

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 13, 1997 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee: Representative David Adkins
Rob Hodges, Kansas Telecommunications Association
Bob Story, Direct Marketing Association
Mike Reeht, AT&T

Others attending: See attached list

Chairperson Myers announced that today the Committee would hear testimony on **HB 2263**. The Chair opened the meeting to discussion regarding the Committee minutes of January 28, 29, 30, 31 and February 4 and 6. Representative Sloan made a motion to accept the minutes and the motion was seconded by Representative Stone. Motion passed.

The Chair made a comment that he wanted the Committee to be aware that the requested information regarding LIEAP (Low Income Energy Assistance Program) was distributed by Staff in the meeting of February 11, 1997 (Attachment #1).

Hearing on HB 2263 - an act concerning consumer protection; relating to consumer telephone calls

The Chair requested that Staff brief the Committee on **HB 2263**. Lynn Holt, Research Department, mentioned that this bill is basically addressed to trying to find a method of dealing with unscrupulous telemarketers and telecommunications solicitors. She mentioned the bill required in new Section 1 that all telecommunications solicitors and telemarketers doing business in Kansas to register with the Attorney General for one year and the registration and renewals would cost \$400. The Attorney General may prescribe the form and manner of application for information about telephone solicitors and telemarketers. The registration application would be accompanied by an irrevocable consent appointing the Attorney General to receive service of process or summons on behalf of the telephone solicitor or telemarketer and therefore represent them in any legal proceeding. Any violation of these provisions would be considered to be an unconscionable act (f) under new Section 1 and defined better under K.S.A. 56-27. Section 3 requires that the Kansas Corporation Commission promulgate rules and regulations that require telecommunications public utilities to inform parties that it is a violation of the Kansas Consumer Protection Act for person to make an unsolicited call to someone who is listed in a do not call telephone directory. In new Section 3 in italicized language the bill specifies two methods of notifying parties and authorizes telecommunications public utilities to provide for the identification in a telephone directory those parties who do not wish to receive unsolicited telephone calls.

The Chair recognized Representative David Adkins, who spoke in favor of the bill (Attachment #2).

The Chair recognized Rob Hodges, Kansas Telecommunications Association, who spoke in opposition of the bill (Attachment #3).

The Chair recognized Bob Story, Direct Marketing Association, who spoke in opposition to the bill (No written testimony).

The Chair recognized Mike Reeht, AT&T, who spoke in opposition to the bill (Attachment #4).

The Chair mentioned that tomorrow, February 14, the Committee will work **HB 2263**. The Chair requested that Staff get information about the a similar law from the State of Oregon since the Committee would be working the bill tomorrow.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for February 14, 1997.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 12, 1997

NAME	REPRESENTING
Rob Hodges	Ks Telecom Assn
Quynna Stan	AT&T
Lorna Funt	
Dion Casey	
Jim Meyer	KS Gov. Consulting
Drury Campbell	R. Rice Law Office
Debra Salts	A.G.
Gail Bright	A.G.
Denny Koch	SW Bell
JOHN C. BOTTENBERG	WESTERN Resource
Mike Reecht	AT&T
WALKER HENDRIX	CURB
Bob Storey	DMA
BOB GRANT	KCC



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

February 7, 1997

Ms. Lynn Holt, Legislative Research
State House Room 545-N
Topeka, KS 66612

Dear Lynn:

In response to your request, I am enclosing a summary of the Low Income Energy Assistance Program. Income limits are set at 110% of poverty, according to household size. This provides assistance to the poorest people who are least able to pay large energy bills. Last year, 30,131 households qualified for assistance and we expect to serve about the same number in 1997.

The Department has received many phone calls from people concerned about increased gas and propane bills. Many who inquire have too much income to qualify for LIEAP. Households with income over the LIEAP guidelines, are referred to the Red Cross, Salvation Army or other community helping organizations. These organizations usually set their own income guidelines and requirements, but are limited by the donations they receive.

