

Approved: February 13, 1998
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 12, 1998 in Room 123-S of the Capitol.

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

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Bob Storey, Dehart and Darr Associates, Inc.
Michael R. Murray, Director of Governmental Affairs, Sprint
Tom Young, AARP
Tyler Prochnow, American Telemarketing Assn.
Steve Rarrick, Consumer Protection Division

Others attending: See attached list

SB 573 - Consumer protection; telephone solicitation

Bob Nugent, Revisor of Statutes, stated **SB 573** repeals existing section KSA 50-670 relating to unsolicited telephone calls which is separate and apart from the telecommunications fraud statutes. **SB 573** Page 1, lines 38 and 39, replaces the language allowing the consumer to obtain a full refund for the return of undamaged and unused goods or a cancellation, changes the time from within seven days after receipt by the consumer, to seven days after the consumer has had an opportunity to review the goods or services. New Section 2 replaces some sections of KSA 50-670 and other sections are from the telecommunications fraud statute. The telemarketer has certain duties under present law when making an unsolicited telephone call, one of which is they must identify the business on behalf of whom they are soliciting, but also must identify himself or herself, which is not included in New section 2 of **SB 573**. Section 2 adds some new provisions that are not in present law: 1) requirement that solicitation can only take place between 8:00 a.m. and 9:00 p.m., 2) the time frame in which telemarketer must identify the purpose of the call is changed from "immediately" to "promptly", 3) includes prize and prize promotion. Mr. Nugent stated the question of whether facsimile and computer solicitations are covered in New section 2 depends upon the interpretation of subsection (f), Page 3, (Copy of KSA 50-670 Attachment 1)

Mr. Nugent stated the two biggest changes in **SB 573** from current law: Page 3, Line 33, sets forth criteria where a seller will not be liable if certain good faith procedures are followed, and **SB 573** does not provide a penalty provision.

Bob Storey, Dehart and Darr Associates, Inc., testified in support of **SB 573**, stating the Direct Marketing Association (DMA) employs approximately 117,730 direct marketing related jobs in Kansas and generates approximately \$11.45 million in annual sales revenue. Mr. Storey stated **SB 573** is an effort to make state law more compatible with federal law and provide uniformity among states. (Attachment 2)

Mr. Storey offered an additional amendment on page 2, lines 8 through 12. The proposed language reads as follows: "...to the extent that the consumer shall have the right to cancel the sale and return unused and undamaged goods or services by notifying the telemarketer. A telemarketer that has received such notice to cancel . . ." Mr. Storey stated this provision of the bill as amended is an assistance to the consumer inasmuch as it provides that if the goods are not satisfactory the consumer has the right to cancel the sale and return the merchandise or request a refund without being limited to the 7-day period.

Mr. Storey stated **SB 573** changes the definition of "Consumer telephone call" to "Telemarketing", as it has a broader definition. **SB 573** provides that anyone called by a telemarketer, regardless of past experience, is entitled to the same rights as a new customer; a telemarketer cannot block caller ID, and must

disclose: identity of person calling, the purpose of the call, the nature of goods or services offered, and no purchase or payment is necessary to win a prize if a prize promotion is offered. Calls are restricted to between 8:00 a.m. and 9:00 p.m. The telemarketer also must disconnect promptly when the person called terminates the call, or if an autodial announcing device is used, the call is terminated within 25 seconds. **SB 573** provides that a seller or telemarketer may not call again if the person says he or she does not want to be called, and after full disclosure of cost and quantity of goods or services, odds of being able to receive a prize if a prize is offered, costs or conditions to redeem a prize. The new language in **SB 573** repeals the requirement to terminate the call if the person gives a negative response due to difficulty in determining what a negative response might be.

SB 573 provides greater protection to consumers than they have under present law, and it also makes the Kansas law adaptable to the federal law, therefore, easier to enforce.

The Committee raised the issue of excluding facsimile machine or computer transmissions from the provisions of **SB 573**.

