

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 21, 2000 in Room 527-S of the Capitol.

All members were present:

Committee staff present: Dr. Bill Wolff, Legislative Research  
Bruce Kinzie, Office of Revisor  
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Steve Rarrick, Office of the Attorney General  
John Pinegar, Direct Marketing Association

Others attending: See attached

Chairman Cox said the committee would work **HB 2825 - Consumer Protection, prohibiting obtaining or submitting check without consent.**

**Steve Rarrick**, Office of the Attorney General, handed out an amendment to **HB 2825. (Attachment 1)** He said there had been previous discussions on what the words negotiable "paper" mean. His office thinks it ought to be changed to negotiable "instrument or payment order." K.S.A. 84-4a-103 talks about payment orders that can be submitted to another bank electronically, orally, or in writing. Also, line 14 of the amendment removes the word "bankcard" and inserts the words "share or similar" account. He thinks this language will properly address the issue. He said he'd had discussions with Bruce Kinzie and the Kansas Bankers Association, and it was thought that an amendment was not necessary for "expressed written authorization." In fact, it was thought that if language was drafted, it would be more limiting than it is right now.

Chairman Cox asked Doug Lawrence if he wanted to address the committee. Mr. Lawrence deferred to **John Pinegar**, the Direct Marketing Association. He handed out a suggested amendment. **(Attachment 2)** He said his position remains the same that it has over the past several years and that is for the Kansas law to reflect the federal law. The three criteria the federal law requires to get a verifiable authorization are: expressed written authorization, independent third party verification, or a tape recording. Under the federal act, this information is available to the financial institutions prior to the withdrawal being made, if the financial institution requests the information. His suggested amendment deletes the words "written authorization" and inserts the words "verifiable authorization in compliance with 16 CFR 310.3." He said his organization just wants to follow the federal law, which they and all legitimate telemarketers are now doing.

Chairman Cox asked what the committee's pleasure was.

Representative Burroughs made a motion to pass out the bill favorably with the amendments presented by Steve Rarrick.

Representative Tomlinson said he would be happy to second it but it would be better to vote on the amendments first. Chairman Cox agreed.

Representative Burroughs retracted his original motion and made a motion to adopt Steve Rarrick's amendment to HB 2825. Representative Tomlinson seconded the motion. The motion carried.

Representative Burroughs made a motion to pass out HB 2825 favorably as amended. Representative Flora seconded the motion.

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTION, Room 527-S Statehouse, at 3:30 p.m. on February 21, 2000.

Representative Humerickhouse said he is really concerned about what the bill would do to people that are doing business in the state legitimately and with the number of hoops we are expecting them to jump through, in order to try to catch the bad guy, who probably won't ever get caught. He thinks it's adverse to the business climate in the state. He said he would be voting against the motion.

Representative Mayans said he agrees with Representative Humerickhouse. He does not think it is good public policy and thinks it would be interfering with businesses trying to do their job. He said he will be voting against the motion.

Representative Grant said he agreed with his two colleagues. To catch one bad guy, we go out and try to blanket everybody. What he'd like to see, if the motion goes down, is for the AG's office, the banking people, and the people that this affects to get together and work out a compromise of some kind. Then they could come back in here and everyone would be happy. He apologized to Representative Ray for having to vote against the bill but said he thinks we're putting too much of a burden on the people out there that are going to have to cope with it.

Chairman Cox called for a voice vote and was in doubt of the outcome so he asked for a show of hands vote. There was a tie vote with 8 yes and 8 no votes. The motion failed.

Representative Sharp made a motion to approve the February 14 minutes as written. Representative Grant seconded the motion. The motion carried.

The meeting adjourned at 3:56 p.m.

The date of the next meeting will be announced at a later date.

# HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: February 21, 2000

| NAME              | REPRESENTING              |
|-------------------|---------------------------|
| Nube Recht        | AT+T                      |
| Janell Conahay    | AARP                      |
| Marc Hamann       | Div. of the Budget        |
| Roger Trautso     | KGC                       |
| Diane Hoover      | WR                        |
| Wane Hutchins     | WR                        |
| Gerry Ray         | House of Reps             |
| Florida LABA      | ONEOK/KANSAS GAS SERVICE  |
| Terry D. Hamblin  | Attorney General's Office |
| George Banbee     | Comm. Bankers             |
| Chuck Stous       | KBA                       |
| Kathy Olsen       | KBA                       |
| Patrick J. Kerley | KCB                       |
| John S. Pinger    | DeLatt Dan + Associates   |
| Doug Lawrence     | SW Bell                   |
|                   |                           |
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|                   |                           |
|                   |                           |

HOUSE BILL No. 2825

By Committee on Financial Institutions

2-2

9 AN ACT relating to consumer protection; prohibiting certain acts.

10  
11 Be it enacted by the Legislature of the State of Kansas:  
12 Section 1. (a) No supplier shall obtain or submit for payment a check,  
13 draft or other form of negotiable ~~paper~~ drawn on a person's checking, ~~instrument or payment order~~  
14 savings ~~or bank~~ account without the consumer's express written ~~, share or similar~~  
15 authorization.

16 (b) A violation of subsection (a) is an unconscionable act within the  
17 meaning of K.S.A. 50-627, and amendments thereto.

18 (c) This section shall be part of and supplemental to the Kansas con-  
19 sumer protection act.

20 Sec. 2. This act shall take effect and be in force from and after its  
21 publication in the statute book.

House Financial Institutions

2-21-00

Attachment 1

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By Committee on Financial Institutions

2-2

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21 publication in the statute book.

→ Verifiable authorization in compliance with 16 CFR 310.3

*House Financial Institutions  
2-21-00  
Attachment 2*

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(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

**310. Deceptive telemarketing acts or practices.**

**(a) Prohibited deceptive telemarketing acts or practices.**

It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

- (1) Before a customer pays for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:
  - (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;
  - (ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
  - (iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

- (iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and
- (v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

**(2) Misrepresenting, directly or by implication, any of the following material information:**

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
- (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
- (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or
- (vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

**(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:**

- (i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

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(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

- (A) The date of the draft(s);
- (B) The amount of the draft(s);
- (C) The payor's name;
- (D) The number of draft payments (if more than one);
- (E) A telephone number for customer inquiry that is answered during normal business hours; and
- (F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

- (A) All of the information contained in 310.3(a)(3)(ii)(A)-(F); and
  - (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and
- (4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 310.3(a) or (c), or 310.4 of this Rule.

(c) Credit card laundering. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

- (1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;
- (2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the

result of a telemarketing credit card transaction between the cardholder and the merchant; or

- (3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

#### 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

- (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
- (ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.