \$2,000, as well as private right of action. This law has too many exemptions and is not effective.	None. Remain on list for 2 years. Can subscribe online.	\$500 per year.	Yes.	Unknown.	30,000. List is by name and phone number.
Alaska (1996)	Attorney General enforces violations; Public Utilities Commission (PUC) sets rates that the local phone company can charge consumers for "black dot" listing.	Yes, up to \$5,000 assessed through the AG's office, as well as private right of action up to \$500.	Consumer pays onetime fee of \$5-\$15 to local phone co. who puts a "black dot" next to the name in the phone book. TMs then use the phone book as a "list".	TM may purchase list for \$25-\$50, or use the phone book as a list for free.	Yes. The local phone co.'s absorb cost. State's role is enforcement (and fines).	900+ (includes charitable organizations who must comply with law as well.)	Unknown. Consumers must register with their individual local phone company.
Arkansas (2000)	Attorney General	Yes, up to \$10,000 under Arkansas' Unfair Trade Practices Act.	\$10 first year, then \$5 renewal fee annually. However, AR recently lowered it to a flat \$5 annually.	None. List received electronically	Yes	785	16,168 List is by phone number
Connecticut (2001)	Dept. of Consumer Protection (DCP)	Yes, up to \$5,000.	None. The consumer gives their name to DCP, who forwards names to DMA*, who maintains list for DCP.	\$450/year paid to DMA. No fees paid to the state.	Absorbable costs to the state. DMA maintains list for free.	TMs are not required to register.	650,000. List is done by consumer name, not by phone no. or household.
Colorado (2002) recently passed and not yet implemented	PUC implements/ AG enforce	Yes, up to \$10,000 under Deceptive Trade Practices Act, as well as private right of action up to \$500.	None. Consumers may subscribe online, or via toll-free #.	Sliding scale based on # of employees. \$500 max. List available via online or CD-ROM.	Anticipate self-funded. Startup costs estimated at \$70,000.	Unknown.	200,000 have signed up since 1/01. Unknown estimated number for implementation. List is by phone number.
Florida (1990)	Dept. of Agriculture and Consumer Services	Yes, up to \$10,000. Additionally, FL requires the TMs to pay the list fees for the next year of the consumers whom they contacted in violation of the law.	\$10 first year, then \$5 renewal fee annually. Consumers may subscribe via mail only at this time. FL is planning on implementing subscriptions online and through a toll free phone number.	Per list: \$30 per area code, per quarter, or \$100 statewide, per quarter. List is received via mail or email.	Yes. The program is totally self-funded, and sometimes creates excess revenue for the state.	Unknown, only a limited # of TMs must register under state TM law, while almost all TMs must comply with the "no call" law. Approx. 1,000 TMs purchase list quarterly.	136,915. List is by phone #. FL estimates that only 1% of the population participates. FL is going to undertake a public service announcement campaign to attract more subscribers.