

JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW AND CONSUMER PROTECTION

Senator Jerry Moran, Chairman

February 28, 1991 - Room 522-S - 10:05 a.m.

SB 131 - habitually giving worthless checks.

PROPONENTS:

Richard L. Schodorf, Consumer Protection Division Dir. (ATTACHMENT I)

Nola Fulston, Sedgwick County D.A.

Bernie Koch, Wichita Area Chamber of Commerce

Frances Kastner, Kansas Food Dealers Association (ATTACHMENT II)

OPPONENTS:

None appeared.

Subcommittee recommendation: to ask Chairman of Judiciary Committee to refer to Judiciary Council.

SB 133 - telemarketing fraud included in consumer protection act. (Bill requested by Sedgwick County delegation)

PROPONENTS:

Nola Fulston, Sedgwick Co. D.A.

Richard Shodorff, Consumer Protection Division Dir. (ATTACHMENT III)

OPPONENTS:

Mike Reeht, AT&T (ATTACHMENT IV)

Bob Storey, Idelman Telemarketing, Inc. (ATTACHMENT V)

Eva Powers, MCI Telecommunications Corp. (ATTACHMENT VI)

Ralph E. Skoog, Kansas Cable Television Association (ATTACHMENT VII)

Andrew Garen, Pioneer TeleTechnologies, Inc.

Subcommittee recommendation: to amend by striking line 25 beginning with the word "Such" thru line 28 and incorporating Richard L. Schodorf's recommendations; and to recommend favorable for passage as amended.

SB 134 - prohibiting commercial advertising by recorded message. (Bill requested by Sedgwick County Delegation)

PROPONENTS:

Richard L. Schodorf, Consumer Protection Div. Dir. (ATTACHMENT VIII)

OPPONENTS:

Bob Storey, Idelman Telemarketing, Inc. (ATTACHMENT IX)

Eva Powers, MCI Telecommunications Corp.

Ralph E. Skoog, Kansas Cable Television Association (See Attachment VII)

Andrew Garen, Pioneer TeleTechnologies, Inc.

Subcommittee recommendation: to amend so that calls are initiated by a live operator; and to recommend favorable for passage as amended.

SB 136 - investigations of violations of odometer fraud statutes.

PROPONENTS:

Richard Shodorff, Consumer Protection Div. Dir. (ATTACHMENT X)

OPPONENTS:

None appeared.

Subcommittee recommendation: to recommend favorable for passage.

SB 137 - penalties for stores who overcharge customers using uniform product codes to price items.

PROPONENTS:

None appeared.

OPPONENTS:

None appeared.

Subcommittee recommendation: to recommend unfavorable for passage.

SB 248 - allowing cancellation of health spa or buying club sales for three days after sale.

PROPOSERS:

Art Weiss, Dept. AG, Consumer Protection Div. (ATTACHMENT XI)

OPPOSERS:

None appeared.

Subcommittee recommendation: to recommend unfavorable for passage.

SB 249 - prohibits solicitations disguised as bills or invoices.

PROPOSERS:

Art Weiss, Dept. AG, Consumer protection Div. (ATTACHMENT XII)

Dave Nichols, Southwestern Bell Telephone (ATTACHMENT XIII)

OPPOSERS:

None appeared.

Subcommittee recommendation: to recommend favorable for passage.

TO: Chairperson and Senators of the Kansas Senate Judiciary Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas.

RE: Senate Bill No. 131-An Act concerning crimes; relating to habitually giving a worthless check.

Problem: Wichita currently has a serious worthless check problem. The number of misdemeanor charges for violation of the state worthless check statute have increased by five times since 1987. The problem has swamped the Wichita Police Department and severely hampered their effectiveness in the prosecution of these crimes. Recently, a task force was set up with members from the Wichita Area Chamber of Commerce, the Wichita Police Department, the Wichita City Prosecutor's Office, and the District Attorney's Office. It was determined that there existed a variety of reasons for the tremendous increase in misdemeanor violations. One reason which was examined as a possible cause was the change in state statute which provided an increase in the dollar amount involved to \$500 before the crime could be considered a felony. However, it was also determined that the increase in misdemeanors was not a result of merely a shift from felonies to misdemeanors since the total felony count also rose dramatically during this same period. It was determined that the sharp increases were due in large part to a lack of fear of the possible penalties by individuals who decided to engage in the criminal activity of habitually writing worthless checks.