LIEAP benefit levels were increased this year due to 1996 carryover. In addition, the President recently provided "Emergency Contingency" LIEAP funds due to the cold weather experienced this winter. The increased funding will allow 1997 average benefits to increase to \$324 per household, compared to \$209 in 1996. In order to stress the household's responsibility to pay the remaining energy obligations, applicants are required to demonstrate self-payments *prior* to receiving LIEAP. Kansas is one of a few states implementing a self-payment requirement.

The President's proposed budget includes level funding for 1998 and the same amount in forward funding for 1999. This is a reversal of his previous plan to cut funding by 25% in 1998 and to phase the program out over five years. LIEAP continues to have bipartisan congressional support for several reasons: 1) concern about elderly people living on very low incomes, and 2) concern about vulnerable families who may be affected by welfare reform.

If legislators have questions about LIEAP, I can be reached at 296-4047. Households wanting to request an application, may request one by calling toll-free 1-800-432-0043.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Valentine".

Kathy Valentine
Energy Program Administrator

House Utilities
2-13-97
Attachment 1

LOW INCOME ENERGY ASSISTANCE PROGRAM

The Low Income Energy Assistance Program (LIEAP) helps qualifying households pay home heating costs. In order to be eligible, households must demonstrate that they have made regular payments toward their heating bills and have income below 110% of the federal poverty level.

Applications for the annual heating benefit are accepted during the period January through March. To qualify, applicants must meet the following requirements:

- Gross income (before deductions) of all persons living at the applicant's address may not exceed the guidelines. Income includes interest on savings accounts and CD's. The applicant must supply proof of all income. Income limits by household size appear below:

<u>Persons Living at the Address</u>	<u>Maximum Allowable 3-Month Gross Income</u>
1	\$ 2,128
2	2,849
3	3,569
4	4,290
5	5,010

- The applicant must be responsible for purchasing heating fuel. The applicant must supply proof of obligation to pay home heating costs. The household's payments must be paid to a vendor or to the landlord in unsubsidized rent.
- The applicant must provide proof of self-payments on the heating bill during two of the past three months.

The previous year's LIEAP recipients will receive a mailed application in January. Completed applications may be mailed or taken to any local SRS Office. Applications are processed in the order received unless the applicant has been threatened with utility shutoff. Applicants may request that the benefit be split between the heating fuel vendor and the electric vendor. This provides flexibility in using the benefit for 1)heating only, or 2)heating and cooling.

Benefits vary according to the following factors:

- Federal funds available each year.
- Household income.
- Number of people living at the address.
- Type of dwelling.
- Type of heating fuel.
- Rates charged by household's heating utility.

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STATE OF KANSAS
HOUSE OF REPRESENTATIVES



REPRESENTATIVE DAVID ADKINS
TWENTY-EIGHTH DISTRICT

CHAIRMAN: COUNCIL OF STATE GOVERNMENTS
MIDWESTERN LEGISLATIVE
CONFERENCE
CHAIRMAN: KANSAS YOUTH AUTHORITY
CHAIRMAN: KANSAS ADVISORY GROUP ON
JUVENILE JUSTICE AND
DELINQUENCY PREVENTION

COMMITTEES
MEMBER: COMMITTEE ON JUDICIARY
COMMITTEE ON BUSINESS, LABOR
AND COMMERCE
COMMITTEE ON TOURISM

Testimony Before
House Committee on Utilities
HB 2263

I appear today to urge you favorable consideration of HB 2263 which I refer to as the "Dinner Hour Preservation Act". It is time for our state to take action to protect consumers from annoying and sometimes fraudulent unsolicited telephone calls.

The bill is modelled after a similar statute enacted in Oregon. That state allows phone companies to offer customers a special symbol in directory listings that indicates that they do not want unsolicited sales calls. In Portland, for about 50 cents a month, a person's listing in the directory will have a little black dot next to it. A company that calls the number anyway can be fined up to \$25,000.

This bill would create a new action under our state's consumer protection laws. Violations of the Kansas Consumer Protection Act can give rise to liability of up to \$5,000 per violation. The Attorney General is authorized to enforce the Act.

