

Approved: March 7, 2000 *Carl Dean Holmes*  
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:05 a.m. on February 15, 2000 in Room 522-S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Rep. Doug Johnston  
Larry Bechtold, AARP  
Steve Rarrick, Attorney General's Office  
Mike Reece, A. T & T.  
Mike Murray, Sprint  
Doug Smith, Direct Marketing Association  
Tyler Prochnow, American Teleservices Association  
Bud Grant, Kansas Chamber of Commerce & Industry

Others attending: See Attached Guest List

Chairman Holmes announced that the committee would be meeting in Room 231-N beginning Thursday, February 17.

**HB 2891 - Telemarketer no-call list**

**HB 2784 - Unsolicited telephone calls to sell consumer goods or services prohibited**

Chairman Holmes opened the hearing with testimony from Rep. Doug Johnston, lead sponsor of **HB 2891 (Attachment 1)**. Rep. Johnston gave a brief outline of the bill and included with his testimony a letter from Lynne Holt, Principal Analyst, that provided information about other states with 'no-call' list laws.

Rep. Johnston responded to questions from Rep. Vining, Rep. Alldritt, Rep. McClure, Rep. Myers, Rep. Dahl, Rep. Krehbiel and Rep. Holmes.

Dr. Larry Bechtold, AARP Kansas State Legislative Committee, testified in favor of **HB 2891 (Attachment 2)**. AARP believes that consumers have a right to personal privacy and should be able to reject intrusive marketing practices and communications.

Deputy Attorney General Steve Rarrick, Consumer Protection Division of the office of the Attorney General, appeared on behalf of Attorney General Carla Stovall. Mr. Rarrick stated the Attorney General's office was supportive of this concept and urged favorable consideration (**Attachment 3**).

Mike Reece, on behalf of A. T & T., testified in opposition to **HB 2891 (Attachment 4)**. He stated that this legislation fails to address the real concern, that is to discourage unscrupulous telemarketers from operating in our state.

Mike Murray, director of Governmental Affairs for Sprint, provided testimony as an opponent to **HB 2891 (Attachment 5)**. Mr. Murray stated that Sprint believes the required use of the Direct Marketing Association's (DMA) Telephone Preference Service list along with the FCC required internal list is all that is necessary to stop unwanted telemarketing phone calls. He also offered an amendment to the bill that would exempt those who used the DMA list.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 522-S on February 15, 2000 at 9:05 a.m.

Appearing on behalf of the Direct Marketing Association, Doug Smith appeared in opposition to **HB 2891** (Attachment 6). Mr. Smith stated that a state specific list can be expensive and is a duplicate of effective efforts already available. Mr. Smith also had distributed information on **HB 2784** (Attachment 7), which the DMA also opposes.

Chairman Holmes stated there was also written testimony from John W. Hesse, Senior Attorney and Director of Government Relations for the Direct Selling Association (Attachment 8).

Mr. Tyler Prochnow, representing the American Teleservices Association, testified as an opponent to **HB 2891** (Attachment 9). Mr. Prochnow expressed concerns about the Attorney General's staff's ability to enforce this law as it is applied to companies outside the state of Kansas.

Mr. Bud Grant, on behalf of the Kansas Retail Council, appeared as an opponent to **HB 2891**. Mr. Grant spoke to the request of the Attorney General's office to not having exemptions to the bill, such as those involved with a pre-existing relationship with the consumer.

The conferees responded to questions from Rep. Dahl, Rep. Alldritt, Rep. McClure, Rep. Myers, Rep. Loyd, Rep. Sloan, Rep. O'Brien, and Rep. Holmes.

Lynne Holt distributed copies of information requested by Rep. Kuether regarding the 1998 and 1999 testimony on competition of generation of electricity. (Attachment 10)

Rep. Sloan distributed copies of an article from the Lawrence Journal-World about green power (Attachment 11).

Meeting adjourned at 10:57 a.m.

Next meeting is Wednesday, February 16, 2000 at 9:00 a.m.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 15, 2000

NAME	REPRESENTING
Rob Hodges	KTIA
Don Miles	KCC
Rep. Douglas Johnston	House Dist 92 (Wichita)
Maren E. Turner	AARP State Director
Larry Bechtold	AARP
Charles Hunson	American Express Co.
Doug Lawrence	SW Bell
Betty Olsen	Ks Bankers Assn
Tom Dashes	McGill Coaches & Assn.
Bob (BROOKS)	KCL
Gail Bright	AG
Teresa Selts	AG
Steve Rarick	AG
Sandy Braden	McGill Coaches & Assoc.
Erik Sartorius	Johnson Co. Board of Realtors
Ann Mah	Southwestern Bell Telephone
Mike Moffet	SWBT
Marvin Ramirez	SWBT
Tyler Prochnow	American Teleservices Association
Phil Johnson	American Teleservices Association