The task force is attacking the problem in a variety of ways. The District Attorney's Office will be providing information to merchants and bankers, helping them detect worthless checks in advance of their acceptance, and helping bankers spot those individuals who would be engaged in the profession of passing hot checks. The Wichita City Prosecutor's Office and the Wichita Police Department are examining proposals for increased investigation and contact with the hot check writers. The District Attorney's Office will be cooperating with the Wichita Area Chamber of Commerce, the Wichita City Prosecutor's Office and the Wichita Police Department in presenting educational forums for the business community on hot check detection techniques. However, education by itself will not totally answer the problem. Major Wichita area merchants have informed the task force that they received between two and three times the number of hot checks at the Wichita stores than comparable outlets in Kansas City, Omaha and Des Moines. A message must be sent to the career hot check writer that Kansas has a get-tough attitude toward this problem.

Solution: Senate Bill No. 131 would revise K.S.A. 1990 21-3708, which is the current statute for habitually giving a worthless check. The revisions are fairly minor but the effect on career check writers could be substantial. The revision provides that a person may be prosecuted as habitually giving a worthless check if he had been previously convicted of misdemeanor count within the past five years. Under the previous statute it required two convictions before the individual could be considered an habitual worthless check writer. The proposed revision would also allow a conviction under the city.

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Attachment 1


misdemeanor ordinance to be considered a prior conviction under the statute. This revision would allow prosecutors to focus in on the problem check writers and provide a felony penalty which would operate as a deterrent to those who might think this would be an easy profession. Since this is an existing statute it would not change the proposed sentencing grid. Also, the penalties provided under this statute are similar to many of the states which surround Kansas. The provision was cited by the District Attorney in Omaha, Nebraska as one of the leading factors in the successful elimination of worthless checks as a major problem for that city.

The requested revision of the Worthless Check Statute would have minimal affect on the sentencing grid being considered by the Kansas Legislature. As can be seen from the attached sentencing range giving a worthless check has a severity level of ten while habitually giving a worthless check has a severity level of seven. The sentencing grid, also attached hereto, indicates that both severity levels seven and ten are designated for presumptive probation accept in rare cases. In both cases incarceration for a check offense should only occur in two specific situations. The first is those defendants who have two or more prior felony offenses against persons, and those are not entitled to presumptive probation. The second situation would arise in those instances where a judge departs from the presumption of probation. However, since a judge may only depart from a presumption of probation if he is able to articulate on the record substantial and compelling reasons for the departure, these instances should be rare. Therefore, amending the habitual check writing statute should have very little, if any, impact on any population in Kansas presence.

Sentencing Range - Non Drug Offenses

Legend

 Presumptive Incarceration

 Presumptive Probation

Severity Level	3+ Persons	2 Persons	1 Person + 1 Non-person	1 Person	3+ Non-person	2 Non-Person	1 Non-Person	2+ Mi-Judgment	No Record
I	216	203	189	176	162	149	135	122	108
II	162	152	142	132	121	111	101	91	81
III	108	100	94	87	81	73	67	61	54
IV	90	85	79	73	67	62	55	50	45
V	72	67	63	58	54	49	45	40	36
VI	43	39	36	34	30	27	24	20	18
VII	32	29	27	24	21	18	16	13	12
VIII	21	19	18	16	14	12	10	10	8
IX	16	14	12	12	10	9	8	7	6
X	12	11	10	9	8	7	6	6	6

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**NON-DRUG
Severity Level 7 Continued**

<u>KSA Number</u>	<u>Description of Statute</u>	<u>Class</u>	<u>P=Person N=Nonperson</u>
21-3708	Habitually Giving a Worthless Check -----	E	N
21-3715*	Burglary (entrance into a building, etc.) -----	D	N
21-3718*	Arson (loss of \$25,000 or less) -----	C	N
21-3720*	Criminal Damage to Property (loss of \$50,000 or more) -----	D	N
21-3726	Aggravated Tampering with a Traffic Signal -----	E	N
21-3729*	Unlawful Use of a Financial Card (loss of \$50,000 or more) -----	D	N
21-3742*	Throwing Objects from a Bridge or Overpass (harm to property) -----	E	N
21-3753	Grain Embezzlement-----	C	N
21-3755	Computer Crime, Unlawful Computer Access ----- (loss of \$150 or more)	E	N
21-3802	Sedition -----	D	N
21-3805*	Perjury (false statement made in a felony trial) -----	D	N
21-3901	Bribery -----	D	N
21-4401	Racketeering -----	D	N

