

rule, in contrast, does not apply to intrastate calls or to many industries generating a significant proportion – if not the majority – of telemarketing calls.

Significant Issues

- State Do-Not-Call registries have been around for several years and currently exist in at least 27 states. In the past 14 months both the FTC and the FCC have proposed the creation of a national Do-Not-Call registry, and the FTC has formally approved such a registry. These proposals represent a significant departure from past federal policies regarding telephone solicitations, and reflect the conclusion by both agencies that those policies had not adequately protected the privacy interests of residents in their own homes.
- In 2002, the New Mexico Legislature passed Senate Joint Memorial 4, which directed the AGO to conduct a study of telemarketing in New Mexico. As part of its study, the office commissioned a scientific poll of residents' attitudes about telemarketing. The office also conducted a town hall meeting on the subject. In both instances, residents voiced their dislike of unsolicited telephone solicitations, and expressed strong support for a state Do-Not-Call registry.
- Courts have long recognized the interest of government in protecting the privacy rights of persons in their home. However, telephone solicitors have challenged some state Do-Not-Call registries, and most recently, the FTC's Do-Not-Call rule, on the ground that such laws abridge free speech rights guaranteed by the 1st Amendment to the U.S. Constitution. The fact that the protections against unwanted telephone solicitations afforded by Do-Not-Call laws and SFLS/SB 573 apply only to residents who request that the government place their number on a no-call list, distinguishes these challenges from most other 1st Amendment challenges to government regulation. This remains a somewhat unsettled area of the law.
- The FTC approved amendments to its Telephone Sales Rule in December of 2002 creating a national Do-Not-Call registry. Companies subject to the jurisdiction of the FTC and are not otherwise exempt, are prohibited from calling phone numbers on the national registry. The FCC is expected to rule on its Do-Not-Call proposal by the end of 2003. If adopted, the FCC Do-Not-Call rule would apply to most if not all of the telephone solicitations outside the scope of the FTC no-call rule.
- The creation and maintenance of do-not-call databases has proven to be expensive in other states. By utilizing the FTC registry, this bill allows the state to avoid these expenses and to also avoid the need to assess fees to both residents who want their telephone numbers placed on the proposed state no-call list, and telephone solicitors who must obtain the list. The FTC, has reported that there will be no charge for consumers to register their phone number on its Do-Not-Call registry, and no charge to businesses or others to obtain the registered numbers from one area code.

ADMINISTRATIVE IMPLICATIONS

The bill requires the AGO to promulgate rules to implement the provision of the bill creating a state Do-Not-Call list. DW/njw