

Approved March 22, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Phil Kline at  
Chairperson

3:38 ~~xxx~~/p.m. on Tuesday, March 15, 1988 in room 423-S of the Capitol.

All members were present except: Representatives Mainey, Leach, Aylward, and Barkis.  
- Excused.

Committee staff present:

Jim Wilson, Revisor  
Lynn Holt, Research  
Elaine Johnson, Secretary

Conferees appearing before the committee:

Rich Bailey, Department of Commerce  
Dr. Charles Krider, Director of Business Research, Institute for Public  
Policy and Business Research, University of Kansas  
Rex E. Wiggins, President, Kansas Venture Capital, Inc.  
David H. Moses, Director, Consumer Fraud and Economic Crime Division of  
the Sedgwick County District Attorney's Office  
Jo Jenkins, Assistant General Counsel, Kansas Corporation Commission  
Bud Grant, Kansas Chamber of Commerce and Industry

Chairman Kline called the meeting to order and opened the hearing on S.B. 473. Chairman Kline recognized Rich Bailey from the Department of Commerce.

Mr. Bailey testified that the Department of Commerce supports S.B. 473 believing that accelerating the tax credit would indeed stimulate additional investment in risk capital funds in Kansas. They believe that passage of this bill will increase the number of certified funds by offering a more immediate incentive to potential investors. The committee was also updated on the activity regarding Kansas venture capital company and local seed capital pool certification. (Attachment 1).

Dr. Charles Krider testified in support of S.B. 473. The Institute for Public Policy and Business Research concurs with the interim Joint Committee's recommendation that taxpayers be allowed to claim in one year the entire allowable tax credit for investments in seed and venture capital. He then went over the summary of the results of their research on the subject. (Attachment 2).

Senator Kerr was scheduled to testify on S.B. 473 but because the Senate was still in session was unable to appear before the committee. A copy of his testimony is attached. (Attachment 3).

Rex Wiggins testified that although they did not start this legislation they are in favor of S.B. 473. They feel that the change from four years to one year for tax credit will enhance investments.

Discussion followed.

This closed the hearing on S.B. 473 and opened the hearing on H.B. 3038. Chairman Kline recognized David Moses.

Mr. Moses testified that H.B. 3038 includes restrictions on the time of day telephone call solicitations may be made, provisions for live operators to inform the subscriber of the nature and originator of the call, and mandatory disconnection of an ADAD within 15 seconds of the subscriber hanging up. Another important provision requires telemarketing companies and ADAD operators to apply for a permit from the KCC in order to make telephone call solicitations in this state. Penalties can be imposed by the KCC against violators of the Act. (Attachment 4). Mr. Moses then went over the changes in the balloon on H.B. 3038 with the committee. (Attachment 5). Mr. Moses

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

room 423-S, Statehouse, at 3:38 XX a.m./p.m. on Tuesday, March 15, 1988

stated that this bill will not eliminate telephone call solicitations but will place them under control.

Questions that arose by the committee were as follows: what about calling to raise funds for political campaigns; what is an established personal relationship; what about real estate and insurance salespeople; won't a referral cause a problem due to the fact that there is not a personal relationship involved. Bill will also need clarification of time as western Kansas is in the mountain time zone.

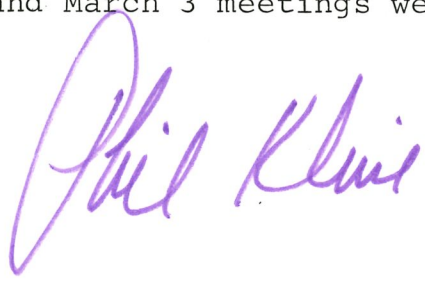
Jo Jenkins testified as legal counsel for the Kansas Corporation Commission. She stated that the Commission is neither supporting nor opposing the bill. The Commission in mid-1980 issued an order regarding the connection of ADADs. The users must provide telephone companies; exchanges originating and receiving such calls certain information regarding the use of ADADs prior to using such equipment. This information includes the prospective user's names, address and telephone number; the address and telephone number from which the ADAD calls are to be made; a description of the ADAD; the calendar days and clock hours during which the ADAD is to be used. (Attachment 6). This rule also provides that no calls are to be made to emergency numbers. The Commission does not receive many complaints regarding ADADs usage. If the complainant has listened long enough to identify the caller, the Commission has generally been able to bring the ADAD user into compliance with the Commission's rule. The staff of the KCC expressed their concerns with the bill (Attachment 6). The majority of the complaints the Commission receives pertain to interstate calls and this bill cannot address interstate use of ADADs.

Bud Grant of the Kansas Chamber of Commerce and Industry stated that he has some of the same questions the committee members had, plus some additional. "If I bought a refrigerator from Sears or a TV from Montgomery Wards and they call me a week later about buying a service contract, I assume that is alright because we have a prior relationship." Where the bill talks about the 501(c), he frankly would like those to be the ones prohibited. He swears there is a circus in town every week. The way unsolicited calls are handled at his house, they hang up. He feels most people could do that and not have to worry about all this. He questioned section 4. - "If an ADAD is used, how do you ask the recipient if they want to listen to it?" In 1980 when this issue was dealt with we thought we solved it, obviously there are those who do not think we did. H.B. 3038 is designed to address a very narrow problem area, one where there is a script, one where the persons sits down and fills in the blanks. Phone usage is so broad and the application is so broad, to try to write a law that will equitably address all these areas is virtually impossible.

Attorney General Robert Stephan sent over written comments. They were distributed to the committee. (Attachment 7).

The minutes of the February 29, March 1 and March 3 meetings were approved.

The meeting adjourned at 4:44 p.m.



Date: 3/15/88

GUEST REGISTER

HOUSE

Committee on Economic Development

| <u>NAME</u>      | <u>ORGANIZATION</u>    | <u>ADDRESS</u>                          |
|------------------|------------------------|---|
| Rich Bailey      | KDOC                   | Capitol Tower - Topeka                  |
| Ernie Jager      | KVO                    | BK IV Tower "                           |
| David S. Wiggins | Kansas Venture Capital | 8700 MONROVIA Suite 214<br>Lenexa 66215 |
| DOUG GRANT       | KCCI                   | TOPEKA                                  |
| Ken Behr         | K. Community Assn.     | Topeka                                  |
| David H Moses    | Sedgwick County DA.    | WICHITA                                 |
| Harold Stover    | KBA                    | Topeka                                  |
| MARK A. BURGHART | REVENUE                | "                                       |
| Gary Reser       | KS. TELECOMM. ASSN.    | TOPEKA                                  |
| Mike Reecht      | AT+T                   | TOPEKA                                  |
| S. STREFF        | AP                     | TOPEKA                                  |
| Jo Jenkins       | KCC                    | Topeka                                  |
| Sam Minton       | KCC                    | Topeka                                  |
| D.W. ZIMMERMAN   | KDOC                   | TOPEKA                                  |
| Jim Gartner      | SWBT                   | Topeka                                  |
| DENNY S KOCH     | SW BELL TEL. Co.       | TOPEKA                                  |
|                  |                        |   |
|                  |                        |   |



TESTIMONY ON SENATE BILL NO. 473  
to the House Committee on Economic Development  
Presented by Rich Bailey, Department of Commerce  
March 15, 1988

*House Eco Dev  
Attachment 1  
3/15/88*

Thank you, Mr. Chairman for allowing me to present testimony on Senate Bill 473.