5/15

**NON-DRUG
SEVERITY LEVEL**

10

<u>KSA Number</u>	<u>Description of Statute</u>	<u>Class</u>	<u>P=Person N=Nonperson</u>
21-3601	Bigamy -----	E	N
21-3602	Incest -----	E	P
21-3605	Nonsupport of a Child or Spouse -----	E	N
21-3606	Criminal Desertion -----	E	P
21-3707*	Giving a Worthless Check (loss of \$500 to \$50,000) -----	E	N
21-3734	Impairing of a Security Interest (loss of \$150 or more) -----	E	N
21-3735	Fraudulent Release of a Security Agreement -----	E	N
21-3736	Warehouse Receipt Fraud -----	E	N
21-3745	Theft of Telecommunications Services ----- (second or subsequent offense, loss of \$150 or more)	E	N
21-3748	Piracy of Sound Recordings -----	E	N

1-5/5



EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

OFFICERS

PRESIDENT
J. R. WAYMIRE
Leavenworth

SENATE JUDICIARY SUB-COMMITTEE

2-21-91

1st VICE-PRESIDENT
SKIP KLEIER
Carbondale

SUPPORTING SB 131

2nd VICE-PRESIDENT
TREASURER
MIKE BRAXMEYER
Atwood

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealer's Association. Our members include manu-factuers, wholesalers and retailers of food products in Kansas.

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

BOARD OF DIRECTORS

CHAIRMAN
MIKE DONELAN
Colby

As many of you have heard me say over the years we are in favor of ANY measure which would help reduce the cost of doing business for Kansas retailers. We have always supported measures to reduce THEFT whether that is in the form of goods or services.

STEVE ASHTON
Salina

DONALD CALL
Cedar Vale

When the Senate Judiciary Committee was considering SB 30 and we heard Senator Morris discuss this concept. After reading SB 131 we believe passage of this measure will be a step in the right direction to send a strong message to those who habitually give worthless checks.

GLEN CATLIN
Herington

DUANE CROSIER
Seneca

TOM FLOERSCH
Fredonia

We respectfully request that you recommend passage of SB 131 when you report back to the Senate Judiciary Committee.

ROY FRIESEN
Syracuse

ARNIE GRAHAM
Emporia

STAN HAYES
Manhattan

Frances Kastner

Frances Kastner, Director
Governmental Affairs, KFPA

CHUCK MALLORY
Topeka

JOHN McKEEVER
Louisburg

LEONARD McKINZIE
Overland Park

BILL REUST
Parsons

BILL WEST
Abilene

JOE WHITE
Kingman

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

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Attachment 2

TO: Chairperson and Senators of the Kansas Senate Judiciary Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime
Division of the Office of the District Attorney, 18th Judicial District,
Sedgwick County, Kansas.

RE: Senate Bill No. 133-An Act concerning Consumer Protection; relating
to Telemarketing Fraud.

Problem: Telemarketing fraud has been labelled as the crime of the 1990's. Fraudulent telemarketers are using 21st century marketing techniques and we are fighting fraud with 1950's approaches according to the nation's top consumer protection officials. Although no one knows exactly how much money is lost in telemarketing scams, the North American Securities Administrators Association estimates that telemarketing fraud costs American consumers ten billion dollars a year. Common ploys include deceptive sales pitches for real estate time-shares; bogus investments in stocks, rare coins, or natural resources; overblown charges for magazine subscriptions and vitamins; and worthless environmental protection devices, such as do-it-yourself radon detectors, useless water filters, etc.

Kansas currently has laws which protect consumers against abusive door-to-door selling practices, by allowing consumers a three day cooling off period in which to cancel the transaction. Telemarketing sales initiated by the supplier should be placed in the same classification. Many consumers allow themselves to be high-pressured into turning over their credit card numbers or orally agreeing to purchases and then regretting the transaction immediately after hanging up the phone. It is also interesting to note that the telemarketer calling you may know more about you than you know yourself. Lists are commonly bought, sold and massaged which will provide the telemarketer with information on your buying practices which allows said telemarketer to develop a strategy of sale designed to pressure you into a purchase.

