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Business Associations and Professions; telephone sales solicitations

Nev. Rev. Stat. § ____ (new); § 232.250 (amended).
AB 142 (Callister); 1989 STAT. Ch. 615

Chapter 615 establishes a scheme for regulating certain persons¹ engaged in the business of telephone sales solicitations.² Under Chapter 615, a person acting as a seller³ or salesman⁴ must be licensed by the Consumer Affairs Division of the Department of Commerce (Division).⁵ To obtain a license, a seller or salesman must submit a written application and specified materials to the Division.⁶ If the application is approved,⁷ the Division will issue a one year license.⁸

1. See 1989 NEV. STAT. ch. 615, sec. 3 at ____ (enacting NEV. REV. STAT. § ____ (description of exceptions)).

2. *Id.* secs. 1-26, at ____ (enacting NEV. REV. STAT. § ____).

3. See *id.* sec. 2, at ____ (enacting NEV. REV. STAT. § ____) (defining seller as a person who solicits by telephone or who communicates with a potential customer by telephone after the customer has responded to a mail solicitation).

4. See *id.* (defining salesman as a person employed or authorized by a seller to sell goods or services by telephone).

5. *Id.* sec. 5, at ____ (enacting NEV. REV. STAT. § ____). A person who solicits sales from within the state is acting as a seller or salesman. *Id.*

6. *Id.* secs. 6, 7, at ____ (enacting NEV. REV. STAT. § ____ (required contents of seller's written application)), 8, at ____ (enacting NEV. REV. STAT. § ____ (required contents of salesman's written application)). Materials which must accompany a seller's application include: (1) Sales aids, if any, a salesman will use while soliciting; (2) sales information or literature the seller will provide to a salesman or to a purchaser; (3) a copy of any written partnership agreement, or copies of articles of incorporation and bylaws, if the applicant is, or is affiliated with, a partnership or corporation; and (4) a bond, letter of credit or certificate of deposit, satisfying stated specifications and in the amount of \$50,000, to be subject to claims of parties injured by the seller's bankruptcy or breach of agreements entered as a licensee. *Id.* sec. 6, at ____ . A seller who will do business under an assumed or fictitious name must submit an additional security instrument and licensing fee for each name. *Id.* A salesman's application must include a statement by the seller desiring to employ the salesman that the seller will associate with the applicant and assume responsibility for the salesman's conduct as a licensee. *Id.* sec. 8, at ____ .

7. The Commissioner of Consumer Affairs (Commissioner) may refuse to issue a license to an applicant who has been convicted of specified crimes, who engaged in conduct for which a licensee's license could be suspended, or who knowingly made a false statement in the application. *Id.* sec. 17, at ____ (enacting NEV. REV. STAT. § ____). An applicant whose application is denied cannot re-apply during the next 180 days. *Id.* sec. 18, at ____ (enacting NEV. REV. STAT. § ____). If an application is denied, the applicant may appeal to the Board in accordance with specified procedures. *Id.* sec. 17.3, at ____ (enacting NEV. REV. STAT. ____).

8. *Id.* secs. 9, at ____ (enacting NEV. REV. STAT. § ____ (issuance of license)), 10, at ____ (enacting NEV. REV. STAT. § ____ (license must be renewed annually)). If, prior to the renewal date, there are material changes in the information used to obtain the license, the licensee must submit the revised information to the Division. *Id.* sec. 10, at ____ (enacting NEV. REV. STAT. § ____). Compare *id.* (requiring submission to Division of changes in licensing information) with *id.* sec. 12, at ____ (enacting NEV. REV. STAT. § ____ (requiring submission

Chapter 615 requires salesmen to disclose certain information to each prospective purchaser,⁹ and requires sellers and salesmen to keep confidential the identity of all purchasers.¹⁰ In addition, special requirements of Chapter 615 apply when sellers or their salesmen represent to purchasers that the purchasers are or may be eligible for gratuities.¹¹ In certain situations, Chapter 615 also requires sellers to give refunds, credits, or replacements to purchasers.¹² Finally, Chapter 615 specifies penalties for a violation of Chapter 615's provisions.¹³

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to Division of new or revised sales aids). Every licensee must appoint the Secretary of State as an agent for service of process. *Id.* sec. 19, at ___ (enacting NEV. REV. STAT. § ____). A licensed salesman may work for only one seller at any given time. *Id.* sec. 11, at ___ (enacting NEV. REV. STAT. § ____).

9. In the course of any solicitation, sales presentation, or related correspondence, salesmen must give their names and identify the seller who employs them. *Id.* sec. 13, at ___ (enacting NEV. REV. STAT. § ____).

10. A salesman may not disclose the name or address of any purchaser. *Id.* sec. 16, at ___ (enacting NEV. REV. STAT. § ____). Disclosure of such information to an employee or associate of the seller, to an employee of the Division, or to any law enforcement agency requiring the information for an investigation is permissible. *Id.* Violation of the non-disclosure provision is punishable by a civil fine. *Id.*

11. *Id.* sec. 14, at ___ (enacting NEV. REV. STAT. § ____). Sellers must submit to the Division a statement describing the gratuity, its value, and the conditions and odds of receiving the gratuity. *Id.* Sellers must convey this information to a prospective purchaser at the time of the solicitation. *Id.* If the seller will give away fewer than all of the items described, then additional specified information must be provided to both the Division and purchasers. *Id.*

12. *Id.* sec. 15, at ___ (enacting NEV. REV. STAT. § ____). The refund provision applies when the purchased goods or services are defective or are not as represented, or if a gratuity is not received as promised. *Id.* The seller must furnish each purchaser with a written summary of the refund provisions of Chapter 615 within three days of any purchase, or upon delivery of purchased items, whichever is later. *Id.*

13. The Commissioner may suspend or revoke a license if the licensee has been convicted of specified crimes, knowingly made a false statement in a licensing application, or violated any of Chapter 615's provisions. *Id.* sec. 17, at ___ (enacting NEV. REV. STAT. § ____). A licensee whose license is revoked cannot apply for a license during the next 180 days. *Id.* sec. 18, at ___ (enacting NEV. REV. STAT. § ____). *An unlicensed person who acts as a seller or salesman is subject to imprisonment for one to six years, a fine of up to \$25,000, or both.* *Id.* sec. 20, at ___ (enacting NEV. REV. STAT. § ____). A salesman who solicits a prospective purchaser on behalf of an unlicensed seller has committed a misdemeanor. *Id.* Any licensee whose license is suspended or revoked, or against whom a civil penalty is assessed, may appeal to the Board in accordance with specified procedures. *Id.* sec. 17.3, at ___ (enacting NEV. REV. STAT. § ____).