### Background

I thought it might be useful to update this committee on the activity regarding Kansas venture capital company and local seed capital pool certification. Thus far, we have certified three venture capital funds -- two in Lawrence and one in Topeka. Currently, we are in the discussion stage with a number of other groups expressing interest in certification including several parties in Topeka, Kansas City, Wichita, Hutchinson, Junction City, and a group in southwest Kansas.

In terms of local seed capital pool certification, we have had serious inquiries from parties in Lawrence, Overland Park, and Great Bend. To date, however, we have received no formal applications for local seed capital pool certification.

### Issue

Parties interested in certification have expressed a variety of concerns dealing with the ability to raise capital for their funds. One of the suggested means to facilitate the fund-raising process concerns the issue Senate Bill No. 473 would address --- accelerating the Kansas income tax credit available for investment in certified Kansas Venture Capital Companies, local seed capital pools, and Kansas Venture Capital, Inc.

### Fiscal Impact

If Senate Bill 473 were to be enacted, it would have no immediate fiscal impact on the Department of Commerce. The overall impact of

this legislation would be in the acceleration of income tax credit claims which may affect state revenues. However, the claims would still be limited to a total of 25 percent for \$24 million of actual investment.

Recommendation

Based on our discussions with prospective applicants for certification, the Department of Commerce supports Senate Bill 473 believing that accelerating the tax credit would indeed stimulate additional investment in risk capital funds in Kansas. We believe that passage of this bill would increase the number of certified funds by offering a more immediate incentive to potential investors.

Thank you once again for the opportunity to testify before this committee. We would be happy to answer any questions you might have.

TESTIMONY ON  
SB 473  
THE VENTURE CAPITAL TAX CREDIT

by  
Dr. Charles Krider  
Professor, School of Business  
and  
Director of Business Research  
Institute for Public Policy and Business Research  
University of Kansas

presented to  
House Economic Development Committee  
March 15, 1988

*House Eco Dev*  
*Attachment 2*  
*3/15/88*

Mr. Chairman, I appreciate the opportunity to testify on S.B. 473, regarding the Venture Capital Company Tax Credit. After examining the results of a present value analysis of the tax credit, obtaining the opinion of Kansans involved in venture and seed capital funding, and gathering information on what other states are doing with regard to such tax credits, we concur with the interim Joint Committee's recommendation that taxpayers be allowed to claim in one year the entire allowable tax credit for investments in seed and venture capital. Therefore we support S.B. 473. Following is a summary of the results of our research on this subject which lead us to believe that the time period for taking the tax credit should be reduced from four years to one year.



SUMMARY OF KANSANS' PERCEPTIONS OF THE TAX CREDIT  
FOR CERTIFIED VENTURE CAPITAL COMPANIES

Overall, there is satisfaction with regard to the structure of the current tax credit for certified venture capital companies. To date, this credit has provided fund managers with an additional marketing tool in their attempts to raise funds. However, it is clear that while the tax credit may be a necessary condition for raising capital, it is not a sufficient condition. Rather, investors rank the track record of the management team as predominant with anticipated risk-adjusted rate of return and fund objectives as second and third criteria.

Obviously, the more attractive the tax credit the more significant is its role in the decision-making process. For this reason, some individuals expressed their support for reducing the time period for taking the tax credit from 4 years to 2 years or less. In addition, the amount of the tax credit coupled with the deduction time frame effects the investor's calculation of the risk-adjusted rate of return; a decision criteria mentioned above.

Finally, many individuals noted that it takes a great deal of time and effort to raise capital particularly in a marketplace where the concept is relatively new. This comment is supported in the experience of other states.

PRESENT VALUE ANALYSIS OF TAX CREDIT  
TO INDIVIDUALS AND CORPORATIONS

The present value analysis is a financial methodology which recognizes that money has value over time. That is, a dollar received today is worth more than a dollar received next year. This has application to the tax credit for venture capital funds in regard to the timing of the tax credit deduction against state taxes. The full credit received in year 1 will have a greater value than one-fourth of the credit received for each of four years.

Two columns of calculations are presented in both Tables 1 and 2 (Appendices A & B). The left-hand column assumes no federal tax implications. The right-hand column takes into account the increase in federal tax liability that occurs as the state tax liability decreases. This is the issue addressed by Indiana.

As a simplistic explanation, the discount rate in these tables can be said to represent the rate of return an investor could have received on their dollars. A 10% discount rate is assumed in the first row, a 12% rate in the second row and an 8% in the final row. As expected, as the discount rate is increased, the effective percentage of the tax credit decreases for periods 2 through 4.

This Present Value methodology is illustrated first in Table 1 (Appendix A) as it relates to the tax credit for individual's investing in these funds. A \$46,000 cash investment is assumed which represents the average amount an individual contributed to the Research Capital Management Group Fund in Lawrence. The calculations which assume a 10% discount rate and no federal tax implications are shown below.

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| Credit taken<br>over x yrs. | Annual<br>State<br>Credit | Net Present<br>Value of<br>Credit | Effective<br>Tax Credit<br>(%) |
|-----------------------------|---------------------------|-----------------------------------|--------------------------------|
| 4                           | \$2,875                   | \$10,025                          | 21.79%                         |
| 3                           | \$3,833                   | \$10,486                          | 22.80%                         |
| 2                           | \$5,750                   | \$10,977                          | 23.86%                         |
| 1                           | \$11,500                  | \$11,500                          | 25.00%                         |

Reviewing these 10% discount figures, we find that the 25% tax credit actually represents an effective credit of 21.8% given the present requirement of a four year deduction period. The effective rate increases as this time period decreases until it reaches 25% if the full credit is allowed in the first year. The effective rate is even lower when federal tax implications are considered ranging from 15.7% for a four year period to 18% for a one year period (see additional calculations shown in Appendix A). These effective rates do not change if we assume an investment level other than \$46,000.

Table 2 (Appendix B) presents similar information as it applies to corporations. Here a \$72,000 cash investment is assumed which represents the average amount a corporation contributed to the Research Capital Management Group Fund in Lawrence. Again, the effective tax credit rates do not change if we assume a different investment level. The corporate effective rate, assuming no federal tax implications, matches the individual rate. When federal taxes are assumed, the effective rate is lower for corporate investors due to their higher average tax rate.

PRESENT VALUE ANALYSIS OF TAX CREDIT TO STATE

An analysis similar to that discussed previously was applied to determine the present value cost to the state of reducing the deduction period from 4 years to 1 year. A \$6,000,000 tax credit ceiling was assumed for this analysis as provided in the legislation. Appendix C provides the complete table of calculations for three discount rates: 10%, 12% and 8%. The calculations using 10% are shown below:

| Credit taken over x yrs. | Annual State Credit | Net Present Value of Credit | Net PV Dollar Savings | Effective Tax Credit (%) |
|--------------------------|---------------------|-----------------------------|-----------------------|--------------------------|
| 4                        | \$1,500,000         | \$5,203,278                 | \$796,722             | 21.8%                    |
| 3                        | \$2,000,000         | \$5,471,074                 | \$528,926             | 22.8%                    |
| 2                        | \$3,000,000         | \$5,727,273                 | \$272,727             | 23.9%                    |
| 1                        | \$6,000,000         | \$6,000,000                 | \$0                   | 25.0%                    |

The fourth column entitled "Net PV Dollar Savings" indicates the savings which the state realizes with the 4, 3, and 2 year deduction periods when compared to a 1 year deduction period. In other words, with the current 4 year deduction period the state realizes a \$796,722 savings over providing a 1 year deduction period.