Solution: Senate Bill No. 133 provides for the above-mentioned cooling off period. The proposed statute not only covers telemarketing sales pitches initiated by the supplier, called cold calls, but also there are situations where a postcard or other written notice is sent through the mail which entices the consumer to call under the guidance of a free gift in order to a telephone solicitation.

The proposed statute provides that any verbal agreement made a consumer to purchase goods or services from a telemarketer shall not be considered valid and legally binding unless the telemarketer receives from the consumer a signed contract that discloses the full terms of the sale is agreed upon. The proposed statute exempts out transactions that:

1. Have been made in accordance with prior negotiations with a consumer;
2. In which the business establishment making the solicitation has made a prior sale to the consumer or has a pre-existing business relationship with the consumer;
3. In which the consumer purchases goods or services pursuant to an examination of a television, radio or print advertise-

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ment, or a sample, brochure, catalog or other media material of a marketer.

The type of statute as represented in Senate Bill No. 133 has been enacted in a number of states including Maryland and Florida and officials from those states have reported that the statute has gone a long way in convincing fraudulent telemarketers to operate in other jurisdictions.

The cooling off period allowed under the statute would allow individuals who have been high pressured into purchasing merchandise over the phone an opportunity to discuss the transaction with someone they trust such as a son, daughter, spouse, or good friend before being legally bound under such purchase. This is particularly advantageous for older adults who are often targets of fraudulent telemarketing scams.

We feel that the language in Senate Bill No. 133 will provide Kansas consumers with far more protection than would be afforded under bills which require telemarketers to adhere to a particular standard of conduct and to hang up when the consumer expresses a lack of interest. The problem with the so-called "Polite Bills" is that the good telemarketers already comply with these requirements and bad telemarketers will ignore them.

Our office has been in contact with local business people and they have expressed concern that the net cast by the statute might also inhibit legitimate telemarketing practices. In the conversations which have taken place three exemptions have been suggested to provide for more flexibility within the statute. The exemptions can be generally listed as follows:

1. An exemption for services which are cancellable at any time and refunds paid on a prorated basis. Also, goods would be exempted if they are returnable for a full refund upon reasonable examination. These rights would need to be thoroughly explained in any telephone sale.
2. Transactions would be exempted where in the consumer was notified at the time of sale that said consumer possessed a three day right to cancel the transaction. The seller should be put on strict proof regarding the fact that said notice was given to the consumer. This should not be a difficult problem as most telemarketers record the entire sales process.
3. Exemption for contracts wherein the sale, lease or rental of consumer property or services contains a purchase price of \$50.00 or less, whether in single or multiple contracts.

Our office is presenting these exemptions in an effort to bring as much information as possible before the committee.



Mike Reecht
State Director
Government Affairs
Kansas

Capitol Tower
400 SW 8th Street, Suite 301
Topeka, KS 66603
Phone (913) 232-2128

**TESTIMONY OF MIKE REECHT
REGARDING SB 75 AND SB 133**

My name is Mike Reecht. I am the State Director of Government Affairs for AT&T in Kansas. The purpose of my testimony is to introduce amendments to SB 75 and SB 133 regarding the telemarketing industry as it is applicable to Kansas.

AT&T is a firm that conducts telemarketing operations on a nation-wide basis. It encourages all efforts that are designed to enhance the image of the telemarketer. SB 75 is an attempt to stop unwanted calls from terminating at residence telephones who elect not to receive such calls. The methodology prescribed in SB75, that is to limit the calls by additional listings in the directory or insuring that no call is made to a non published number will fall short of accomplishing its purpose as it might be applicable to national telemarketers.

It is important for the committee to recognize that national telemarketers do not use local telephone directories in the course of conducting their business. Rather, national telemarketers obtain call lists from suppliers of such lists on a nation-wide basis. It is essential that if a residential customer decides that he or she does not want to receive calls from national telemarketing firms that he or she notify a service that would, in fact, remove his or her name from national telemarketing lists. Although listing in the local phone directory may in fact stop calls of local telemarketers to a particular residence, it does little to stop calls by national telemarketing operations.

