

Approved: _____
Date 3/7/97

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 14, 1997 in Room 313-S of the Capitol.

All members were present except: Rep. Toelkes - excused

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

Conferees appearing before the committee:

Others attending: See attached list

Chairperson Myers acknowledged Staff who distributed some information requested by Representative McClure regarding the telecommunications statutes in the state of Oregon and a copy of a registration letter was included (Attachment #1).

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

The Chair requested that Staff quickly review the bill. The Chair asked if there were any questions of Staff or any discussion on the bill. Representative Sloan discussed a proposed balloon amendment drafted by Staff. He mentioned that on Page 1, line 40, the original language had the Attorney General being involved as being the agent of the telemarketer, so he suggested that if any telemarketer wanting to do business in Kansas would have to file with the Attorney General the name of a resident agent. That person who would be their resident contact. On Page 2, Section (f), clarifies that telemarketer does not include those who are working on behalf of charitable organizations registered with the Secretary of State. Also, in existing statute there are exemptions for the Regents institutions that are contacting their alumni and for other groups, etc. Representative Sloan suggested that rather than having a dot in the phone book, that every telecommunications company doing business in the state shall notify their customers at least twice a year either through bill inserts or some other kind of public disclosure of how to get off a telecommunications chain. He also wanted to see, but for lack of time, it is not in the balloon where it states on Page 1 resident agent, at that time they would also notify the Attorney General how a person would get off their list. So if you receive a call, you could call the Attorney General and they would have a list of telemarketers and could tell you where to call or write to get off a list if you did not want to wait for the cycle for the telephone company to notify you.

Representative Sloan made a motion that the Committee accept the balloon amendment to HB 2263 (Attachment #2). The motion was seconded by Representative McClure. Discussion followed on the motion. Representative Sloan withdrew his motion with no objection from Representative McClure who had seconded the motion.

Representative Sloan made a motion that the Committee accept the balloon for HB 2263 as subsequently amended. Representative McClure seconded the motion. Discussion followed on the motion. Motion passed.

Representative Humerickhouse made a motion to table HB 2263. The motion was seconded by Representative Johnson. Motion failed. Discussion followed.

Representative Sloan made a motion to recommend HB 2263 favorable for passage as amended. Representative Samuelson seconded the motion. Discussion followed.

Representative McKinney made a motion to table HB 2263. Representative Humerickhouse seconded the motion. Motion passed and the bill was tabled.

The Chair announced that on Monday, February 17, 1997, the Committee will be hearing testimony on **HB 2314** - use of Kansas Universal Service Fund and scheduled to be worked the next day, February 18, 1997.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 17, 1997.

646.561

TRADE REGULATIONS AND PRACTICES

(Unlawful Telephone Solicitations)

646.561 Definitions for ORS 646.561 to 646.565. As used in ORS 646.561 to 646.565, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Party" means a residential telephone customer of a telecommunications company.

(3) "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, goods or services, or make a donation. "Telephone solicitation" does not include:

(a) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have made a donation or expressed an interest in making a donation;

(b) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(c) Business to business contacts. [1989 c.622 §3]

646.563 Unlawful telephone solicitation. A person is in violation of ORS 646.608 (1)(hb) if, during a telephone solicitation, the called party states a desire not to be called again and the person making the telephone solicitation makes a subsequent telephone solicitation of the called party at that number. [1989 c.622 §3]

646.565 Notice of provisions of ORS 646.561 and 646.563; rulemaking by Public Utility Commission. The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.561 and 646.563. Notification may be by:

(1) Annual inserts in the billing statements mailed to parties; or

(2) Conspicuous publication of the notice in the consumer information pages of local telephone directories. [1989 c.622 §10]

646.567 Definitions for ORS 646.567 to 646.571. As used in ORS 646.567 to 646.571, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Party" means a residential telephone customer of a telecommunications company.