## RECOMMENDATIONS

There are three options which exist regarding the current tax credit for venture capital companies. First, the credit may be retained in its present form; 25% over a four year period. Second, the tax credit percentage could be increased to 30%; the rate provided in the Indiana legislation. Finally, the tax credit deduction period could be decreased from its present time frame of 4 years to 2 years or less as is legislated in the majority of states we surveyed.

It is our recommendation that the current legislation be amended to decrease the deduction period from 4 years to 1 year. This change has two distinct advantages. First, the accounting complexity required by both the investor and the state to track the credit over a four year period of time is reduced. This reduction in complexity results in an administrative cost savings to both the investor and to the state. Secondly, with the reduction to a one year time period, the effective rate of the tax credit matches the legislated or "advertised" rate of 25% as shown in the previous present value analysis.

## OTHER STATE VENTURE CAPITAL TAX CREDIT PROGRAMS

### Arkansas

#### Description:

- Legislation passed in 1985
- 33% tax credit which can all be taken in the first year; carry forward provisions available

#### Activity:

-No activity to date; possible explanations:

- 1) No direct solicitation by the state
- 2) Firms interested in venture capital are working through other organizations within the state e.g. private sector initiative through Southshore Bank, Chicago and Arkansas Business Council supported by Sam Walton and Don Tyson.

### Indiana

#### Description:

- Enabling legislation passed in 1981
- One-time fund "drive" with a two-year investment window for eligibility for a 30% tax credit
- 30% tax credit to be taken in the year of the investment with a 5 year carry forward provision available

#### Activity:

- The \$5,000,000 available for the tax credit was utilized resulting in a venture capital fund of \$16,667,000
- Major investors included Indiana headquartered insurance firms, banks, utilities and industrial concerns with a sizable Indiana presence

#### Role of Tax Credit:

- Considered crucial as it provided visibility that the fund otherwise would not have received
- Credit was large enough to "get attention" but not "that great". When the effects of federal tax liabilities were considered, the effective tax credit rate was calculated as less than 20%.
- Tax credit was a necessary but not sufficient condition for success of the venture capital fund. Other important factors included:

- 1) Sense of responsibility to economic development
- 2) Obtain a "window" on new technology

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- They are considering the formation of a second fund, however, they will attempt raising funds without the benefit of a tax credit now that venture capital has become "visible" in the state.

## Louisiana

### Description:

- Original legislation passed in 1984, amended in 1986 reducing the capitalization level from a minimum of \$3 million to \$200,000
- 35% tax credit which may be taken in the first year of the investment with carry forward provisions available
- An additional 5% is given if the capital company invests in a business located in a Louisiana Enterprise Zone

### Activity:

- Slow with first application requested in September 1987

## Mississippi

### Description:

- Enabling legislation passed in 1985, modeled after the Louisiana legislation
- 25% tax credit which may be taken in the first year
- \$200,000 minimum capitalization requirement for fund to qualify investors for the tax credit

### Activity:

- To date, no one has applied for the tax credit. Just recently, one individual has indicated an interest in establishing a fund and the state is now in the process of drafting the necessary papers. They attribute the low level of activity to the cumbersome and restrictive nature of the bill.

## Missouri

### Description:

- Enabling legislation passed in 1986 establishing the mechanism to form 5 qualified contribution funds
- Investments in one of the five funds qualifies the investor for a 30% tax credit which may be taken over the first year with a 10 year carry forward tax provision
- Tax credits are negotiable instruments
- \$2,000,000 maximum capital contribution per investor



Activity:

- In the final stages now of presenting the first prospectus to a group of investors. This would establish the first of the five qualified contribution funds.

Montana

Description:

- Original legislation passed in 1983
- Provided a 25% tax credit which is required to be taken in year of investment if possible, carry forward and carry back provisions are provided
- Original legislation amended in 1987 as only \$2.4 million in venture capital had been raised resulting in \$400,000 in tax credits over the four year period since the legislation was first adopted
- New law provides a 50% tax credit with same time frame provisions and increases the maximum tax credit per individual from \$25,000 to \$125,000

Activity:

- Since the passage of the new legislation in July 1987, one capital company is in the process of raising the \$1.5 million minimum capitalization level
- Slow activity attributed to the character of the people in Montana, the lack of knowledge and education in venture capital and a general fear of these riskier funds

North Dakota

Description:

- Original legislation passed in 1985, amended in 1986/87 to allow insurance companies and banks to contribute funds
- 25% tax credit to be taken over four years, carry forward and carry back provisions included
- \$500,000 minimum capitalization

Activity:

- Slow; the first application is in process

APPENDIX A

EFFECTIVE TAX CREDIT  
CERTIFIED VENTURE CAPITAL COMPANIES  
INDIVIDUALS

TABLE 1

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 10%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$10,025                    | 21.79%                   |
| 3                          | \$3,833             | \$10,486                    | 22.80%                   |
| 2                          | \$5,750             | \$10,977                    | 23.85%                   |
| 1                          | \$11,500            | \$11,500                    | 25.00%                   |

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 10%  
Individual federal tax rate of 28%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$2,070               | \$7,218                     | 15.89%                   |
| 3                          | \$3,833             | \$2,760               | \$7,550                     | 16.41%                   |
| 2                          | \$5,750             | \$4,140               | \$7,904                     | 17.15%                   |
| 1                          | \$11,500            | \$8,280               | \$8,280                     | 18.00%                   |

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 12%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$9,780                     | 21.25%                   |
| 3                          | \$3,833             | \$10,312                    | 22.42%                   |
| 2                          | \$5,750             | \$10,854                    | 23.66%                   |
| 1                          | \$11,500            | \$11,500                    | 25.00%                   |

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 12%  
Individual federal tax rate of 28%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$2,070               | \$7,042                     | 15.31%                   |
| 3                          | \$3,833             | \$2,760               | \$7,425                     | 16.14%                   |
| 2                          | \$5,750             | \$4,140               | \$7,836                     | 17.04%                   |
| 1                          | \$11,500            | \$8,280               | \$8,280                     | 18.00%                   |

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 8%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$10,284                    | 22.36%                   |
| 3                          | \$3,833             | \$10,665                    | 23.19%                   |
| 2                          | \$5,750             | \$11,074                    | 24.07%                   |
| 1                          | \$11,500            | \$11,500                    | 25.00%                   |