Mike Murray, Director of Governmental Affairs, Sprint, stated KSA 50-670, refers to an existing business relationship, and **SB 573** Section 1(b) refers to a "preexisting business relationship with the consumer". As a matter of policy Sprint believes the law should apply to all telemarketers regardless of existing or preexisting business relationships. The proposed law and the existing law prohibits Sprint from selling its services as some others in the telecommunications field are able to do due to their preexisting relationship or an existing relationship. The present laws are discriminatory and Sprint believes **SB 573** is a consumer friendly approach to bringing everyone under the consumer protection laws regarding telemarketing, if the following amendment is adopted: Page 1, line 26, following the semicolon (;) insert the following "and is not a provider of telecommunications services except as providers defined as rural telephone companies pursuant to KSA 66-1, 187 (1)". (Attachment 3)

The Committee raised the advisability of including other businesses in the amendment proposed by Mr. Murray.

Tom Young, AARP, testified in opposition to **SB 573**, stating the proposed legislation exempts telemarketing transactions from the written contract provision of KSA 60-672, and fails to provide a penalty provision for unconscionable acts. (Attachment 4)

Tony Prochnow, American Telemarketing Association, was present and stated the American Telemarketing Association supports **SB 573**.

The hearing on **SB 573** was continued to tomorrow.

Upon motion by Senator Barone, seconded by Senator Steineger, the Minutes of February 10, 1998 Meeting were unanimously approved.

The meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for December 13, 1998.

TELEPHONE SOLICITATIONS

50-670. Unsolicited consumer telephone calls; requirements and prohibitions; carriers not responsible for enforcement; unconscionable act or practice. (a) As used in this section:

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes;

(2) "unsolicited consumer telephone call" means a consumer telephone call other than a call made:

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

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

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

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

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

(4) "automatic dialing-announcing device" means any user terminal equipment which:

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

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

(5) "negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

(1) Identify themselves;

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

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

(4) immediately discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call; and

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

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telephone solicitor's service or equipment is capable of allowing the display of such number.

(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.

(e) Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section.

(f) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(g) This section shall be part of and supplemental to the Kansas consumer protection act.

History: L. 1991, ch. 158, § 2; L. 1992, ch. 252, § 9; L. 1997, ch. 172, § 1; July 1.

ELDERLY OR DISABLED PERSONS AS VICTIMS

50-676. Elder or disabled persons as victims of consumer protection act; definitions. As used in this act:

(a) "Elder person" means a person who is 60 years of age or older.

(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.

TESTIMONY OF BOB W. STOREY
BEFORE THE SENATE COMMERCE COMMITTEE

ON SENATE BILL 573

FEBRUARY 12, 1998

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

ON BEHALF OF MY CLIENT, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY IN SUPPORT OF SENATE BILL 573.

I REPRESENT DEHART AND DARR ASSOCIATES, INC., A PUBLIC RELATIONS FIRM WHICH IN TURN REPRESENTS THE DIRECT MARKETING ASSOCIATION (DMA). THE DMA HAS 3,600 MEMBER COMPANIES NATIONWIDE, WITH SIXTEEN OF THOSE MEMBER COMPANIES HEADQUARTERED AT EIGHT KANSAS CITIES. THIRTY-NINE OF THE MEMBER COMPANIES HAVE OPERATIONS IN THE STATE OF KANSAS.

THESE COMPANIES PROVIDE APPROXIMATELY 117,730 DIRECT MARKETING-RELATED JOBS IN KANSAS, AND GENERATE APPROXIMATELY \$11.45 MILLION IN ANNUAL SALES REVENUE IN THE STATE OF KANSAS.

THESE ARE 1996 STATISTICS PROVIDED BY THE WEFA GROUP, A LEADING ECONOMIC AND BUSINESS FORECASTING AND CONSULTING FIRM WITH OFFICES IN NINE STATES AND NINE FOREIGN COUNTRIES. IN ADDITION TO THE ABOVE, THE DMA REPRESENTS A CONSORTIUM OF BOOK AND RECORDING PUBLISHERS AND MANUFACTURERS SUCH AS READERS DIGEST, BOOK OF THE MONTH CLUB,

RECORD OF THE MONTH CLUB, AND MAGAZINE PUBLISHERS OF AMERICA (MPA).

THERE ARE FORTY TELEPHONE MARKETING SERVICE COMPANIES IN KANSAS, WITH APPROXIMATELY 4,515 EMPLOYEES.

THE PURPOSE OF OUR TESTIMONY TODAY IS TO SUPPORT SENATE BILL 573.