(3) "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, goods or services, or make a do-

nation. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party;

(b) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have donated or expressed an interest in donating goods, services or real estate;

(c) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(d) Business to business contacts. [1989 c.451 §1]

646.569 Unlawful telephone solicitation if party identified in telephone directory.

(1) A person is in violation of ORS 646.608 (1)(cc) if the person engages in the telephone solicitation of a party and that party is identified in the party's telephone directory as a party that does not wish to receive any telephone solicitation.

(2) For purposes of this section, "telephone solicitation" also does not include a person soliciting business from prospective purchasers who have previously purchased from the person making the solicitation or the business enterprise for which the person is calling. [1989 c.451 §2]

646.570 [Repealed by 1953 c.391 §2]

646.571 Notice of provisions of ORS 646.567 to 646.571; rulemaking by Public Utility Commission. (1) The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.567 to 646.571 and 646.608. Notification may be by:

(a) Annual inserts in the billing statements mailed to parties; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

(2) Telecommunications companies may provide for the identification of those parties in a telephone directory who do not wish to receive telephone solicitations. [1989 c.451 §3]

646.580 [Repealed by 1953 c.391 §2]

646.590 [Repealed by 1953 c.391 §2]

646.600 [Repealed by 1953 c.391 §2]

UNLAWFUL TRADE PRACTICES

646.605 Definitions for ORS 646.605 to 646.652. As used in ORS 646.605 to 646.652:

(1) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and includes any trade or commerce directly or indirectly affecting the people of this state.

House Utilities
2-14-97
Attachment 1

HARDY MYERS
ATTORNEY GENERAL



DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

Registration Letter
+ Registration
Form

DEPARTMENT OF JUSTICE

CIVIL ENFORCEMENT DIVISION

1162 Court Street NE

Justice Building

Salem, Oregon 97310

Telephone: (503) 378-4732

FAX: (503) 373-7067

TDD: (503) 378-5938

February 13, 1997

Amy Jones
0000 45th St. S.E.
Salem, OR 97000

Re: Registration of Telemarketing Firm: ABC Corporation
Registration Number TM-000

Dear Ms. Jones:

This will acknowledge the registration of your organization under ORS 646.551 as a telephone seller. The effective date of your registration is February 13, 1997.

Your registration will remain in effect for the period of one year from the above date. You are responsible for completing a new registration form, accompanied by an annual registration fee, to renew your registration. You should resubmit those renewal materials to this office at least two weeks prior to your registration expiration date in order that your registration does not lapse.

Pursuant to OAR 137-20-201(4), whenever there is a material change in the information required on the registration form, the seller shall, within ten days, file an addendum updating the information with the Department of Justice. Changes in salespersons soliciting on behalf of the seller shall be updated by addenda filed, if necessary, in quarterly intervals computed from the effective date of registration. Please refer to OAR 137-20-201(4) for specific instructions on filing employee addenda.

Pursuant to OAR 137-20-201(5), you must post the enclosed Telemarketer Registration Confirmation Notice(s), within (10) days, in a conspicuous place at each of your business locations, and you must have available for inspection at each location a copy of the entire registration statement that has been filed with this office.

Ms. Jones
February 13, 1997
Page 2

Also, there are certain disclosures that need to be made. Please refer to OAR 137-20-203 for information on the required disclosures.

During the course of the solicitation, you may not in any way use the fact or requirement of registration with our office in such a way as to create the impression this solicitation or the person or organization conducting the solicitation have been or will be endorsed, sanctioned or approved by the Attorney General or any other governmental agency.

If you have any questions regarding this information, please feel free to contact me.

Sincerely,

Cindy Scott
Administrative Assistant
Financial Fraud Section

cms

HARDY MYERS
Attorney General



DAVID SCHUMAN
Deputy Attorney General

DEPARTMENT OF JUSTICE

CIVIL ENFORCEMENT DIVISION

1162 Court Street NE

Salem, Oregon 97310

Telephone: (503) 378-4732

FAX: (503) 378-5017

TDD: (503) 378-5938

February , 1997

*Letter sent to
companies not
in compliance*

[Name and Address of Business
or Person in Violation of Black Dot
Law]

Re: Unlawful Telephone Solicitations in Oregon/Black Dot
Our File Number:

Dear Sir/Madam:

We have received a complaint that your company is engaging in unlawful trade practices in violation of ORS 646.608(1)(cc), by soliciting Oregon residents identified in the telephone directories as not wishing to receive any telephone solicitations.