It is the intent of my amendment to provide a methodology where by a customer can notify the Kansas Corporation Commission in writing that he or she does not wish to receive such calls from national telemarketing firms. The Kansas Corporation Commission would in turn forward the request by the customer to a national telemarketing association to insure that his or her name will be removed from national lists. Such a list is maintained by the Direct Marketing Association.

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AT&T concurs with the purpose of SB 75 in its attempt to stop calls from customers who do not wish to receive calls from telemarketers. It is important, however, that the remedies suggested in SB 75 do in fact achieve the results anticipated. In my opinion, national telemarketing calls would not be deterred under the legislation in its current format.

I have proposed an additional amendment regarding the disconnect interval found on page 2 of the bill. It changes 15 seconds to 30 seconds. Typically, computer placed calls can disconnect within a matter of seconds but due to local telephone office technology, the additional time frame needs to be built into the legislation.

With regard to SB 133, AT&T sells its services and products through its national telemarketing operation. AT&T long distance customers today within one day of ordering the service can have available to him or her plans such as Reach Out America, Pro Watts or some of the other long distance savings programs AT&T offers.

SB 133 would require AT&T to obtain written authorization from the customer before implementing such savings plans. AT&T does not feel that this is in the best interest of the telecommunications consumer. AT&T does not feel it should be the intent of SB 133 to diminish in any way what the customer is able to obtain today, but rather to safeguard customers from disreputable companies. To that end, AT&T submits an additional exemption to be included in the bill that would exempt telemarketers from the provisions of the bill if the customer is assured of a full refund. The amendment language suggested by AT&T goes to that point.

AMENDMENT NO. —

TO SB 133

Amend Sec. 3 of SB 133 by amending page 3, line 17, by adding a new subsection (d) to read as follows:

"(d) In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within 7 days after receipt by the consumer, and the seller will process the refund within 30 days after receipt of the returned merchandise by the consumer or the refund for any services not performed or a prorata refund for any services not yet performed for the consumer."

TESTIMONY OF BOB W. STOREY
SENATE BILL NO. 133
SENATE JUDICIARY SUBCOMMITTEE

Members of the Committee:

I represent DeHart and Darr Associates, Inc., a member of the Direct Marketing Association ("DMA"). DMA is the largest and oldest national trade association serving the direct marketing industry. Members of DMA market goods and services through direct response advertising methods such as direct mail and catalog, telemarketing, magazine and newspaper ads, and broadcast advertising. The organization has 15 members located in 8 Kansas cities and 47 members with operations in Kansas.

As we have stated previously during testimony opposing Senate Bill No. 134, we do not object to the intent of the legislation contained in Senate Bill No. 134 and neither do we object to the intent of the legislation contained in Senate Bill No. 133. However, we respectfully ask that an additional exemption be added to the bill. This requested exemption is a common practice of DMA today and is contained in the laws of other states.

The exemption would be contained in section 3 and could be either of the following:

Sec. 3. The provisions of sections 1 through 4 do not apply to a transaction:

- 1) In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within 7 days after receipt by the consumer, and the seller will process the refund within 30 days

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after receipt of the returned merchandise by the consumer.

or

2) In which:

- (1) The consumer may obtain a full refund for the return of undamaged and unused goods to the seller within 7 days of receipt by the consumer; and
- (2) The seller will process the refund within 30 days of receipt of the returned merchandise by the consumer.

These excerpts were taken from the laws in Florida and Maryland. DMA would have no problem complying with these laws and would have no problem complying in the State of Kansas if the committee believes that Senate Bill No. 133 is necessary for the consumer.

Thank you for your consideration.

TESTIMONY OF MCI TELECOMMUNICATIONS CORPORATION
ON SENATE BILL NO. 133

My name is Eva Powers. I am local counsel for MCI Telecommunications Corporation. You heard yesterday from LeAnn Chilton, Governmental Affairs Manager with MCI on Senate Bill 75. Unfortunately she was unable to stay over to provide testimony on Senate Bill 133 today.

MCI presently employs a telemarketer to market some of its services. MCI does not use automated dialing devices only live marketers. MCI is concerned that its telemarketer and the industry generally are favorably perceived by the public.