Assumptions : \$46,000 Cash Investment  
25% tax credit or \$11,500  
Discount rate of 8%  
Individual federal tax rate of 28%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$2,875             | \$2,070               | \$7,405                     | 16.10%                   |
| 3                          | \$3,833             | \$2,760               | \$7,652                     | 16.70%                   |
| 2                          | \$5,750             | \$4,140               | \$7,973                     | 17.33%                   |
| 1                          | \$11,500            | \$8,280               | \$8,280                     | 18.00%                   |

APPENDIX B  
EFFECTIVE TAX CREDIT  
CERTIFIED VENTURE CAPITAL COMPANIES  
CORPORATIONS

TABLE 2

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 10%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$15,691                    | 21.79%                   |
| 3                          | \$6,000             | \$16,413                    | 22.80%                   |
| 2                          | \$9,000             | \$17,182                    | 23.86%                   |
| 1                          | \$18,000            | \$18,000                    | 25.00%                   |

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 10%  
Corporate federal tax rate of 34%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$2,970               | \$10,356                    | 14.38%                   |
| 3                          | \$6,000             | \$3,960               | \$10,833                    | 15.05%                   |
| 2                          | \$9,000             | \$5,940               | \$11,340                    | 15.75%                   |
| 1                          | \$18,000            | \$11,880              | \$11,880                    | 16.50%                   |

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 12%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$15,308                    | 21.26%                   |
| 3                          | \$6,000             | \$16,140                    | 22.42%                   |
| 2                          | \$9,000             | \$17,036                    | 23.66%                   |
| 1                          | \$18,000            | \$18,000                    | 25.00%                   |

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 12%  
Corporate federal tax rate of 34%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$2,970               | \$10,103                    | 14.03%                   |
| 3                          | \$6,000             | \$3,960               | \$10,653                    | 14.80%                   |
| 2                          | \$9,000             | \$5,940               | \$11,244                    | 15.62%                   |
| 1                          | \$18,000            | \$11,880              | \$11,880                    | 16.50%                   |

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 8%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$16,097                    | 22.36%                   |
| 3                          | \$6,000             | \$16,700                    | 23.19%                   |
| 2                          | \$9,000             | \$17,333                    | 24.07%                   |
| 1                          | \$18,000            | \$18,000                    | 25.00%                   |

Assumptions : \$72,000 Cash Investment  
25% tax credit or \$18,000  
Discount rate of 8%  
Corporate federal tax rate of 34%

| Credit taken over x years: | Annual State Credit | Credit Net of Fed Tax | Net Present Value of Credit | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------|-----------------------------|--------------------------|
| 4                          | \$4,500             | \$2,970               | \$10,624                    | 14.76%                   |
| 3                          | \$6,000             | \$3,960               | \$11,022                    | 15.31%                   |
| 2                          | \$9,000             | \$5,940               | \$11,440                    | 15.89%                   |
| 1                          | \$18,000            | \$11,880              | \$11,880                    | 16.50%                   |

APPENDIX C  
EFFECTIVE TAX CREDIT  
CERTIFIED VENTURE CAPITAL COMPANIES  
STATE OF KANSAS

TABLE 3

Assumptions : \$6,000,000 TOTAL TAX CREDIT  
Discount rate of 10%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Net PV Dollar Savings | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|-----------------------|--------------------------|
| 4                          | \$1,500,000         | \$5,230,278                 | \$769,722             | 21.79%                   |
| 3                          | \$2,000,000         | \$5,471,074                 | \$528,926             | 22.80%                   |
| 2                          | \$3,000,000         | \$5,727,273                 | \$272,727             | 23.86%                   |
| 1                          | \$6,000,000         | \$6,000,000                 | \$0                   | 25.00%                   |

Assumptions : \$5,000,000 TOTAL TAX CREDIT  
Discount rate of 12%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Net PV Dollar Savings | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|-----------------------|--------------------------|
| 4                          | \$1,500,000         | \$5,102,747                 | \$897,253             | 21.26%                   |
| 3                          | \$2,000,000         | \$5,380,102                 | \$619,898             | 22.42%                   |
| 2                          | \$3,000,000         | \$5,678,571                 | \$321,429             | 23.66%                   |
| 1                          | \$5,000,000         | \$5,000,000                 | \$0                   | 25.00%                   |

Assumptions : \$5,000,000 TOTAL TAX CREDIT  
Discount rate of 8%  
No federal tax consequences

| Credit taken over x years: | Annual State Credit | Net Present Value of Credit | Net PV Dollar Savings | Effective Tax Credit (%) |
|----------------------------|---------------------|-----------------------------|-----------------------|--------------------------|
| 4                          | \$1,500,000         | \$5,355,645                 | \$634,355             | 22.36%                   |
| 3                          | \$2,000,000         | \$5,568,529                 | \$433,471             | 23.19%                   |
| 2                          | \$3,000,000         | \$5,777,778                 | \$222,222             | 24.07%                   |
| 1                          | \$5,000,000         | \$5,000,000                 | \$0                   | 25.00%                   |

TESTIMONY ON SENATE BILL 599  
AGRICULTURAL VALUE ADDED PROCESSING CENTER

by

Dr. Charles Krider  
Professor, School of Business and  
Director, Business Research  
Institute for Public Policy and Business Research  
University of Kansas

presented to the

House Economic Development Committee  
March 16, 1988

A-2-14  
3/15/88

Mr. Chairman, I appreciate the opportunity to testify on behalf of SB 599 which establishes an agricultural value added processing center for the State of Kansas. I support this bill and believe that it is a positive step for the economic development of the state. Indeed an important element of Kansas' economic development strategy is to build on the state's existing strengths. The creation of an agricultural value added processing center does this by building on one of the major sectors of Kansas' economic base - agriculture.

The creation of an agricultural value added processing center is consistent with the findings and recommendations of the 1986 Kansas Economic Development Study. Part of the first recommendation in this study was that the state develop a strategy on "the application of science and technology to the value-added processing of Kansas commodities within Kansas...." The establishment of a value added processing center represents such a strategy.

Through the creation of a value added processing center, the state can have an effect on the demand side of the agricultural market. Much effort is now concentrated on improving the supply side of agriculture by developing methods to increase the yield and improve the quality of agricultural products. Such efforts have been highly successful; the supply of agricultural products is not a problem. More effort now needs to be applied to approaching the agricultural market from the demand side. Through value added manufacturing of agricultural products, the state can increase the demand for Kansas products.

In addition to increasing the demand for Kansas agricultural products, value added processing will also increase employment in the state, particularly in those rural areas which are in great need of economic development. Agricultural processing firms are naturally attracted to rural communities because that is where their resource base is. A Kansas value added processing center will be an attractive feature to food processing companies deciding to locate or expand in the state. The location or expansion of food processing companies will strengthen and build on the current economic base of Kansas by increasing demand for the state's products and increasing employment in areas of the state where it is badly needed.

The potential projects for an agricultural value added processing center are virtually unlimited contingent only upon the center's capacity to recognize untapped markets and formulate creative solutions. For example, Kansas could explore the possibility of introducing agricultural products to industries involved in the freezing and cold packing food specialties. Kansas agricultural goods could conceivably be used in frozen processed foods like donuts and pizza. Since consumer demand for low calorie, high quality frozen products has been steadily increasing, this industry could be a promising market that would increase demand for Kansas agricultural products.