The Oregon legislature was very concerned with the continued increase in unsolicited and at times unwanted telephone calls to a person's home. While some consumers may welcome businesses selling goods and services over the phone, other consumers view the unsolicited call as an invasion of their privacy. As a result, the legislature struck a balance protecting businesses and consumers. If consumers did not want to be called, they had two options:

1. Once they received an unwanted phone call they could contact a business and indicate that they no longer wanted to be called (ORS 646.569); or

2. The consumer could notify businesses that they did not want to be called by placing a mark after their name in a telephone directory. This option was available only if the telephone company offers this service (ORS 646.563).

Consumer Complaints, 1st Floor Robertson Building, 1215 State Street N.E., Salem, Oregon
Consumer Line (503) 378-4320 or 229-5576 (Portland only) from 8:30 a.m. to noon, FAX (503) 378-5017

This is letter we use to put business on notice - usually effective.

[Name of Business]
February , 1997
Page 2

The law does not cover:

1. Calling a consumer in response to a request or inquiry by the consumer;
2. Charitable organizations calling members or individuals who previously made donations;
3. Calls to poll or solicit the expressions, ideas, opinions or votes;
4. Calls to a business; or
5. In the case of notations in a telephone directory calls to people who have previously purchased from the business.

We have received a complaint that you have contacted a consumer that has placed a mark in the phone book indicating that the consumer does not want to be called. If you have contacted a consumer that has indicated they do not want to be called by either option, your company has violated Oregon's laws.

You may purchase copies of the black dot list for purging your records by contacting either GTE at (804) 333-8100 or U.S. West Marketing Resources at (800) 999-4630.

I am making a notation that your company has been placed on notice of Oregon's solicitation laws. I would ask that your business familiarize itself with the laws and develop procedures to assure compliance. Future violations may result in legal action.

If you have any questions, please do not hesitate to contact our Enforcement Officers between the hours of 8:30 and noon, Monday through Friday (Salem 378-4320; Portland 229-5576).

Sincerely,

Alice MacDonald
Enforcement Officer

(BD)
cc: Consumer or person filing complaint

HOUSE BILL No. 2263

By Representative Adkins

2-7

9 AN ACT concerning consumer protection; relating to unsolicited con-
10 sumer telephone calls; ~~amending K.S.A. 66-1,189 and repealing the~~ providing penalties and remedies for certain acts
11 ~~existing section.~~

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) No telephone solicitor, as defined in K.S.A. 50-
15 670, and amendments thereto, or telemarketer, as defined in K.S.A. 50-
16 671, and amendments thereto, shall conduct business in this state without
17 having registered with the office of the attorney general at least 10 days
18 prior to the conduct of such business. A telephone solicitor or telemar-
19 keter is required to register in the name under which the telephone so-
20 licitor or telemarketer conducts business. Individual employees of the
21 telephone solicitor or telemarketer are not required to register. A tele-
22 phone solicitor or telemarketer is conducting business in this state if tel-
23 ephone solicitations of prospective purchasers are made from locations
24 in this state or solicitation is made of prospective purchasers located in
25 this state.

26 (b) A registration shall be effective for one year from the date of filing
27 with the office of the attorney general. Each application for registration,
28 or renewal thereof, shall be accompanied by a fee of \$400.

29 (c) The office of the attorney general shall send to each registrant a
30 certificate or other appropriate document demonstrating registration
31 compliance, which shall be posted at the telephone solicitor's or tele-
32 marketer's principal business location.