To that end, MCI in October of 1990 submitted the following five guidelines to the FCC. The guidelines are:

1. Uniform, minimum disclosures in all sales solicitations;
2. Monitoring procedures to assure that telephone sales representatives adhere to approved procedures;
3. Verification of all sales by individuals independent of the carriers' sales organizations to insure that the consumer has authorized a change in service;
4. Audits by independent, outside firms to assure conformance to each step of the procedure; and
5. Free and convenient return to the original long distance carrier in the case of unauthorized service conversion.

In MCI's opinion, the implementation of these five guidelines and the ability of customers to notify the Direct Marketing Association to remove their names from national lists alleviate concerns related to telemarketing.

MCI applies these guidelines to its telemarketing activities. 100% of its telemarketing sales calls are independently verified by the placing of a second call by a different group than that which placed the initial sales call. The verification call is made within one hour of the initial call.

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If, in spite of these precautions, a customer is switched to MCI without having given authority for the switch, MCI pays the cost to switch the customer back to the original carrier.

In fact, if a customer, any time in the first 90 days for any reason, or no reason, wishes to be switched back to his former carrier, MCI will pay the change charge.

Senate Bill 133 would require MCI to obtain written authorization from a customer before starting to provide service to that customer. MCI presently mails an authorization card to new customers and requests that they sign and return the card. Experience has demonstrated that very few people return the card. Apparently they find it inconvenient to provide such written verification. The customers are accustomed to be able to obtain telephone service by simply placing a call.

MCI also employs the accounting firm of Arthur Anderson to assure conformance with the five guidelines.

MCI actively supports the concept of telemarketing standards; however, it is necessary that any standards which are adopted can be enforced. As was pointed out by some conferees yesterday, the interstate nature of the telemarketing business makes it at a minimum difficult and expensive for a state to enforce state specific standards. For a regulated company, such as MCI, enforcement is not a problem since the Corporation Commission has jurisdiction over its services and over complaints against the company. For unregulated services and goods, the situation is not so simple. MCI is prepared to work with the committee to develop workable standards.

**COMMENTS OF THE KCATV ASSOCIATION
TO CRIMINAL SUBCOMMITTEE OF THE KANSAS SENATE
FEBRUARY 20, 1991**

Submitted by Ralph E. Skoog,
Attorney for KCATV Association
Re: Senate Bill No. 133 and 134

The cable television industry is concerned about the provisions of S.B. No. 133 and No. 134 by reason of the fact that in their regular relationship with the persons in their franchise area, cable television systems make substantial use of telephone contacts with those that are their subscribers and those to whom they wish to sell their services. The provisions of the two bills may have serious and important and unintended consequences to others and to our industry. In reference to S.B. No. 133, we recognize that we regularly rely upon verbal agreements and requests by consumers to provide our services for both long-term and ad hoc services. The requirement by the Bill that every such telephone provision must await confirmation in writing and therefore most likely by mail and return mail might seriously impede the desire for service by consumers from cable television systems. One of our ongoing problems at present is to have a ready and timely response to requests for hookup and changes of service. Certainly pay per view agreements might be affected by these provisions even though we understand that such is not the intent of the sponsors of the Bills.

Representatives of our industry have met with the prosecutors in Sedgwick County and we hope to be able to work with them and others interested in this problem so that their perceived needs may be fulfilled without outlawing bona fide commercial relationships with consumers or our customers.

The provisions of S.B. No. 134 apparently propose to outlaw the use of automatic dialing and recorded messages.

It appears to us that the distinctions made in the existing language and these provisions are an invitation to litigation which might be frivolous in nature. The broad brush effect may outlaw state of the art equipment and significantly inhibit important commercial enterprise within the state.

Thank you for the opportunity to appear.

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Attachment 7

TO: Chairperson and Senators of the Kansas Senate Judiciary Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime
Division of the Office of the District Attorney, 18th Judicial District,
Sedgwick County, Kansas.