THE PURPOSE FOR SENATE BILL 573 IS TO MAKE THE STATE LAW MORE COMPATIBLE WITH THE FEDERAL LAW, SO THAT IT WILL BE EASIER TO UNDERSTAND AND TO ENFORCE.

SENATE BILL 573 REPEALS B.S.A. 50-670, AND AMENDS K.S.A. 50-673.

YOU WILL NOTE THAT IN THE NEW BILL, SECTION ONE IS THE EXISTING K.S.A. 50-673, AND SECTION TWO IS THE NEW LANGUAGE REPLACING K.S.A. 50-670.

THE FIRST PAGE, ON LINE 38, YOU WILL NOTICE THE NEW LANGUAGE, WHICH STATES: "AFTER THE CONSUMER HAS HAD AT LEAST SEVEN DAYS TO REVIEW THE GOODS OR SERVICES." THE REASON FOR THIS CHANGE IS THAT IT AFFORDS GREATER PROTECTION TO CONSUMERS REGARDING THE REVIEW AND/OR RETURN PERIOD. THE WAY THE LAW STATES NOW, "WITHIN SEVEN DAYS AFTER RECEIPT BY THE CONSUMER", COULD ENFORCE A HARDSHIP ON THE CONSUMER. FOR INSTANCE, IF YOU ARE TRAVELING OR IN THE HOSPITAL, OR HAVE A FAMILY EMERGENCY, AND YOU ARE NOT ABLE TO REVIEW THE PRODUCT WITHIN THE SEVEN DAYS AFTER IT IS RECEIVED, TECHNICALLY YOU WOULD NOT BE ELIGIBLE FOR A REFUND. WE DO NOT WANT TO TIE THE

CONSUMER TO THE SEVEN DAY PERIOD, SO, WITH THIS AMENDMENT, WHEN THE CONSUMER RECEIVES THE GOODS OR PRODUCT, HE OR SHE HAS SEVEN DAYS ONCE HE OR SHE RECEIVES THE PRODUCT, TO REVIEW THE GOODS OR SERVICES, AND THEN ASK FOR A REFUND IF DESIRED.

AT THIS POINT, WE DO HAVE ANOTHER AMENDMENT TO OFFER TO THE BILL, AND IT IS ATTACHED TO THE TESTIMONY HEREIN. I WILL EXPLAIN IT AT THIS TIME.

ON PAGE TWO, WE WOULD ASK TO DELETE THE LANGUAGE "TO CHOOSE AT ANY TIME WITHIN", ON PAGE TWO, LINE NINE, DELETE "THE SEVEN DAY REFUND PERIOD", ON PAGE TWO, LINE TEN, DELETE "IN WRITING PROVIDED THE CONSUMER RETURNS TO THE TELEMARKETER THE", PAGE TWO, LINE ELEVEN, DELETE "BY THE CONSUMER", PAGE TWO, LINE NINE, INSERT AFTER "SALE", "AND RETURN UNUSED AND UNDAMAGED GOODS OR SERVICES". WITH THAT AMENDMENT, IT WOULD THEN READ, BEGINNING ON LINE EIGHT THROUGH LINE TWELVE: "TO THE EXTENT THAT THE CONSUMER SHALL HAVE THE RIGHT TO CANCEL THE SALE AND RETURN UNUSED AND UNDAMAGED GOODS OR SERVICES BY NOTIFYING THE TELEMARKETER. A TELEMARKETER THAT HAS RECEIVED SUCH NOTICE TO CANCEL . . . "

AGAIN, WE BELIEVE THAT THIS IS AN ASSISTANCE TO THE CONSUMER BECAUSE IT DOES NOT LIMIT THE RETURNING OF THE UNUSED AND UNDAMAGED GOODS WITHIN THE SEVEN DAY PERIOD, BUT PROVIDES THAT IF THE GOODS ARE NOT SATISFACTORY, THEN THE CONSUMER HAS THE RIGHT TO

CHOOSE TO CANCEL THE SALE AND THE RETURN THE UNUSED AND
UNDAMAGED GOODS OR SERVICES FOR A REFUND WITHOUT BEING LIMITED TO
THE SEVEN DAY PERIOD.