33 (d) Each application for registration shall be in writing and shall con-
34 tain such information regarding the conduct of the telephone solicitor's
35 or telemarketer's business and the personnel conducting the business and
36 shall be submitted in such form and manner as the attorney general may
37 prescribe.

38 (e) At the time of submission of a registration application, each tel-
39 ephone solicitor or telemarketer shall file with the attorney general an
40 irrevocable consent appointing ~~the attorney general~~ a resident agent
41 phone solicitor's or telemarketer's attorney to receive service of process
42 in any action, suit or proceeding against the telephone solicitor or tele-
43 marketer or the telephone solicitor's or telemarketer's successor in inter-

House Utilities
2-14-97
Attachment 2

2-8

(g) 1 est which may arise under this section/
 2 ~~(f)~~ Any violation of this section is an unconscionable act or practice
 3 under the Kansas consumer protection act.

(h) 4 ~~(g)~~ This section shall be part of and supplemental to the Kansas con-
 5 sumer protection act.

6 New Sec. 2. (a) A person is in violation of the Kansas consumer pro-
 7 tection act if the person engages in an unsolicited consumer telephone
 8 call, as defined in K.S.A. 50-670, and amendments thereto, to a ~~party and~~
 9 ~~that party is identified in the party's telephone directory as a party~~ that
 10 does not wish to receive ~~any~~ unsolicited consumer telephone calls.

customer

11 (b) This section shall be part of and supplemental to the Kansas con-
 12 sumer protection act.

13 ~~Sec. 3. K.S.A. 66-1,189 is hereby amended to read as follows: 66-~~

14 ~~1,189. (a) Every telecommunications public utility governed by this act~~
 15 ~~shall be required to furnish reasonably efficient and sufficient service,~~
 16 ~~joint service and facilities for the use of any and all products or services~~
 17 ~~rendered, furnished, supplied or produced by such telecommunications~~
 18 ~~public utility, to establish just and reasonable rates, joint rates, tolls,~~
 19 ~~charges and exactions and to make just and reasonable rules, classifica-~~
 20 ~~tions and regulations. Every unjust or unreasonably discriminatory or un-~~
 21 ~~duly preferential rule, regulation, classification, rate, joint rate, toll,~~
 22 ~~charge or exaction is prohibited, unlawful and void. The commission shall~~
 23 ~~have the power, after notice and hearing in accordance with the provisions~~
 24 ~~of the Kansas administrative procedure act, to require all telecommuni-~~
 25 ~~cations public utilities governed by this act to establish and maintain just~~
 26 ~~and reasonable joint rates when the same are reasonably necessary in~~
 27 ~~order to maintain reasonably sufficient and efficient service from such~~
 28 ~~telecommunications public utilities.~~

29 ~~(b) (1) The commission, by rules and regulations, shall require that~~
 30 ~~telecommunications public utilities inform parties of the provisions of sec-~~
 31 ~~tion 2. Notification may be by:~~

- 32 ~~(A) Annual inserts in the billing statements mailed to parties; or~~
- 33 ~~(B) conspicuous publication of the notice in the consumer information~~
- 34 ~~pages of local telephone directories.~~

35 ~~(2) Telecommunications public utilities may provide for the identifi-~~
 36 ~~cation of those parties in a telephone directory who do not wish to receive~~
 37 ~~unsolicited consumer telephone calls, as defined in K.S.A. 50-670, and~~
 38 ~~amendments thereto.~~

39 ~~Sec. 4. K.S.A. 66-1,189 is hereby repealed.~~

40 Sec. 5 This act shall take effect and be in force from and after its
 publication in the statute book.

(f) The provisions of this section shall not apply to any telephone solicitor or telemarketer that solicits only on behalf of one or more charitable organizations registered with the secretary of state pursuant to the charitable organizations and solicitations act or exempted from such registration pursuant to such act.

Each telecommunications public utility doing business in this state shall notify customers of the utility of procedures to identify themselves as not wishing to receive unsolicited consumer telephone calls. Such notice shall be given at least every six months and may be by an insert in customer billing statements or other public notice.

(c)