

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR.

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on February 12, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. John Toplikar - excused

Committee staff present: Bob Nugent, Revisor of Statutes
Jerry Donaldson, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee: Rep. Gerry Ray
Steve Rarrick, Asst. Attorney General
Mike Murray, Sprint

Others attending: See attached list

The fiscal note for **HB 2161**, which was heard yesterday, was handed out to the committee.

Hearing on: HB 2197 - Consumer protection, negative option invitation or announcement.

Rep. Gerry Ray appeared as a proponent of the bill. She believes that it offers protection to the citizens of Kansas from a practice called "negative option". She explained an experience she had last summer with two charges on her MasterCard statement. (See Attachment 1)

Steve Rarrick, Asst. Attorney General, Consumer Protection Division of the Attorney General's office, appeared on the behalf of Attorney General Carla Stovall to testify in support of **HB 2197**. The bill would add to current statute a provision to include negative option solicitations as part of the circumstances under which property or services received by a person are considered to be unordered, and defines the term "negative option invitation or announcement." Their testimony also contained some minor changes. (See Attachment 2)

Jolene Grabill spoke from the audience saying this bill was a good idea, that it has happened to her three times.

Mike Murray, Sprint, appeared before the committee with concerns about the current law. Sprint sees a problem with unscrupulous consumers who could take advantage of companies by ordering by phone and then later saying they didn't order. Would they then get the service for life? In response, Mr. Rarrick stated that this was not the case and they have never had a case where the consumer argued they should get the service for life. He also stated that a bill concerning "slamming" and "cramming" might address other issues that Mr. Murray mentioned.

Written testimony was received from John Pinegar and Bob Storey, who represent the Direct Marketing Association (DMA). They have concerns with the bill as originally drafted and their testimony contains proposed amendments they have worked out with the Attorney General's office. (See Attachment 3)

No others were present to testify for or against the bill and Chairman Lane closed the hearing after reading the fiscal note.

Final Action on: HB 2049 - Modifications to wage payment act.

Rep. Swenson made a motion to pass out the bill favorably and to place it on the Consent Calendar. The motion was seconded by Rep. Beggs. The motion passed.

Final Action on: HB 2050 - Elimination of duplicate new employee reports.

A motion was made by Rep. Grant to pass out the bill favorably and to place it on the Consent Calendar. Rep. Gilmore seconded the motion and the motion carried.

The meeting was adjourned at 10:45 a.m. The next meeting is scheduled for February 16, 1999.

GERRY RAY
 REPRESENTATIVE, 20TH DISTRICT
 JOHNSON COUNTY
 9817 WOODSON
 OVERLAND PARK, KS 66207
 STATE CAPITOL—ROOM 115-S
 TOPEKA, KS 66612-1504
 (785) 296-7682



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE-CHAIR: ENVIRONMENT
 MEMBER: TAXATION
 TRANSPORTATION

FEBRUARY 12, 1999

HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR

TESTIMONY ON HOUSE BILL 2197

Mr. Chairman, members of the Committee. Thank you for hearing HB 2197. This is a bill I believe offers protection to the citizens of Kansas from a practice called "negative option". You may not be acquainted with the term or practice, I certainly was not until I became a target for it.

Let me explain. Last summer my husband and I received our MasterCard statement which had two charges we could not identify. One for \$53.00 and the other for \$55.00 for discount services. After some investigative work on our part we were able to obtain "800" numbers for both companies from the credit card company.

The first company was contacted and they explained we had been sent material on their discount service. Because we did not take action to decline the service, the charge was added to our MasterCard account. We believe the material appeared to be "junk mail" and we most likely threw it away unopened. They agreed to credit our account, however it took about two months for it to be done. I might mention we had already denied the charge with the credit card company but still wished to have the matter expressly settled.

The story on the other company was the same with the exception that the "800" number was useless. We called at all times during the day and night and always got an answering machine with a message saying "We cannot take your call now - try again later." Finally by working with the credit card company we discovered this company was an affiliate of another company and we were able to reach them through the parent firm.