THIS IS THE ONLY CHANGE WHICH AFFECTS K.S.A. 673.

THE BILL, IN SECTION TWO, DEFINES AUTOMATIC DIALING ANNOUNCING
DEVICES, PRIZES AND PRIZE PROMOTION, SELLERS, TELEMARKETERS, AND
TELEMARKETING.

YOU WILL NOTE THAT THE TERM "TELEMARKETING" REPLACES
"CONSUMER TELEPHONE CALL". IN DEFINING TELEMARKETING, IT STATES
THAT THE TELEMARKETER IS A PERSON WHO MAKES TELEPHONE CALLS TO A
CUSTOMER. THIS WOULD SEEM TO BE BROADER THAN THE WORD CONSUMER,
IN THAT IT WOULD APPLY TO ANYONE WHO IS CALLED BY A TELEMARKETER.

ALSO, THE BILL PROVIDES THAT THERE ARE NO EXEMPTIONS, SO THERE IS
NO NEED TO SPEAK TO THE FACT THAT THERE WOULD BE CERTAIN ACTS WHICH
WOULD BE EXEMPTED FROM THE LAW, SINCE THIS BILL PROVIDES THAT ANY
ONE CALLED BY A TELEMARKETER, REGARDLESS OF PAST EXPERIENCE, ETC., IS
ENTITLED TO THE SAME RIGHTS AS A NEW CUSTOMER.

THE BILL FURTHER PROVIDES THAT A TELEMARKETER MAY NOT BLOCK
CALLER I.D. IN OTHER WORDS, IF A CONSUMER HAS A CALLER ID ON HIS PHONE,
THE CONSUMER CAN IDENTIFY WHO THE TELEMARKETER CALLING IS.

THE BILL ALSO PROVIDES THAT A TELEMARKETER MUST DISCLOSE THE
FOLLOWING:

- 1) CALLS RESTRICTED BETWEEN THE HOURS OF 8 A.M. AND 9 P.M.;
- 2) THE IDENTITY OF THE PERSON CALLING;
- 3) THE PURPOSE OF THE CALL;
- 4) THE NATURE OF GOODS OR SERVICES OFFERED;
- 5) THAT NO PURCHASE OR PAYMENT IS NECESSARY TO WIN A PRIZE IF A PRIZE PROMOTION IS OFFERED. AND
- 6) HANG UP IF THE PERSON CALLED TERMINATES THE CALL.

THE TELEMARKETER ALSO MUST DISCONNECT IMMEDIATELY WHEN THE CALLED PERSON TERMINATES THE CALL, OR IF AN AUTODIAL ANNOUNCING DEVICE IS USED, WITHIN 25 SECONDS.

THE BILL FURTHER PROVIDES THAT A SELLER OR TELEMARKETER MAY NOT CALL AGAIN IF THE PERSON SAYS HE OR SHE DOES NOT WANT TO BE CALLED AGAIN.

THE BILL PROHIBITS THE FOLLOWING ACTIVITIES:

- A) HARASSMENT;
- B) MISREPRESENTING ANY INVESTMENT OPPORTUNITIES; OR
- C) USING A PROFESSIONAL COURIER TO OBTAIN FULL OR PARTIAL PAYMENT PRIOR TO INSPECTION OF GOODS BY THE CONSUMER.

IN ADDITION TO THE ABOVE, THE BILL STATES THAT BEFORE A CONSUMER PAYS FOR GOODS OR SERVICES, A TELEMARKETER MUST DISCLOSE:

- 1) THE TOTAL COST;

- 2) THE QUANTITY OF GOODS OR SERVICES;
- 3) THE ODDS OF BEING ABLE TO RECEIVE A PRIZE IF A PRIZE IS OFFERED;
- 4) THAT NO PAYMENT OR PURCHASE IS NECESSARY TO WIN IF A PRIZE IS OFFERED;
- 5) INSTRUCTIONS ON HOW TO PARTICIPATE IN ANY PRIZE PROMOTION WITHOUT MAKING A PURCHASE; AND
- 6) ALL COSTS OR CONDITIONS TO REDEEM A PRIZE.

