

Approved: _____
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on April 30, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

Committee staff present: Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
C. Steven Rarrick, Deputy Attorney General, Chief, Consumer Protection Division

Others attending: See attached list

Confirmation Review on the reappointment of:

Larry K. Williams, Kansas Inc., term expires January 15, 2001.

The Committee reviewed the paper work forwarded to the Committee on Mr. Williams.

Senator Steffes moved, seconded by Senator Brownlee, that the reappointment of **Larry K. Williams** be recommended favorable for confirmation to Kansas Inc. The recorded vote was in favor of the motion.

HB 2462 - Consumer protection; three-day right to cancel in certain telemarketer business transactions

The Chair informed the Committee that **SB 151, Regulation of telephone solicitors**, was passed by the Senate on a vote of Yeas 34 - Nays 5, recommended favorably by the House Business, Commerce and Labor Committee, is on the House Calendar. It is not scheduled for debate. The Chair asked the committee to consider substituting **SB 151** for the provisions included in **HB 2462**.

C. Steven Rarrick, Chief, Consumer Protection Division, testified in support of **SB 151** and requested several technical amendments. (Attachment 1)

Senator Barone moved, seconded by Senator Ranson that the language in **HB 2462** be stricken in its entirety, and the language in **SB 151** be inserted in lieu thereof; and further **SB 151** be amended as follows: Page 2, line 42, by striking the words "be able to", line 43, by striking the word "business"; Page 3, by striking all of lines 4, 5, 6 and 7 and inserting in lieu thereof the following: "A telephone solicitor shall not transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease. The voice vote was in favor of the motion with one "no" vote.

Senator Barone moved, seconded by Senator Brownlee that **Substitute for HB 2462** be recommended favorable for passage as amended. The recorded vote was Yeas - 10; Pass 1.

The meeting was adjourned at 8:30 a.m.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: April 30, 1997

NAME	REPRESENTING
Gail Bright	A.G.
Steve Rarrick	A.G.
Bob Storey	DMA



State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (913) 296-3751 FAX: 291-3699 TTY: 291-3767

CARLA J. STOVALL
ATTORNEY GENERAL

CONSUMER HOTLINE
1-800-432-2310

April 28, 1997

Senator Alicia Salisbury
State Capitol
Topeka, Kansas 66612

RE: SB 151, HB 2462

Dear Senator Salisbury:

It is my understanding that the Senate Commerce Committee has indicated their intent to amend HB 2462 (three-day right to cancel in certain telemarketing transactions) to SB 151 (telephone solicitation) during the April 30 session. Our office has provided testimony on both bills and I believe the Committee is aware of the Attorney General's position on these issues.

I am writing to address some technical amendments to SB 151 which I believe were, inadvertently, not adopted by the House Business, Commerce and Labor Committee. At the time our office presented testimony to the House Committee, we proposed some amendments to clarify certain sections of the bill. These were discussed by the Committee, but were not included when the bill was recommended favorably. I had talked to Representative Crow and she had agreed to offer the proposed changes on the House floor. I have enclosed the proposed balloon amendments for your consideration.

At page 2, lines 42-43, we would ask that the words "be able to" and "business" be removed. The intent of this provision is to prevent telemarketers from taking affirmative steps to withhold their telephone number rather than situations where their services or hardware prevent the display of their telephone number. Removal of the word "business" would allow this provision to apply to telemarketers operating from their homes.

At page 3, lines 4-7, we have suggested substitute language to strengthen the provision proposed by Senator Jordan and amended to this bill on the floor of the Senate. Unfortunately, the current language may allow "loopholes" for businesses who want to avoid the requirements of the law. With the requirement that a telephone solicitor's "initial" contact with the consumer must be by facsimile, we believe unscrupulous telephone solicitors could avoid the requirements of the statute by simply calling the consumer first and sending subsequent solicitations by facsimile. In this situation, a consumer receiving numerous and unwanted facsimile transmissions would not have the protections of this law since the initial contact was by telephone. In addition, the use of the phrase "printed material," rather than "written material," would allow telephone solicitors to avoid the requirements

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Attachment # 1-1 thru 1-5

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of the statute by faxing hand-written materials. Finally, the inclusion of the word "computer" in our amendment will cover faxes and communications via computer modems which are possible with current technology. I have discussed this language change with Senator Jordan and he has agreed to the proposed amendment.