A second example of an area that would provide potential for a Kansas agricultural processing center would be targeting those industries who manufacture "dry" bakery products. Grains grown and milled in Kansas could be the principal ingredient in cookies



and crackers. This could be a profitable market for Kansas processors since the Midwest Research Institute has predicted that the cookie and cracker industry will generate 1.7 percent annual real growth between 1985 and 1990.

As with other markets, the agricultural market is becoming increasingly competitive. It is important to realize that in order for Kansans to compete in the agricultural market they must not merely follow but rather lead in the development of new agricultural products and processes. The development of new products requires a commitment of time and financial resources and it must be a deliberate effort to be a success.

Other states, as well as foreign competitors, are making such a deliberate effort. Iowa and Nebraska have already established centers like the one proposed in this bill and have had success with these centers. Oklahoma is currently working on a proposal for such a center. By applying resources to value added research these centers can create new products, reduce the development time necessary for such products, and help processors gain greater shares of the market by beating the competition to the market with new products.

Iowa State's comparable research center is the Meat Research Center located on the campus of Iowa State. The center is funded by the state at the \$850,000 level. Its research focuses on developing new products and new processing technologies while penetrating new markets. For example, the center is currently targeting several European markets by altering existing processing techniques and developing new processing technologies

A-2-17  
3/15/8

that allow U.S. goods to be shipped to another country.

Nebraska has a food processing center affiliated with the University of Nebraska. This center is currently building new facilities which will include pilot plants for all four major food groups. The facilities will have analytical services, quality control, and sensory evaluation laboratories, as well as seminar space. FY 1988 funding was at approximately \$200,000.

I strongly support the creation of a value added processing center through SB 599; however, we also feel that a value added processing center needs not only be oriented toward providing coordination and information services for value added processing, which SB 599 provides for, but also needs to have a strong focus on doing actual research on value added processing, which this bill does not provide for.

I feel that the center's impact would be increased substantially by strengthening the bill to make the center more of a research-oriented center. Such a center needs to have the mandate and funding to provide research services in order to be an attractive feature to new and expanding processing firms. In order to Kansas to be a leader in agricultural processing and not just a follower, a deliberate commitment must be made to agricultural value added processing research. Although SB 599 in its current form is a positive move for Kansas' economic development, it can have a more powerful impact with the provision for research services, as well as coordination and information services.

Testimony

House Economic Development Committee

SB 473

Bill would allow 25% tax credit for investments in Kansas Venture Capital, Inc., certified Venture Capital Co.'s and local seed capital pools enacted in 1986 Session to be claimed in one year rather than four.

Recommended: By 1987 Interim Joint Committee on Economic Development.

Goal: Stimulate more aggressive investment in venture and seed capital in the state at almost no additional cost to the state. Venture capital company managements indicated the change would simplify the tax credit and make it more attractive. Since the total cap of \$24 million on investments eligible for the credits is not changed, the only additional cost to the state is the loss of investment income on the taxes not paid in by eligible investors.

Cash Flow: State's cash flow would also be affected in a minor way. Testimony in the Senate Assessment and Taxation committee indicated cash flow could be decreased in the current year by approximately \$1 million based upon investments already made which would now be eligible for the 25% credit immediately.

Status of Investments: -KVCII has subscriptions of \$6.6 million.  
Have called in half in cash.

-Two or three private venture capital companies have been certified.

-As of a short time ago no local seed capital companies had been certified, but several groups were in the process of seeking investments.

Conclusion: Accelerating the tax credit is an important and low cost way for the state to stimulate faster investment in venture and seed capital.

**SEDGWICK COUNTY DISTRICT ATTORNEY**  
**18th Judicial District**

Sedgwick County Courthouse  
Annex — First Floor  
535 North Main  
Wichita, Kansas 67203

CLARK V. OWENS  
District Attorney

Henry H. Blase  
Chief Deputy

Consumer Fraud and  
Economic Crime Division  
(316) 268-7921

TESTIMONY

TO: HOUSE ECONOMIC DEVELOPMENT COMMITTEE

FROM: DAVID H. MOSES, DIRECTOR, CONSUMER FRAUD AND ECONOMIC CRIME  
DIVISION OF THE SEDGWICK COUNTY DISTRICT ATTORNEY'S OFFICE

RE: HOUSE BILL 3038 - AN ACT RELATING TO UNSOLICITED TELEPHONE  
CALLS; CONCERNING THE REGULATION THEREOF; PROVIDING FOR  
CERTAIN PENALTIES

GIVEN: MARCH 15, 1988

Thank you for the opportunity to address HB 3038. As Director of the Sedgwick County District Attorney's Consumer Fraud Division, I have the opportunity to see firsthand the problems both local and state consumers face in the marketplace. A very important area of concern in consumer circles is the lack of specific legislation regulating telephone call solicitations.

Complaints about telephone call solicitations continue to increase in Kansas and other states. The question of the propriety of these type of phone calls revolves around the right of privacy versus the right of freedom of expression. States and courts have recently

*House Eco Devo*  
*Attachment 4*  
*3/15/88*

wrestled with these two sometimes conflicting rights.

Ironically, the Constitution of the United States provides protection for both the caller and the answerer. The First Amendment protects the caller's free expression, even when it includes the commercial speech of the telemarketers. On the other hand, support for protecting individuals from undesired telephone call solicitations by regulation of the industry is also founded upon the constitutional right of privacy.

Restriction on speech to protect the individual's right to privacy revolves around two primary factors. The two factors used to measure the strength of the interest in privacy are the forum in which the communication is received and the method of the communication. The interest in privacy is strongest when loud, audible communication cannot be avoided in the home.

Perhaps the most annoying kind of telephone call solicitation is one generated at random or sequentially by computer; this is called an automatic dialing-announcing device (ADAD). After reaching a subscriber, a recorded message is played to induce a purchase. Often, even if the subscriber hangs up, the ADAD does not disconnect until the entire message has been played. Consequently, these devices present a serious nuisance and invasion of privacy. In the event of a medical or other emergency, the problem of a subscriber not being able to use their phone until the recording has finished could mean the difference between life and death.

According to the National Conference of State Legislatures, thirty states have enacted, in some form, legislation or administrative rules or regulations protecting the individual's right

to privacy. These states include Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming (see Appendix "A").

The majority of these states restrict or eliminate automatic dialing-announcing devices (ADADs). Other provisions require restrictions on telephone listings, registration of automatic dialing-announcing device companies with the state, control of live operators, 3-10 second disconnect after hang-up and other restrictions on telephone call solicitations.

House Bill 3038 includes restrictions on the time of day telephone call solicitations may be made, provisions for live operators to inform the subscriber of the nature and originator of the call, and mandatory disconnection of an ADAD within 15 seconds of the subscriber hanging up. Another important provision requires telemarketing companies and ADAD operators to apply for a permit from the KCC in order to make telephone call solicitations in this state. Penalties can be imposed by the KCC against violators of the Act. This, hopefully, will assist in decreasing telemarketing fraud and abuses, and also help consumer protection agencies locate owners of companies in the event of complaints.