Our next question was "how did the companies assess our charge account number?" It seems we had ordered from a couple of catalogs we had received in the mail and these companies were affiliates of those catalog companies.

Ironically this all took place at a time when I was serving on the Information Management Interim Committee, which was dealing primarily with privacy issues. So I was primed to recognize that my privacy had been seriously infringed upon.

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 Attachment 1

The Interim Committee did not introduce a bill because we could not complete the research on the issue in time to make the deadline. Therefore, I requested HB 2197. Representative Phill Kline, who is a co-sponsor of the bill, was Chair of the Information Management Committee.

Steve Rarrick and Kelli Benintendi of the Consumer Protection Division of the Attorney General's Office, drafted the bill before you. There are several changes proposed to address some problems and I will ask Mr. Rarrick to go over those in a minute.

Again, thank you for considering this bill. When I first learned about the negative option practice, I was astounded that such things were occurring. It took about eight weeks of work on the part of my husband and me, including chargeable long distance calls, to get it straightened out. I could not believe we are required to carefully read our "junk mail" in order to protect ourselves. I hope you agree that HB 2197 is needed to eliminate this problem and will recommended it favorable for passage.

I would be pleased to stand for questions.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699 TTY: 291-3767

CONSUMER HOTLINE
1-800-432-2310

Testimony of
C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Business, Commerce & Labor Committee
RE: HB 2197
February 12, 1999

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in support of HB 2197. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The intent of HB 2197 is to modify K.S.A. 50-617, which deals with the receipt of unsolicited goods. Under the current statute, a person may consider unordered goods or services received to be an unconditional gift, and may dispose of them as they see fit. Collecting on a bill for unordered goods or services is a deceptive act or practice under the Kansas Consumer Protection Act (KCPA). HB 2197 seeks to include negative option solicitations as part of the circumstances under which property or services received by a person are considered to be unordered, and defines the term "negative option invitation or announcement."

An example of a negative option announcement would be if your credit card company sent a 30-day trial offer of their credit card protection program for which one would be billed unless canceled before the expiration of the trial offer time. In this negative option scenario, even though the program was never requested or ordered, one would have to make sure the company's cancellation procedure was followed in order to avoid being charged. Cancellation may involve calling a company representative and listening to a high pressure sales pitch for the program before being allowed to cancel.

The Consumer Protection Division receives inquiries about negative option solicitations, and recently we have received complaints against two different companies using negative options to sell discount buying club memberships. The negative option announcement is sent to the consumer by bulk mail that many consumers discard as junk mail. The envelope does not indicate that a consumer will be charged if the membership is not canceled. Both of these companies acquired credit card numbers when other merchandise was purchased by phone from a catalog or television advertisement.

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2-12-99
Attachment 2

The amendments to K.S.A. 50-617 in this bill specifically provides that property or services received when a person fails to respond to a negative option solicitation are unordered. Any attempt to collect or bill for these property or services would be a violation of the KCPA.

Additionally, we would propose the following balloon amendments to the bill:

On page 1, line 23, we propose changing the word "unsolicited" to "unordered" to be consistent with the other language in the statute.

On page 1, line 37, we propose adding "or sends" following "proposes to send," to include circumstances in which the property or services are sent as part of the negative option invitation or announcement.

On page 1, line 42, following "Any attempt to collect," we propose deleting "on billing for" and adding "or bill for unordered" in order to include both collection efforts and simply billing for unordered property or services as deceptive acts or practices.

On page 1, line 43, we propose deleting "received as an unconditional gift."

Both our office and Representative Ray were contacted by members of the direct marketing industry with suggested language related to book-of-the-month type arrangements. This amendment is at page 2, line 2, and we would be agreeable to this language which would be applicable to book clubs, music clubs, etc. in which a person has agreed in advance to receive property on a periodic basis.

On behalf of Attorney General Stovall, I would urge your favorable consideration of HB 2197 with the proposed balloon amendments. Thank you.