This bill is good for Kansas families and good for senior Kansans that often times are the victims of unscrupulous phone solicitors.

I urge your favorable consideration of this legislation. It's time we allow to "hang up" on unsolicited sales calls in a way that works.

David Adkins
House Utilities
2-13-97
Attachment 2



Legislative Testimony

Kansas Telecommunications Association 700 SW Jackson St., Suite 704, Topeka, KS 66603-3758 V/TTY 913-234-0307 FAX 913-234-2304

Before the House Committee on Utilities

HB 2263

February 13, 1997

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

KTA members share the frustration of telephone consumers everywhere regarding unsolicited consumer telephone calls made by unscrupulous telemarketers. In many cases, the customers who have complained to you, as legislators, or to the Consumer Protection Division of the Attorney General's Office, have also complained to their local telephone company or long distance provider about the business practices of some telephone solicitors. We don't necessarily like everything that telemarketers do with the telephone network, but we can only affect certain parts of that usage.

Even though our members largely condemn the business practices of some telemarketers, the KTA appears today in opposition to HB 2263 -- specifically we oppose Sections 2 and 3 of the bill dealing with directory listings. We ask that those sections be stricken from the bill should you decide to act upon it.

1. As drafted, the bill is confusing because it requires some things and permits others. New Section 2 of the bill would make it a violation of the Kansas Consumer Protection Act to engage in an unsolicited consumer telephone call to a party who is identified in the telephone directory as not wishing to receive such calls. But, Section 3 (b) (2) of the bill (beginning on line 35 on page 2) says a telecommunications public utility may provide for the identification. That apparent conflict is made more troublesome by the language (beginning on line 29 on page 2) that would require the KCC to promulgate rules and regulations for notification of customers.

The telephone company representatives I talked to have a problem understanding what their responsibilities would be under this bill.

2. With today's modern telecommunications network and advanced telemarketing technology, there is no way to make sure that the telephone company's directory will ever be seen by the solicitor making the call.

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The level of sophistication of telemarketers now includes telephone directories from across the nation on CD ROM. Making sure the customer's "do not solicit" wishes are represented on those data bases is beyond our control.

A technology called "predictive dialing" takes maximum advantage of the computer dialing and telecommunications aspects of telephone solicitation. Using this technology, a telemarketer uses automatic dialing equipment that places the call from a list of numbers, detects when a call has been answered, and only then sends the call to a person who begins the scripted presentation. The early stages of call setup is entirely automatic.

These types of calls are unlikely to be affected by provisions such as those contained in HB 2263. However, the customer who asks for his or her directory listing to indicate "no solicitation calls" will not understand why such calls persist.

3. The bill does not make it clear whether local telephone companies would be able to recover their costs for altering their directories and for tracking which customers have opted for identification. Neither are the costs of billing statements or directory advertisements identified for future recovery. We do not have a "fiscal note" for the bill, but we do know there would be costs for telephone companies to recover from the ratepayer.
4. As the telecommunications industry enters the era of local competition, there are questions about telephone directories overall. When more than one company is providing local service, how many companies will be printing directories? Whose responsibility will it be to make sure a customer's wishes are correctly shown in the directory if only one is printed for several companies?

The future of telecommunications is clouded enough without adding these complications.

The KTA is not opposing HB 2263 to protect the "bad actors" who engage in telemarketing. Neither do we oppose the bill because of the revenues that telemarketing brings to us. We oppose HB 2263 because it is unworkable, would create an unfair and unreasonable expectation in the minds of our customers that their phones would stop ringing with solicitation calls, and would impose costs on member companies that are not clearly recoverable.

Someday there may be a technological answer to the problems of people not wanting to receive certain types of calls. But, for today, technology does not present a solution. Neither does HB 2263. We ask that you report the bill unfavorably.

Thank you for your time. I'll try to answer questions you may have.