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 15, 2000

NAME	REPRESENTING
Christine Aarnes	KCC
Janette Luehring	KCC
Sten Parson	Smoot & Associates
Orin Lawrence	AARP
STUDS	
Matt Goddard	Heartland Community Bankers
Bruce Dimmitt	Independent
Cynthia Smith	KCPA
Dud Burke	Western Resources
Doug Smith	Direct Marketing Association
ED SCHAUB	WESTERN RESOURCES
Walker Hendrix	CURPS
Mike Reecht	ATT
Tom Day	KCC
Melie Murray	Sprint

**DOUGLAS JOHNSTON**

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*State of Kansas*



TOPEKA

COMMITTEE ASSIGNMENTS

MEMBER: TAXATION  
TRANSPORTATION  
ENVIRONMENT  
GOVERNMENTAL ORGANIZATIONS  
AND ELECTIONS  
ADMINISTRATIVE RULES AND  
REGULATIONS

*House of Representatives*

TESTIMONY IN FAVOR OF HOUSE BILL 2891  
HOUSE UTILITIES COMMITTEE  
FEBRUARY 15, 2000

REP. DOUGLAS JOHNSTON

Thank you for this opportunity to testify in favor of legislation which would empower citizens to put a stop to unwanted telemarketing calls at their homes.

House bill 2891 would establish a mandatory telemarketing do-not-call list with the Kansas Corporation Commission. This list would be maintained by the KCC for the express purpose of giving citizens an avenue for reducing or eliminating the telemarketing calls they receive at their homes. Citizens will be able to voluntarily put their name & phone number(s) on the list in order not to receive unsolicited ("cold") calls from companies doing telemarketing in Kansas. Any companies doing telemarketing in Kansas would be REQUIRED to use the list to ensure they are NOT calling anyone on the list. They are prohibited from making calls to individuals on the list. (See page 3 of the bill, lines 3-7.)

QUESTIONS ABOUT THE BILL:

I want to encourage the committee to seriously consider the following issues during your deliberations on this bill. These are issues which may or may not require amendment to the bill, but which I have received questions on from a variety of legislators.

How does this bill affect telephone calls from political phone banks?

ANSWER: The bill does not effect political phone banks because of the definition on page 1, lines 29-35:

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

Please note this definition would not prohibit calls for donations to organizations, but it would prohibit calls selling items for organizations.

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 1

Does the bill prohibit calls from businesses or organizations with which citizens already have relationships?

ANSWER: NO. See page one, lines 36-44 and page two, lines 1-2:

36 (2) "Unsolicited consumer telephone call" means a consumer tele-  
37 phone call other than a call made:  
38 (A) In response to an express request of the person called;  
39 (B) primarily in connection with an existing debt or contract, payment  
40 or performance of which has not been completed at the time of such call;  
41 (C) to any person with whom the telephone solicitor or the telephone  
42 solicitor's predecessor in interest had an existing business relationship if  
43 the solicitor is not an employee, a contract employee or an independent  
44 contractor of a provider of telecommunications services; or

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

Does this bill affect telephone calls from individual sales persons (realtors, insurance agents, etc.)?

ANSWER: YES. See page 2, lines 3-6:

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

THE COMMITTEE SHOULD CONSIDER A VARIETY OF POSSIBLE EXCEPTIONS TO THE  
BILL.

Does the bill deal with the "predictive dialing" problem which causes citizens to receive calls where they pick up the phone and no one answers?

ANSWER: NO. See House Bill 2580 which has had a hearing in the House  
Committee on Labor & Industry, but which has not received any action yet. I  
have spoken to Rep. Al Lane, chair of the committee and asked him if he would  
be opposed to adding the language of HB 2580 to the bill. He indicated that  
would be fine, but that he was awaiting amendment language from the Direct  
Marketers Association and Sprint which have some concerns about the bill.

How are companies protected if they make a good-faith effort to comply with the law?

ANSWER: SEE PAGE 3, LINES 12-15:

12 (i) It shall be a defense in any action or proceeding brought under  
13 this section that the defendant has established and implemented, with due  
14 care, reasonable practices and procedures to effectively prevent unsoli-  
15 cited consumer telephone calls in violation of this section.

How would this bill be enforced?

ANSWER: This legislation, if adopted, shall become part of the Kansas Consumer Protection Act. SEE PAGE 3, LINES 16-17.

Why should citizens have to pay a fee to NOT receive telemarketing calls?

Several legislators and citizens have raised this legitimate concern. For reference, see page 4, lines 5-7:

- 5 (d) A residential subscriber shall pay the commission a fee of \$5 for
- 6 each notice for inclusion in the data base established under this section.
- 7 A telephone solicitor shall pay the commission a fee of \$10 per year for

I want to encourage the committee to seriously consider changing the fees as written in the bill to eliminate the fee for getting on the do not call list and increasing the fee for telephone solicitors to access the list. We should make it a goal for our proposal to be revenue neutral, but we also should seriously consider the logic of "charging" someone to protect them from unsolicited telemarketing calls. Personally, I think folks who don't want to be bothered probably wouldn't make very good customers anyway and that companies doing telemarketing would benefit from saving time and resources calling folks who don't want to be bothered. Purchasing the list should be a smart business practice on their part.