It is important to note that HB 3038 was originally drafted with input from affected agencies and interest groups. In fact, a great deal of input was received from Idelman Telemarketing, which currently does business in Hutchinson and Wichita. This is significant because

9-4-3  
3/15/88

the vast majority of their business is exempted from the definition of "telephone call solicitations" found in Sec. 1(b) yet they cooperated by discussing the issue and making suggestions. Also, I have enclosed, as Appendix "B", a letter from a business that conducts telemarketing in Kansas. The letter speaks for itself.

After a review of HB 3038, as introduced, some minor changes became necessary. The balloon contains several of these proposed changes. These changes are a result of discussions with legislators, affected agencies and interest groups. The term "telephone call solicitations" replaces "unsolicited telephone calls" in lines 17, 31, 40, 43, 47, 61, 72, 88, 96 and 101. This better describes the type of call being referred to in the legislation and avoids confusion about the type of call being regulated.

Lines 51 and 52 are changed to eliminate Sunday telephone calling and line 74 has the solicitors identify themselves during the call. Line 93 requires the applicant to disclose the names and addresses of all corporate officers; line 101 asks for the presentation or "pitch" being used; and, line 104 requires a description of the product or service being offered.

Finally, the balloon adds a new paragraph (f) to Sec. 5 and a new paragraph (2) to Sec. 7. Both of these provide for a due process hearing in their respective categories.

The problems of invasion of privacy and telephone fraud are a reflection of the expansion of modern communications technology into everyday life. The time is ripe for Kansas to join the thirty other states which have addressed this problem through legislation. Preventative legislation such as HB 3038 would protect the consumer



and still allow bona fide telemarketers to operate within certain time restrictions.

Respectfully submitted,

A handwritten signature in black ink that reads "David H. Moses". The first letter "D" is significantly larger and more stylized than the rest of the name.

DAVID H. MOSES  
Assistant District Attorney  
Director, Consumer Fraud &  
Economic Crime Division

DHM/gjr

APPENDIX "A"

UNSOLICITED PHONE CALLS AND AUTOMATIC DIALING ANNOUNCING DEVICES (ADAD)\*

| <u>STATE</u>                 | <u>Enacted Legislation or Admin. Rules/Regs.</u>   |
|------------------------------|--|
| 1. ALASKA . . . . .          | Alaska Stat., §45.50.472 (Passed 1978)             |
| 2. ARIZONA . . . . .         | Ariz. Rev. Stat §1-13-29                           |
| 3. ARKANSAS . . . . .        | Ar. Stat. Ann., §41-4162 (Passed 1977)             |
| 4. CALIFORNIA . . . . .      | Cal. Public Utilities Code, §2873<br>(Passed 1984) |
| 5. COLORADO . . . . .        | Colo. Rev. Stat., §18-9-311 (1985 Supp.)           |
| 6. CONNECTICUT . . . . .     | Conn. Gen. Stat. Ann., §16-256e (Passed<br>1983)   |
| 7. FLORIDA . . . . .         | Fla. Stat. Ann., §365.165 (Passed 1984)            |
| 8. GEORGIA . . . . .         | HB 43 (signed by gov. 4/16/87)                     |
| 9. HAWAII . . . . .          | Hawaii Public Util. Comm, Tariff 79-64             |
| 10. IDAHO . . . . .          | Idaho Code, §18-1670 (Supp. 1985)                  |
| 11. ILLINOIS . . . . .       | Illinois Commerce Comm. Rule 78-0037               |
| 12. INDIANA . . . . .        | HB 1061 (signed by gov. 4/24/87)                   |
| 13. MARYLAND . . . . .       | Md. Ann. Code Art. 78, §550 (Passed 1978/79)       |
| 14. MICHIGAN . . . . .       | Mich. Stat. Ann. 22.1467                           |
| 15. MINNESOTA . . . . .      | SB 184 (signed by gov. 5/28/87)                    |
| 16. MISSOURI . . . . .       | MO. Code Regs 4§240-32.090(1978)                   |
| 17. NEBRASKA . . . . .       | Neb. Rev. Stat., §87-307 (Passed 1979)             |
| 18. NEW YORK . . . . .       | NY Public Serv. Comm. Tariff 900-PSC               |
| 19. NORTH CAROLINA . . . . . | N.C. Gen. Stat. 75-30                              |
| 20. OHIO . . . . .           | HB 404 (signed by gov. 1936)                       |
| 21. OREGON . . . . .         | ORS 646.611  |
| 22. RHODE ISLAND . . . . .   | S.B. 873 (signed 6/25)                             |
| 23. SOUTH DAKOTA . . . . .   | Pub. Util. Guidelines (PUG)                        |
| 24. TENNESSEE . . . . .      | Tenn. Code Ann. 39-6-1102 (Supp. 1986)             |
| 25. TEXAS . . . . .          | Tex. HB 659 (Passed & signed by gov.<br>6/11/85)   |
| 26. UTAH . . . . .           | Utah Public Serv. Comm. Regulations                |
| 27. VIRGINIA . . . . .       | Virginia code, §18.2-425.1 (Passed 1978)           |
| 28. WASHINGTON . . . . .     | Wash. Laws 1985, Chap. 121 (Enacted 4/22/85)       |
| 29. WISCONSIN . . . . .      | Wis. Stat. Ann., §134.72                           |
| 30. WYOMING . . . . .        | HB 245 (signed by gov. 3/2/87)                     |

\*Information provided by The National Conference of State Legislatures  
(R. Frohling 9/28/87)



RECEIVED  
DISTRICT ATTORNEY  
18TH JUDICIAL DISTRICT

MAR 1 -

EXHIBIT "B"

March 11, 1988

Ms. Dianne Gjerstad  
Kansas State Representative  
State Capitol  
Topeka, Kansas 66612

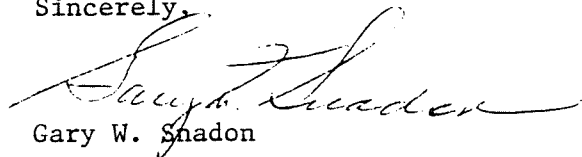
RE: HOUSE BILL #3038 - House Economic Development Committee  
Hearing: Tuesday, March 15, 1988

Dear Ms. Gjerstad:

At the request of David Moses, Assistant District Attorney, of Wichita, Kansas, I have read a proposed act regulating unsolicited telephone calls to consumers in the state of Kansas and find it to be a very fair and comprehensive bill....fair to the companies employing telemarketing in Kansas....and fair to the consumers as well. My only recommendation would be to make the bill a little more restrictive by totally eliminating phone solicitation on Sunday.

We have a substantial telemarketing program in Missouri and Kansas and recommend passage of this bill.

Sincerely,



Gary W. Snadon

GWS:pas

cc: David Moses

403 North Business 65  
Branson, MO 65616  
(417) 334-3196

a-4-7  
3/15/88

# HOUSE BILL No. 3038

By Committee on Energy and Natural Resources

2-24

PROPOSED AMENDMENTS  
3-15-88

*House Eco Dev  
Attachment 5  
3/15/88*

0017 AN ACT relating to ~~unsolicited telephone calls~~; concerning the telephone call solicitations  
0018 regulation thereof; providing for certain penalties.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. As used in this act, unless the context otherwise  
0021 requires:

0022 (a) "Automatic dialing-announcing device" means any user  
0023 terminal equipment which:

0024 (1) When connected to a telephone line can dial, with or  
0025 without manual assistance, telephone numbers which have been  
0026 stored or programmed in the device or are produced or selected  
0027 by a random or sequential number generator; or

0028 (2) when connected to a telephone line can disseminate a  
0029 recorded message to the telephone number called, either with or  
0030 without manual assistance.