HOUSE BILL No. 2197

By Representatives Ray, Adkins, Beggs, Campbell, Carmody, Cox, Faber, Freeborn, Glasscock, Huff, Jennison, Phil Kline, Phill Kline, Lane, Lightner, Loyd, McCreary, Myers, Powell, Shultz, Stone and Wilk

2-3

2-1

11 AN ACT relating to consumer protection; concerning negative option
12 invitation or announcement; amending K.S.A. 50-617 and repealing
13 the existing section.
14

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

16 Section 1. K.S.A. 50-617 is hereby amended to read as follows: 50-

17 617. (a) Whenever any supplier shall, in any manner, or by any means,
18 deliver ~~goods property~~ or services not ~~actually affirmatively~~ ordered or
19 requested by the recipient, the receipt of any such unordered ~~goods prop-~~
20 ~~erty~~ or services shall for all purposes be deemed an unconditional gift to
21 the recipient who may use or dispose of the same in any manner the
22 recipient sees fit without any obligation on the recipient's part to the
23 ~~sender supplier. Property or services are considered to be unsolicited un-~~
24 ~~less the recipient specifically requested, in an affirmative manner, the~~
25 ~~receipt of the property or services according to the terms under which~~
26 ~~they are being offered. Property or services are not considered to have~~
27 ~~been affirmatively ordered or requested if a person fails to respond to a~~
28 ~~negative option invitation or announcement to purchase the property or~~
29 ~~services, and the property or services are provided notwithstanding. In~~
30 any action for the return of such ~~goods property~~ or for payment of the
31 purchase price of such ~~goods property~~ or services or any other consid-
32 eration, it shall be a complete defense that the ~~goods property~~ or services
33 were delivered to the recipient ~~unordered voluntarily~~ and that the recip-
34 ient did not ~~actually affirmatively~~ order or request the same.

unordered

35 (b) As used in this section, "negative option invitation or announce-
36 ment" means any material sent by a supplier which identifies property or
37 services which such supplier proposes to send to recipients, and the recip-
38 ients are thereafter billed for the property or services identified in the
39 material, unless by a date or within a time specified by the supplier, the
40 recipients, in conformity with the supplier's terms set forth in the material,
41 instruct the supplier not to send the identified property or services.

or sends

42 (b)(c) Any attempt to collect ~~on billing for goods property~~ or services
43 ~~received as an unconditional gift~~ under this section is a deceptive act or

*or bill for unordered
received as an unconditional gift*

2-3

2-4

1 practice under the Kansas consumer protection act.

2 ~~(e)~~ ~~(d)~~ This section shall be part of and supplemental to the Kansas
3 consumer protection act.

4 Sec. 2. K.S.A. 50-617 is hereby repealed.

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

(d)

The provisions of Section 50-617 do not apply to plans and arrangements regulated by and in compliance with 16 CFR 425 or to contractual plans or arrangements such as continuity plans, subscription arrangements, standing order arrangements and series arrangements under which the supplier periodically ships property to a consumer who has affirmatively ordered or requested in advance to receive such property on a periodic basis.

(e)

2-4

Memorandum

To: The Honorable Al Lane, Chairman
Members of the House Business, Commerce and Labor Committee

From: John Pinegar, Lobbyist
Bob Storey, Lobbyist

Date: February 11, 1999

Re: House Bill 2197

Please be advised, we represent the Direct Marketing Association (DMA). The DMA has representative members such as The Book of the Month Club, Time-Life Magazines, Record of the Month Club, and many others.

Regarding House Bill 2197, the DMA had some concerns with the bill as originally drafted. However, we have been working with the Attorney General's Office and are satisfied with the proposed amendments they plan to address, as well as the concerns of Representative Ray and the other sponsors of the bill.

The DMA has no objections to House Bill 2197 with the proposed amendments. It will allow DMA's members to function in a lawful manner as they have in the past.

Thank you for your consideration.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-12-99
Attachment 3

HOUSE BILL No. 2197

By Representatives Ray, Adkins, Beggs, Campbell, Camody, Cox, Faber, Freeborn, Glasscock, Huff, Jennison, Phil Kline, Phyll Kline, Lane, Lightner, Loyd, McCreary, Myers, Powell, Shultz, Stooe and Wilk

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5-2

3-2

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P. 3 003

5-3

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5-3