RE: Senate Bill No. 134-An act concerning Consumer Protection; relating
to Delivering Commercial Advertising by Recorded Message

Problem: On a daily basis Kansas citizens are being barraged by recorded sales pitches from automatic dialing machines. Many of these recorded messages entice the consumer into believing that they have won a free gift or vacation and then direct them to call a 900 number in order to receive their prize. In three such cases investigated by the Sedgwick County District Attorney's Office and the Attorney General's Office for the State of Kansas, the entire promotion turned out to be a fraud and there are presently pending two district court cases involving said promotions. In addition to the fraudulent propensity of many of these calls, many Kansas citizens are aggravated by the method in which they are conducted. The typical case involves an operation from Florida where a boiler room operation is set up with a computer generated telephone calling system which randomly calls in sequence each number of a given prefix. Local hospitals have had their phones tied up as the phone calls begin coming in to emergency areas not otherwise listed. Large businesses have been affected as the automatic dialing machine calls one desk after another through an entire department. A Sedgwick County resident recently could not make an emergency call because the automatic dialing machine would not disconnect and that individual was required to go to a neighbor's house to use their phone in order to obtain help in the emergency. Individuals who have unlisted phone numbers still receive these intrusive calls because of the sequence dialing system. Our office has received more calls from consumers expressing dissatisfaction with being harassed by recorded sales pitches than any other problem in the history of the office.

Solution: Senate Bill No. 134 provides an answer to this problem. This proposed legislation would forbid telemarketers from using the telephone lines to contact consumers to deliver recorded messages for the purposes of delivering commercial advertising. The bill provides for exceptions in the following circumstances:

1. Where the subscriber has consented or authorized the contact;
2. Where the subscriber has voluntarily provided his telephone number to the supplier;
3. Where the purpose of the recorded message is to advise consumers concerning merchandise or goods or services which were previously ordered.

The type of language found in Senate Bill No. 134 has been acted in a number of states including the state of Michigan. We were told by one fraudulent telemarketer who was selling phony trips to Florida that if we didn't want people like him calling into our state we should enact a prohibition like many of the southern states because he didn't call into those states.

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Attachment 8*

TESTIMONY OF BOB W. STOREY
SENATE BILL NO. 134
SENATE JUDICIARY SUBCOMMITTEE

Members of the Committee:

I represent DeHart and Darr Associates, Inc., a member of the Direct Marketing Association ("DMA"). DMA is the largest and oldest national trade association serving the direct marketing industry. Members of DMA market goods and services through direct response advertising methods such as direct mail and catalog, telemarketing, magazine and newspaper ads, and broadcast advertising. The organization has 15 members located in 8 Kansas cities and 47 members with operations in Kansas.

DMA and its members are opposed to Senate Bill No. 134. We believe that the language contained in this bill is unnecessary since the intent of the legislation is already being enforced by the industry and is consistent with the DMA guidelines that no recorded messages be done without a live operator.

If the committee believes that Senate Bill No. 134 is necessary, then we suggest the following amendments;

- 1) Section (b), line 23 on page 1, add the following language after the word "message":

. . . without the use of a live operator. . .

or

- 2) Section (b)(1), line 27 on page 1, add the following language after the word "caller":

. . . including a live operator. . .

These amendments would simply clarify the intent of the law.

Thank you for your consideration.

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TO: Chairperson and Senators of the Kansas Senate Judiciary Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime
Division of the Office of the District Attorney, 18th Judicial District,
Sedgwick County, Kansas.

RE: Senate Bill No. 136-An act concerning Consumer Protection; relating to
Odometer Fraud.

Problem: The practice of tampering with the odometer readings of vehicles has been a major problem for many of years. A recent story on the CBS program "60 Minutes" showed graphically that the problem continues to be one of the most extensive consumer frauds perpetrated against our citizens. The "60 Minutes" program went to Houston, Texas and ran title histories on a number of automobiles being offered for resale in the Houston area. The results indicated that many of these automobiles contained odometers which had been altered after sale and before resale. Odometer fraud is a national problem for the primary reason that thousands of dollars can be made by a middle man with just a spin of the dial. The Kansas Department of Motor Vehicles, the Attorney General's Office and County and District Attorneys throughout the state attempt to combat this problem. However, the investigation and prosecution of these criminals is hampered by statutes which do not allow for proper investigative powers to detect major players in this fraud.

Solution: Kansas presently has both civil and criminal laws sufficient to provide for the illegal practice of odometer fraud. However, the civil statute lacks any investigative powers to be provided to the Attorney General or Kansas County and District Attorneys. Senate Bill No. 136 provides powers which would enable law enforcement officers to be able to investigate fraudulent odometer activity rather than having to wait for a completed case to walk through the door. The investigative powers set forth in Senate Bill No. 136 have been taken from the investigative powers set forth in the Kansas Consumer Protection Act.