0031 (b) ~~"unsolicited telephone call"~~ means any ~~unsolicited~~ tele-  
0032 phone call to any ~~subscriber~~ when the firm being represented by  
0033 such call has not had a prior business or personal relationship  
0034 with the ~~subscriber~~, and when the purpose of the call is to solicit  
0035 the purchase or the consideration of the purchase of goods or  
0036 services by the ~~subscriber~~; and

0037 (c) "commission" means the state corporation commission.

0038 Sec. 2. (a) The connection of an automatic dialing-announc-  
0039 ing device to a telephone line and the making of ~~unsolicited~~  
0040 ~~telephone calls~~ are subject to this act and to the jurisdiction,  
0041 control and regulation of the commission.

0042 (b) No person shall operate an automatic dialing-announcing  
0043 device or make ~~unsolicited telephone calls~~, except in accordance  
0044 with this act. Such actions, either individually or acting as an  
0045 officer, agent or employee of a person or corporation, are subject

"telephone call solicitation "

person

telephone call solicitations

any telephone call solicitation

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0046 to this act.

0047 (c) No person shall make ~~an unsolicited telephone call~~ or  
0048 operate an automatic dialing-announcing device in this state to  
0049 place a call which is received by a telephone located in this state  
0050 during the hours between 9 p.m. and 9 a.m. Kansas time on  
0051 Monday through Saturday and ~~on Sunday during the hours~~  
0052 ~~between 11 a.m. and 6 p.m.~~ Kansas time.

a telephone call solicitation

during the hours between 9 p.m. Saturday and 9 a.m. Monday

0053 (d) This act does not prohibit the use of an automatic dial-  
0054 ing-announcing device by any person exclusively for:

0055 (1) A school for purposes of contacting parents or guardians of  
0056 pupils regarding attendance; or

0057 (2) a public or private utility, petroleum refinery, chemical  
0058 processing plant or nuclear power plant for purposes of advising  
0059 about an actual or potential life-threatening emergency.

0060 Sec. 3. The provisions of this act regarding automatic dial-  
0061 ing-announcing devices and ~~unsolicited telephone calls~~ do not  
0062 apply to the following:

telephone call solicitations

0063 (a) An established business associate, customer or other per-  
0064 son having an established relationship with the person being  
0065 called;

0066 (b) any call generated at the request of the recipient;

0067 (c) a survey conducted to discover opinions on political  
0068 issues; or

0069 (d) a call made by nonprofit organizations exempt from fed-  
0070 eral income tax pursuant to section 501(c) of the internal revenue  
0071 code of 1986, as in effect on the effective date of this act.

0072 Sec. 4. The initiator of ~~an unsolicited telephone call~~ and the  
0073 operator of an automatic dialing-announcing device shall:

a telephone call solicitation

0074 (a) Upon initiation of the call with intended recipient:

(1) State the full name of the individual initiating the call;

0075 ~~(1)~~ State the name of the business or organization being  
0076 represented and the nature of the call;

(2)

0077 ~~(2)~~ inquire whether the person being called consents to  
0078 hearing a solicitation, or in the case of an automatic dialing-an-  
0079 nouncing device operator, whether the person being called con-  
0080 sents to hearing the recorded message; and

(3)

0081 ~~(3)~~ be able to provide the name and address of at least one  
0082 corporate officer.

(4)

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3/15/88

0083 (b) Hang up the phone, or in the case of an automatic dial-  
0084 ing-announcing device operator, disconnect the automatic dial-  
0085 ing-announcing device from the telephone line within 15 sec-  
0086 onds of the termination of the call by the person being called.

telephone call solicitations

0087 Sec. 5. (a) No person, organization or business shall make  
0088 ~~unsolicited telephone calls~~, or connect any automatic dialing-  
0089 announcing device to any telephone line in this state for the  
0090 purpose of making telephone calls to persons in this state, unless  
0091 a permit has been issued by the commission.

which

0092 (b) Application for such permit shall be made on forms pre-  
0093 scribed by the commission ~~and~~ shall require the applicant to  
0094 provide ~~information as to~~ the kind of automatic dialing-an-  
0095 nouncing device, if applicable, to be connected, the times of day  
0096 ~~unsolicited telephone calls~~ and automatic dialing-announcing

the names, addresses and telephone numbers of all corporate officers,

telephone call solicitations

0097 device calls are proposed to be placed, the anticipated number of  
0098 calls proposed to be placed during a specific calling period, the  
0099 average length of a completed call, the text of automatic dialing-  
0100 announcing device calls ~~and~~ the guidelines and points to be

,

and a copy of any presentation being used

0101 made by a live ~~unsolicited telephone call maker~~, along with the  
0102 name, address and phone number, the method to be used for  
0103 compensating telephone solicitors, whether a free gift or in-  
0104 ducement will be offered ~~and~~ such additional information as the  
0105 commission may require of the applicant.

telephone call solicitor

, a description of the product and services being offered and

for permits or renewal thereof

0106 (c) Applicants shall pay a fee as prescribed by the commis-  
0107 sion for such permits sufficient to cover the administrative costs  
0108 for the issuance of such permits.

or renewal

All moneys received for fees under this act shall be deposited in the  
state treasury to the credit of the public service regulation fund.

0109 (d) Permits ~~shall be renewable annually or upon review of~~  
0110 verified complaints made to the commission ~~or other~~ agency or  
0111 upon the commission's own initiative regarding the permith-  
0112 older's telephone solicitation. Permits may be subject to sus-  
0113 pension or revocation for any violation of this act.

may be renewed annually upon proper application accompanied by the  
renewal fee prescribed therefor. Each permit shall be subject to review  
upon

by any individual or any public

0114 (e) The commission may also consider the existing telephone  
0115 capacity in the state and may deny issuance or renewal of a  
0116 permit if the applicant's calling patterns would create telephone  
0117 traffic overload or would in other ways be detrimental to the  
0118 public access to telephone lines.

(f) If the commission denies the issuance or renewal of a permit  
or suspends or revokes a permit, without a prior hearing, the applicant  
or permitholder, as the case may be, may request a hearing before the  
commission by filing a request therefor within 30 days of the date of  
the order denying issuance or renewal or the suspension or revocation  
of the permit.

0119 Sec. 6. This act shall apply to any automatic dialing-an-

(g) The commission is hereby authorized to adopt rules and regulations

for the implementation and administration of this act, including hearing and notice procedures and other procedures deemed  
necessary for the administration of this act.

0120 nouncing device connected to any telephone line in this state,  
0121 both prior to and subsequent to, the effective date of this act.