THE CHANGES IN SENATE BILL 573 AS HEREIN PROPOSED OFFER GREATER PROTECTION TO CONSUMERS REGARDING THE REVIEW AND RETURN PERIOD, AND REQUIRE SELLERS TO PUT KANSANS ON THEIR DO-NOT-CALL LIST WHO ASK NOT TO BE CALLED AGAIN.

ALSO, THE NEW LANGUAGE REPEALS THE REQUIREMENT TO TERMINATE THE CALL IF THE PERSON GIVES A NEGATIVE RESPONSE. THE REASON FOR THIS CHANGE IS THAT THE MARKETERS HAVE FOUND IT IMPOSSIBLE TO TRAIN THEIR EMPLOYEES AS TO WHAT A NEGATIVE RESPONSE IS.

FOR INSTANCE, IT IS EASY TO UNDERSTAND WHAT THE FOLLOWING RESPONSES ARE:

- 1) "I DON'T WANT TO TALK NOW"
- 2) "I DON'T WANT TO HEAR FROM YOU AGAIN"
- 3) "I DON'T NEED OR WANT SERVICES OR GOODS"

WE ARE ALL AWARE THAT THESE WOULD BE NEGATIVE RESPONSES. BUT HOW ABOUT THE FOLLOWING:

- 1) "I MAY ALREADY HAVE THAT"
- 2) "I DON'T HAVE MONEY TO PAY FOR THAT THIS MONTH" (YOU CAN PAY LATER, BUT THEY NEED TO BE TOLD)
- 3) "I DON'T WANT A CIVIL WAR SERIES"
- 4) "I DON'T WANT IT BECAUSE THE LAST TIME IT DIDN'T WORK"

ARE THOSE NEGATIVE RESPONSES ? BY CHANGING THE LAW AS IT IS PROPOSED IN 573, THE CONSUMER STILL HAS ALL OF THE PROTECTIONS UNDER THE CURRENT LAW, BUT IT IS LESS CONFUSING TO ALL PARTIES.

THE TELEMARKETERS DO NOT WANT TO ANNOY THEIR CUSTOMERS, BUT THE LAW CANNOT BE FUZZY SO THEY CAN PROPERLY OBEY THE LAW.

A GOOD ANALOGY IS, IF YOU HAVE EVER BEEN IN A RETAIL STORE AND THE CLERK SAYS, "CAN I HELP YOU?" AND YOU RESPOND "I DON'T THINK SO", HAVE YOU EVER HAD THE CLERK WALK OFF AND GIVE UP INSTEAD OF TRYING TO CONTINUE SELLING YOU A PRODUCT? WE DON'T THINK SO.

WHAT WE ARE PROPOSING ARE CHANGES IN THE LAW WHICH GIVE THE CONSUMER SOME GREATER PROTECTION THAN HE HAS UNDER THE PRESENT LAW, AND IT ALSO MAKES THE KANSAS LAW ADAPTABLE TO THE FEDERAL LAW AND EASIER TO ENFORCE.

WE URGE THIS COMMITTEE TO ADOPT THE PROVISIONS OF SENATE BILL 573 AND REPORT THE BILL FAVORABLY TO THE FULL SENATE.

ON BEHALF OF MY CLIENT, I RESPECTFULLY THANK YOU FOR YOUR
CONSIDERATION IN HEARING THIS MATTER, AND I WILL STAND FOR QUESTIONS
FROM THE COMMITTEE.

BOB W. STOREY

Note: could accept this further amendment

page 2, line 8 delete
"to choose at any time within"

page 2, line 9 delete
"the seven-day refund period,"

page 2, line 10 delete
"in writing, provided the consumer returns to the
telemarketer the"

page 2, line 11 delete

page 2, line 12 delete
"by the consumer."

page 2, line 9 insert after "sale"
"and return unused and undamaged goods or services"

it would then read: beginning line 8
through line 12

extent that the consumer shall have the right to cancel the
sale and return unused and undamaged goods or services by
notifying the telemarketer. A telemarketer that has received
such notice to cancel

new underlined

[57 FR 4740, Feb. 7, 1992]

Subpart L—Restrictions on Telephone Solicitation

§ 64.1200 Delivery restrictions.