We do not believe there needs to be any other changes in the current odometer statute, as set out in K.S.A. 1990 50-647 through 50-653.

A minor change needs to be brought to the committees attention on page two of Senate Bill No. 136 line number 10. The words, "imposed under subsection (a)(2) of K.S.A. 50-634 and amendments thereto" should be substituted by the following language, "imposed under section K.S.A. 50-651 and amendments thereto".

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Attachment 10



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

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Testimony of
Deputy Attorney General Arthur Weiss
On Behalf of Attorney General Robert T. Stephan
Before the Senate Judiciary Sub-Committee
on Criminal Law and Consumer Protection
RE: Senate Bill 248
February 26, 1991

The Kansas Consumer Protection Act contains a provision allowing consumers three days to cancel door-to-door sales. Many consumers who complain to our office are unaware that the three-day cancellation right does not apply to other high-pressure sales. Two areas in which we have had problems which use high-pressure sales are health spas and buying clubs.

We are all aware of the many problems that enforcement agencies have had with health spas in the past. Another area of high-pressure sales tactics is that of buying clubs. When I speak of buying clubs, I do not mean wholesale clubs such as the Sam Waltons locations in Kansas City or Wichita. This bill specifically exempts locations which have merchandise on hand for immediate purchase by the consumer.

The type of buying clubs we speak of are those which charge in the neighborhood of \$800 for a lifetime membership, entitling the consumer to order merchandise through catalogs

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at discount prices. These clubs often collect large amounts of money up front, much like health spas. Consumers must make many major purchases in order to recoup the supposed savings. We have had particular problems with a club called NuMart, which operated and then went out of business in Topeka, Wichita, and the Kansas City areas.

This bill would simply provide consumers with a three-day "cooling off" or rescission period, during which they would have the right to cancel such transactions.

It is our belief that no legitimate business transaction would be unable to withstand the three days of scrutiny, which this bill would provide. For these reasons, Attorney General Robert Stephan and his Consumer Protection Advisory Council asks for your support in the passage of Senate Bill 248.



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Testimony of
Deputy Attorney General Arthur Weiss
On Behalf of Attorney General Robert T. Stephan
Before the Senate Judiciary Sub-Committee
on Criminal Law and Consumer Protection
RE: Senate Bill 249
February 26, 1991

Attorney General Robert Stephan and his Consumer Protection Advisory Council have requested the introduction of Senate Bill 249 to solve a growing problem which faces all Kansas consumers, most particularly small businesses. Because the "yellow fingers" symbol used by Southwestern Bell and other local yellow pages providers has never been trademarked, it is often used with solicitations disguised as invoices addressed to small businesses.

The solicitations are designed to trick businesses into believing that the notice is a renewal for their local telephone company yellow pages directory. In fact, most of these solicitations are from private yellow page services. Many of the books, if ever printed, are only distributed to those who purchase a listing. Therefore, their usefulness is highly suspect.

The Attorney General and his Consumer Protection Advisory Council asks that such deceptive solicitation practices be

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prohibited. This bill requires prominent disclosure to the consumer that the solicitation is, in fact, just that, and that there was no obligation on the part of the recipient unless the recipient wants to purchase the offered goods or services.

In the case of yellow pages directories which are not affiliated with a local telephone service, an additional disclosure is required. It specifically points out to the recipient that the directory is not affiliated with the local telephone company classified directory.

Thank you for the opportunity to be heard on Senate Bill 249.

12-2/2



"The One to Call On"SM

David C. Nichols
District Manager
Public Affairs

WRITTEN TESTIMONY ON SENATE BILL 249

Thank you Mr. Chairman and Committee Members. My name is David Nichols, representing Southwestern Bell (SWB). I'm here to testify in support of Senate Bill 249. SWB continues to receive numerous complaints from our customers concerning their directory listings. In general, our customers receive a directory bill that looks like their Southwestern Bell directory bill and they pay it, when in reality, they have paid a directory bill from another directory service, not their local SWB directory. We believe the Attorney General's office proposal would help correct this misconception and we support their efforts.

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