(a)

0122 Sec. 7. Any person violating this act is guilty of a civil of-  
0123 fense and is subject to either, or both, of the following penalties:

, organization or business

(1) 0124 (a) A fine not to exceed \$1,500 for each violation, levied and  
0125 enforced by the commission on a complaint or on its own motion,

, which upon receipt shall be

0126 deposited in the state treasury to the credit of the state general  
0127 fund; or

telephone call solicitations

(2) 0128 (b) disconnection of all or part of telephone service to auto-  
0129 matic dialing-announcing devices or numbers making ~~unsolic-~~

0130 ited telephone calls for a period of time which shall be specified  
0131 by the commission but which shall not exceed 180 days.

(b) If the commission imposes a penalty under subsection (a), without a prior hearing, the person, organization or business upon which the penalty is imposed may request a hearing before the commission by filing a request therefor within 30 days of the date of the order imposing the penalty.

0132 Sec. 8. This act shall take effect and be in force from and  
0133 after its publication in the statute book.

4-5-4  
3/15/88



TESTIMONY BEFORE HOUSE ECONOMIC DEVELOPMENT COMMITTEE  
ON HOUSE BILL 3038  
Tuesday, March 15, 1988

Mr. Chairman, members of the committee. Good afternoon. My name is Jo Jenkins, and I am an Assistant General Counsel with the Kansas Corporation Commission (KCC or Commission). I am here today to present testimony on behalf of the Commission regarding House Bill 3038.

The Commission is neither supporting nor opposing the bill. However, the Commission wishes to point out several issues and/or concerns for the committee's consideration.

I believe some background on the Commission's actions regarding automatic dialing and announcing devices, also known as ADADs, will be helpful.

In mid-1980, the Commission issued an order and rule regarding the connection of ADADs. The rule applies to all types of solicitation calls made utilizing ADADs. It requires users of ADADs to provide telephone companies' exchanges originating and receiving such calls certain information regarding the use of ADADs prior to using such equipment. This information includes the prospective user's name, address and telephone number; the address and telephone number from which the ADAD calls are to be made; a description of the ADAD; the calendar days and clock hours during which the ADAD is to be used; and an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message. Certain information is also required to be provided to the called party during an ADAD-induced phone call. The call is to be disconnected by the calling party within 15 seconds of the called party hanging up. The rule also provides that no calls are to be made to emergency numbers.

When the Commission initially looked at this issue in 1980, the record revealed that the extent of ADADs usage in Kansas was unknown because there was no means of determining the extent of ADADs usage. Today, we know little more about the extent of ADADs use because the phone companies are not always notified as required by the existing rule. The Commission does not receive many complaints regarding ADADs usage. If the complainant has listened long enough to identify the caller, the Commission has generally been able to bring the ADAD user into compliance with the Commission's rule. However, the majority of the complaints the Commission receives involve interstate calls, that is, calls originated outside the state of Kansas, over which the Commission has no jurisdiction.

Members of Commission staff worked with Representative Gjerstad on a draft version of the bill prior to introduction. Some of staff's concerns were addressed at that time. Other concerns still exist.

First, Section 3 of the bill states that calls from an

*House Eco Devs  
Attachment 6  
3/15/88*

established entity having an established relationship with the person being called; any call generated at the request of the recipient, a political survey; or a call by a charitable, federally tax exempt organization is not subject to the act. This means that no permit is required, the calls may be made at any time, the 15-second disconnect rule is not applicable, and the caller does not have to identify itself at the beginning of the call nor obtain the called party's consent to hear the solicitation. The Commission's existing rule contains no exceptions, and none should be made here except perhaps when the call is generated at the request of the called party. In addition, one of the exceptions will be difficult to interpret, i.e., what is an "established relationship." Second, an effort will have to be made to determine the tax-exempt status of charitable organizations seeking exemption from the provisions of this act.

Second, there is a technical error in section 2, on page 2 at line 0052, which may have already been brought to your attention.

Third, although the bill permits the Commission to charge a fee sufficient to cover the administrative costs for issuing the requisite permits, the Commission feels there may be substantial fiscal impact. The Commission has not been asked to prepare a fiscal impact statement regarding this bill, but is in the process of preparing a statement at this time. At a minimum, passage of this bill would require additional staff time to process and investigate the applications, as well as investigate complaints. It might also be difficult to determine how to spread that cost to the applicants, given the Commission does not know how many applications may be received.

Fourth, there is nothing in the statute which would prohibit the calling of emergency numbers. The Commission is concerned that if emergency numbers are tied up by an ADAD-induced call that the public safety will be threatened.

In summary, the Commission has a rule in place. The Commission does not receive numerous complaints regarding ADADs. The Commission has concerns as to whether this bill addresses the major problems involved in the use of ADADs. In addition, the Commission believes that ADAD usage will be difficult to police. For almost 8 years, ADAD users have been required to provide information to the telephone companies, and we have been told that it is not consistently provided by ADAD users. Therefore, we are uncertain how well the permitting process will be followed. In addition, the bill cannot address interstate use of ADADs, over which the Commission has no jurisdiction. Again, the majority of complaints the Commission receives pertain to interstate calls.

Finally, the Commission is not certain that this bill will reduce the occurrences of fraud which has been a major problem associated with ADAD usage. I would also like to point out that jurisdiction with respect to fraud issues will lie with the Attorney General's office, not the Commission. In talking with a representative of the Attorney General's

office, it is my understanding the FCC is considering giving the states some jurisdiction to deal with interstate ADAD calls involving fraud. This would permit the Attorney General's office to have jurisdiction over fraudulent interstate ADAD calls affecting Kansas residents.



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March 11, 1988

Representative Phil Kline, Chairman  
House Committee on Economic Development  
Room No. 182-W

RE: H.B. 3038

Mr. Chairman & Members of the Committee:

I agree that there is a problem with unsolicited telephone calls. Many of these calls are generated by automatic dialing devices. These computer generated calls are placed to phone numbers without regard to any right of privacy of the individual. Even an unlisted phone number will not protect an individual from this intrusion. Most of these calls are solicitations or advertisements to buy goods or services from the caller. Many involve businesses which are using misrepresentations to sell these goods and services to Kansas consumers. Kansas consumers who fall prey to these

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solicitations often later file a complaint with my Consumer Protection Division.

Many states have attempted to regulate these phone solicitations. Some have used language quite similar to H.B. 3038. However, there are some problems in regulation of these calls. Questions of regulating interstate calls and free speech protection are always raised.

H.B. 3038 specifically authorizes the Kansas Corporation Commission to issue permits to use the automatic dialing devices on "any telephone line in this state." (Line 0120) This would provide regulation of intrastate use only. That would effectively remove the question of interstate regulation.

This bill provides for a fine of \$1,500 per violation. The penalty provided may not be stiff enough to put a lid on the problem. The reference in lines 0124 through 0127 referring to the "deposit in the State Treasury" is unclear. No enforcement by agencies other than the Kansas Corporation Commission is provided for in the legislation.

I support legislation to regulate these intrusive phone calls. However, they must not overreach the legislature's power to regulate. The regulation must be sufficiently stringent to curtail these annoyances. This bill is at least a step in that direction. I have asked for regulation of

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these devices in S.B. 713. I urge your support on legislation of these devices.

Sincerely,



ROBERT T. STEPHAN  
Attorney General

RTS:tk

cc: Representative Diane A. Gjerstad  
Room 272-W

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