Attorney General Stovall thanks the Committee for their consideration to this matter and would ask that the above amendments be offered during the final session. If you should have further questions, please give me a call.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL



C. Steven Rarrick
Deputy Attorney General
Chief, Consumer Protection Division

CSR:GEB
Enclosure

SENATE BILL No. 151

By Committee on Commerce

1-30

12 AN ACT concerning consumer protection; relating to telephone solici-
13 tation; amending K.S.A. 50-670 and repealing the existing section.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 50-670 is hereby amended to read as follows: 50-
17 670. (a) As used in this section:

18 (1) "Consumer telephone call" means a call made by a telephone
19 solicitor *to the residence of a consumer* for the purpose of soliciting a sale
20 of any ~~consumer goods property~~ or services to the person called, or for
21 the purpose of soliciting an extension of credit for ~~consumer goods prop-~~
22 ~~erty~~ or services to the person called, or for the purpose of obtaining
23 information that will or may be used for the direct solicitation of a sale
24 of ~~consumer goods property~~ or services to the person called or an exten-
25 sion of credit for such purposes;

26 (2) "~~consumer goods or services~~" means any tangible personal prop-
27 erty which is normally used for personal, family or household purposes;
28 including, without limitation, any such property intended to be attached
29 to or installed in any real property without regard to whether it is so
30 attached or installed, as well as cemetery lots and time-share estates; and
31 any services related to such property;

32 (3) (2) "unsolicited consumer telephone call" means a consumer tel-
33 ephone call other than a call made:

34 (A) In response to an express request of the person called;

35 (B) primarily in connection with an existing debt or contract, payment
36 or performance of which has not been completed at the time of such call;

37 ~~or~~

38 (C) to any person with whom the telephone solicitor has an existing
39 business relationship; or

40 (D) to any person with whom the telephone solicitor has an ex-
41 isting business relationship; or

42 (E) (G) (D) by a newspaper publisher or such publisher's agent or
43 employee in connection with such publisher's business;

1 (4) (3) "telephone solicitor" means any natural person, firm, organi-
 2 zation, partnership, association or corporation who makes or causes to be
 3 made a consumer telephone call, including, but not limited to, calls made
 4 by use of automatic dialing-announcing device;

5 (5) (4) "automatic dialing-announcing device" means any user ter-
 6 minal equipment which:

7 (A) When connected to a telephone line can dial, with or without
 8 manual assistance, telephone numbers which have been stored or pro-
 9 grammed in the device or are produced or selected by a random or se-
 10 quential number generator; or

11 (B) when connected to a telephone line can disseminate a recorded
 12 message to the telephone number called, either with or without manual
 13 assistance;[;]

14 (5) "negative response" means a statement from a consumer in-
 15 dicating the consumer does not wish to listen to the sales presen-
 16 tation or participate in the solicitation presented in the consumer
 17 telephone call.

18 (b) Any telephone solicitor who makes an unsolicited consumer tel-
 19 ephone call to a residential telephone number shall:

20 (1) Identify themselves and the business on whose behalf such person
 21 is soliciting and the purpose of the call immediately upon making contact
 22 by telephone with the person who is the object of the telephone solici-
 23 tation;

24 (2) within 30 seconds after beginning the conversation, inquire
 25 whether the person being solicited is interested in listening to a sales
 26 presentation and immediately discontinue the solicitation if the person
 27 being solicited gives a negative response; and

28 (1) Identify themselves;

29 (2) identify the business on whose behalf such person is soliciting;

30 (3) identify the purpose of the call immediately upon making contact
 31 by telephone with the person who is the object of the telephone solicitation;

32 (4) within 30 seconds after beginning the conversation, inquire
 33 whether the person being soltotted is interested in listening to a sales
 34 presentation;

35 (5) (4) immediately discontinue the solicitatton if the person being
 36 solicited gives a negative response at any time during the consumer tele-
 37 phone call; and

38 (3) (6) (5) hang up the phone, or in the case of an automatic dialing-
 39 announcing device operator, disconnect the automatic dialing-announc-
 40 ing device from the telephone line within 25 seconds of the termination
 41 of the call by the person being called.

42 (c) A telephone solicitor shall not be able to withhold the display of
 43 the telephone solicitor's business telephone number from a caller identi-

(c) be able to
 business

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1 fication service when that number is being used for telemarketing pur-
2 poses and when the telephone solicitor's service or equipment is ca-
3 pable of allowing the display of such number.

4 [(d) A telephone solicitor whose initial contact with a consumer
5 is through printed material transmitted by telefacsimile machine
6 shall not transmit any additional printed information if the con-
7 sumer requests orally or in writing that such transmissions cease.]

~~[(d) A telephone solicitor whose initial contact with a consumer is
through printed material transmitted by a facsimile machine shall not
transmit any additional printed information if the consumer requests
orally or in writing that such transmissions cease.]~~

(d) A telephone solicitor shall not transmit any written information
by facsimile machine or computer to a consumer after the consumer
requests orally or in writing that such transmissions cease.

8 (e) ~~(d)~~ [(e)] Telephone companies Local exchange carriers and
9 telecommunications carriers shall not be responsible for the enforce-
10 ment of the provisions of this section and shall not be liable for any error
11 or omission in the listings made pursuant hereto.

12 ~~(d)~~ (e) [(f)] Any violation of this section is an unconscionable act or
13 practice under the Kansas consumer protection act.

14 (e) ~~(f)~~ [(g)] This section shall be part of and supplemental to the
15 Kansas consumer protection act.

16 Sec. 2. K.S.A. 50-670 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its
18 publication in the statute book.