Mike Reecht
Kansas Director
State Government Affairs

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**TESTIMONY ON BEHALF OF AT&T
BEFORE THE HOUSE UTILITIES COMMITTEE
HOUSE BILL 2263
FEBRUARY 13, 1997**

Chairman Myers and members of the committee:

My name is Mike Reecht and I am State Director for AT&T in Kansas. I appreciate the opportunity to appear before the committee regarding HB 2263.

AT&T understands the intent of the legislation is to provide some degree of protection to consumers from unscrupulous telemarketers, and certainly does not disagree with that intent. However, as is often the case, the unscrupulous telemarketers that ignore existing law are also likely to ignore this law, especially those located out of state, while legitimate telemarketers will attempt to comply with the law and in doing so will incur additional costs and potential competitive disadvantage.

I will discuss very briefly those sections of the bill that present concerns:

Section 1(b) proposes a registration fee. AT&T does not object to a proposed registration fee. It is concerned, however, regarding the policing and collection of such fee payment, especially from out-of-state businesses. I believe the situation as described above exists; honest and legitimate telemarketers will comply with the law, but the unscrupulous telemarketers, the target of this legislation, have no greater incentives to register or comply with this law than they do under existing law.

Section 1(c) proposes the attorney general send each registrant a certificate. The cost of sending certificates to all telemarketers who reside or do business in the state should be determined. The requirement of the telemarketer to post a copy of the certificate could be very discriminatory to in-state firms who are far more likely to receive a compliance visit by the attorney general. In addition, the value of a physical posting at the office of an entity that by definition conducts business by phone is questionable.

Section 1(d) proposes the provision of operational information to the attorney general. AT&T telemarketing operations are in the business of selling goods and services over the phone. We attempt to employ qualified people to deliver the sales presentation in the best voice possible. This section seems to suggest that the attorney general would have a free hand to determine the ability of

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Attachment 4*

telemarketers to conduct business in Kansas and the personnel it employs to do the job. It appears to be a way to reject applications/registrations for some unknown or yet to be determined reason. The section seems vague and potentially discriminatory. The personnel conducting business on behalf of AT&T would fill a substantial list and would change on a regular basis. The information retained by the attorney general would be of marginal use and would have to be updated on a frequent basis.

Section 1(e) proposes that at the time of submission of a registration application, the telemarketer must appoint the attorney general to receive service of process for the telemarketer in any suit arising under this section. AT&T has a long established procedure for receipt and handling of legal process in Kansas which is necessary to ensure that AT&T is able to respond to suits in a timely and effective manner. The proposed language would apparently preempt that established process and require that the attorney general be served on behalf of AT&T. Given that the attorney general will likely side with the complainant and against a telemarketer in any such suit, it is inconceivable that the statute would require the attorney general to take the place of a telemarketers' own representative in receiving and handling the initial notice of the lawsuit.

New Section 2(a) proposes that a customer could designate in his local directory a desire not to be called. National telemarketing operations like AT&T do not rely solely on local directories from which to develop its contact lists. Customer lists come from a number of sources both internal and external to the company. To comply with this section of the law, every telemarketer who calls into the state must receive a copy of every telephone directory from Kansas to cross reference the call list against the directory to determine who may not want to be called. I estimate that there may be as many as a hundred directories in Kansas. It would be impractical to assume that all telemarketers could or would comply with this provision.

Direct Marketing Associates(DMA) maintains a master list of customers who do not wish to be called. A better alternative would be to notify customers of the location where they could write to be removed from call lists. Section 3(b)(1)(B) talks about notice in the customer information pages of the local telephone directories. I suggest that DMA information could be listed on those pages.

The telemarketing industry is well aware of the reputation it has with the American public. Legitimate telemarketers recognize that customers are only likely to buy the product or service if the presentation is professional and courteous. The consumer has the ultimate weapon--the hang up.

In summary, customer information and education should be the primary way to stop unwanted telemarketing solicitation. I believe HB 2263 will only serve to burden legitimate telemarketers with new regulations and additional fees, while unscrupulous or uninformed telemarketers will continue to operate in violation of the state's statutes.