(a) No person may:

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(2) Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by § 64.1200(c) of this section.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(b) For the purpose of § 64.1200(a) of this section, the term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(c) The term *telephone call* in § 64.1200(a)(2) of this section shall not include a call or message by, or on behalf of, a caller:

(1) That is not made for a commercial purpose,

(2) That is made for a commercial purpose but does not include the trans-

mission of any unsolicited advertisement,

(3) To any person with whom the caller has an established business relationship at the time the call is made, or

(4) Which is a tax-exempt nonprofit organization.

(d) All artificial or prerecorded telephone messages delivered by an automatic telephone dialing system shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player which placed the call) or address of such business, other entity, or individual.

(e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber:

(1) Before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), and

(2) Unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(i) Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list.

(ii) Training of personnel engaged in telephone solicitation. Personnel engaged in any aspect of telephone solicitation must be informed and trained in the existence and use of the do-not-call list.

(iii) Recording, disclosure of do-not-call requests. If a person or entity making a telephone solicitation (or on whose behalf a solicitation is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is

mado, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.

(iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call.

(v) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a do-not-call list for the purpose of any future telephone solicitations.

(f) As used in this section:

(1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an

electronic signal received over a regular telephone line onto paper.

(3) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By a tax-exempt nonprofit organization.

(4) The term *established business relationship* means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(5) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

[57 FR 48335, Oct. 23, 1992; 57 FR 53293, Nov. 9, 1992]



Testimony before the Senate Commerce Committee
Thursday, February 12, 1998
Michael R. Murray, Director of Governmental Affairs, Sprint
Senate Bill 573

Madam Chairman and Members of the Committee:

My name is Mike Murray, Director of Governmental Affairs in Kansas for Sprint.

Thank you for the opportunity to express our views about Senate Bill 573 which amends current telemarketing laws in Kansas.

Under current law, Chapter 50-670 (Paragraph 2, subparagraph C) refers to an existing business relationship, and 50-673 (Section 1, paragraph b) refers to preexisting business relationships. In the first instance in 50-670, the definition of an unsolicited telephone call does not include a call when made by a telemarketer representing a company which has an existing business relationship with the consumer being called.

In the second instance in Chapter 50-673, telemarketers who have a preexisting business relationship are not required to comply with certain provisions governing telemarketing.

Senate Bill 573 addresses only the existing business relationship language contained in 50-670 by repealing that section.

As a matter of policy, Sprint believes the requirements of the new Chapter 50-673 should apply to all telemarketers regardless of existing or preexisting business relationships. This non-discriminatory application of the law will create a level playing field for all telemarketers. More importantly, Sprint believes this is a consumer friendly approach bringing everyone under the consumer protection laws regarding telemarketing.

We believe it is time this inequity in the telemarketing laws be eliminated.

Senate Commerce Committee

Date 2-12-98

Attachment # 3-1 thru 3-3

It is our understanding that the principal reason the existing and preexisting business relationship provision are in current law is to protect small businessmen and women who sell to the public over the telephone and who have clients who have previously purchased products or services from them. Sprint is sensitive to that concern and offers the following language to address that situation:

In new Chapter 50-673, Section 1 we propose adding after the word "establishment" at the end of the paragraph (b) "and is not a provider of telecommunications services except as providers defined as rural telephone companies pursuant to KSA 66-1, 187 (l). "

We support Senate Bill 573 with this amendment pertaining preexisting business relationships. It is our hope the Committee will recommend passage of the bill with our proposed amendment.

If SB 573 fails in committee, continue to pursue changes to the existing laws to make compliance with telemarketing rules equitable for competitors and consumers alike.

Thank you for your attention and consideration, and I will be happy to respond to questions.



SENATE BILL No. 573

By Committee on Commerce

2-3

9 AN ACT concerning consumer protection; relating to telephone solici-
10 tation; amending K.S.A. 50-673 and repealing the existing section; also
11 repealing K.S.A. 1997 Supp. 50-670.
12

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

14 Section 1. K.S.A. 50-673 is hereby amended to read as follows: 50-
15 673. The provisions of K.S.A. 50-671 through 50-674 and amendments
16 thereto do not apply to a transaction:

17 (a) That has been made in accordance with prior negotiations in the
18 course of a visit by the consumer to a merchant operating a business
19 establishment that has a fixed permanent location and where consumer
20 goods or services are displayed or offered for sale on a continuing basis;

21 (b) in which the business establishment making the solicitation has
22 made a prior sale to the consumer, is establishing a business to business
23 relationship or has a clear, preexisting business relationship with the con-
24 sumer, provided that relationship resulted in the consumer becoming
25 aware of the full name, business address and phone number of the es-
26 tablishment;

27 (c) in which the consumer purchases goods or services pursuant to
28 an examination of a television, radio, or print advertisement or a sample,
29 brochure, catalogue, or other mailing material of the telemarketer that
30 contains:

- 31 (1) The name, address, and telephone number of the telemarketer;
32 (2) a full description of the goods or services being sold along with a
33 list of all prices or fees being requested, including any handling, shipping,
34 or delivery charges; and

35 (3) any limitations or restrictions that apply to the offer; or

36 (d) in which the consumer may obtain a full refund for the return of
37 undamaged and unused goods or a cancellation of services notice to the
38 seller ~~within seven days after receipt by the consumer~~ *after the consumer*
39 *has had at least seven days to review the goods or services*, and the seller
40 will process the refund within 30 days after receipt of the returned mer-
41 chandise by the consumer or the refund for any services not performed
42 or a pro rata refund for any services not yet performed for the consumer.
43 The return and refund privilege shall be disclosed to the consumer orally

insert: "and is not a provider of telecommunications services except as providers defined as rural telephone companies pursuant to K.S.A. 66-1, 187 (1)"



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Good Morning. My name is Tom Young. I am a volunteer representing the AARP Kansas State Legislative Committee. Our Committee represents the legislative and regulatory interests of the more than 332,000 AARP members from across the state.

On a national level, we are joined in the fight against telemarketing fraud by the Federal Trade Commission, the Postal Inspection Service, and the National Association of Attorneys General (NAAG). In Kansas, we are joined in the fight against fraudulent telemarketing by the Attorney General, Kansas Area Agencies on Aging, the Silver Haired Legislature, and the Retired Teachers Association.

Federal authorities estimate that telemarketing fraud robs Americans of some \$40 billion a year. The actual number may be higher, since telemarketing fraud is part of the nation's underground economy. Telemarketing fraud

targeted at the elderly.

Senate Commerce Committee

Date 2-12-98

Attachment # 4-1 then of 3

AARP is fighting back against telemarketing fraud through education across the nation, and legislation in 15 states,

including Missouri, Oklahoma. We can provide you with a chart that summarizes and compares the major provisions of state telemarketing laws.

The Federal Trade Commission (FTC) that was enacted in 1994 provided general direction to the telemarketing industry on how to restrain from fraudulent activities

than as a consumer protection rule. The FTC rule explicitly allows the states to enact provisions that provide greater consumer protections as long as they do not conflict with the federal law. We do not believe that

SB 573 in its present form provides consumer protections for the following reasons:

Section I: Amends K.S.A. 50-673 by permitting consumers a seven day period to review the goods and services received

in a telemarketing transaction before being required to seek a full refund upon return of the undamaged goods, or notifying the seller of the cancellation of services. This

in essence provides a 14-day window for consumers to decide about goods or services that they have purchased. The significance of the provision is that if a seller applies such terms to the transaction, the transaction is exempt from the the written contract as provided in K.S.A.

50-672. We do not support exemptions for such refund policies and the additional time for review does not change our position. Consumers should not be compelled to pay for and receive goods and services based on a telephone conversation without the opportunity to cancel the sale before payment is made and merchandise shipped. These provisions compel the consumer to bear the expense, both in time and money, of repackaging, remailing and returning the items. This is clearly an attempt to coerce the consumer into accepting the goods or services, knowing

that the inconvenience and cost of returning the item may not be worth the effort.

Section 2: The specific practices that telemarketers and sellers must adhere to, such as banning courier pick-ups for payment without providing the consumer an opportunity to inspect the goods, can generally be supported by AARP.

Including them in this section of the code, makes the penalties for failing to comply with these practices insufficient. The practices listed in this section should

be unconscionable acts as defined in K.S.A. 50-627.

Section 2 of this proposed legislation should amend K.S.A. 50-675 so that these practices are classified as unconscionable acts with penalties attached.

In summary, fraudulent telemarketers are criminals. We ask you to help Kansans fight back.

Thank you for this opportunity to share our views.