In Florida citizens wishing to be on the list are charged \$10 the first year and \$5 for subsequent years. In Georgia and Kentucky the fee is \$5 to get on the list.

When would the do not call list come into effect?

ANSWER: No later than July 1, 2001

How will citizens know about the do not call list?

ANSWER: I have every confidence that many legislators will inform their constituents and the media will make the public aware. Also, note on page 3, lines 24-42:

- 24 (b) No later than July 1, 2001, the commission shall adopt rules and
- 25 regulations that:
- 26 (1) Require each local exchange company to inform its residential
- 27 subscribers that a consumer has the opportunity to give notice to the
- 28 commission or its contractor that the consumer objects to receiving un-
- 29 solicited consumer telephone calls;
- 30 (2) specify one or more methods by which a consumer may give no-
- 31 tice to the commission or its contractor of the consumer's objection to
- 32 receiving unsolicited consumer telephone calls and one or more methods
- 33 by which a consumer may revoke that notice;
- 34 (3) specify the time period for which a notice of objection shall be
- 35 effective and the effect of a change of telephone number on such notice;
- 36 (4) specify the methods by which objections and revocations shall be
- 37 collected and added to the data base;
- 38 (5) specify one or more methods by which a telephone solicitor can

39 obtain access to the data base as required to avoid calling the telephone  
40 numbers of consumers included in the data base; and  
41 (6) specify such other matters relating to the data base that the com-  
42 mission deems desirable.

What if the federal government establishes a national do not call list?

ANSWER: See page 3 & 4:

43 (c) If the federal communications commission establishes a single na-  
Page 4

1 tional data base of telephone numbers of subscribers who object to re-  
2 ceiving telephone solicitations, the commission shall include the part of  
3 such single national data base that relates to Kansas in the database  
4 established under this section.

What about the national do not call list established and run by the Direct Marketing Association in Washington D.C.?

ANSWER: The DMA list is a voluntary list. Companies are NOT required to use the list to ensure they don't bother citizens who don't want to receive telemarketing calls.

Will the database be used for any purpose other than compliance with the law?

ANSWER: No. See page 4, lines 10-14:

10 (e) Information contained in the data base established under this sec-  
11 tion shall be used only for the purpose of compliance with this section or  
12 in a proceeding or action under K.S.A. 50-670, and amendments thereto.  
13 Such information shall not be subject to public inspection or disclosure  
14 under the open records act.

What are other states doing regarding this issue?

ANSWER: Several states have proposed and adopted similar laws. Indiana is currently considering legislation. Washington State, Florida, Georgia Illinois and Kentucky have passed similar laws and about a dozen other states are looking at similar legislation.

In Georgia the state charges customers \$5 for being on the list for two years and telemarketers can be fined \$2,000 for calling anybody on the list. According to information brought to my attention by Lynne Holt, some 130,000 households in Georgia have joined the list. In Florida, some \$320,000 in fines has been collected from 42 companies since 1992.

Please also see the attached memo from Lynne Holt, dated December 6, 1999.

Thank you for your time and attention to this issue.



STATE OF KANSAS

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WILLIAM G. WOLFF  
ASSOCIATE DIRECTOR  
ALAN D. CONROY  
CHIEF FISCAL ANALYST



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December 6, 1999

Representative Douglas Johnston  
1450 Lieunett  
Wichita, Kansas 67203

Dear Representative Johnston:

I just finished all my committee assignments and am finally getting to legislative requests. Sorry for the delay. This letter responds to your request for information on no-call list legislation. Five states have implemented no-call list laws to date: Florida, Georgia, Oregon, Tennessee, and Alabama. Louisiana has used another approach with the same objective. I called Florida and Georgia to discuss their respective laws in greater detail because these two states are implementing the no-call list programs. The other four states (Oregon, Tennessee, Alabama, and Louisiana) only enacted their programs in 1999. However, a few observations about the legislation of these states are included below.

## Florida

**Provisions of the Law.** Florida's law (Attachment I) is instructive because it has been in effect since 1990 and program staff have several years of experience with implementation. The Florida No Sales Solicitation Calls law directs the Florida Department of Agriculture and Consumer Services to compile and maintain a "No Sales Solicitation Calls" list for residential, mobile, or telephonic paging device subscribers. Business numbers may not be included on the list. Lists must be updated on a quarterly basis.

The law prohibits the sale of "consumer goods and services" (defined in statute) through calls made from telemarketers located both within and outside the state to telephone numbers which appear on the "No Sales Solicitation Calls" list. However, this prohibition does not apply to any call:

- In response to an express request of the person being called;
- In connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

- To a person with whom the telemarketer has an existing or previous business relationship;
- By a newspaper in connection with newspaper business; and
- Which requests a contribution or donation.

The "No Sales Solicitation Calls" list is updated on a quarterly basis. The fee to telephone subscribers wanting to be on the list is \$10 per telephone number for the first year and \$5 for renewals (annual basis).

**Program Staff Support.** Eight positions are directly assigned to the No Sales Solicitation Calls program although resources of the legal and accounting divisions also are used. Two positions handle list production and distribution and the remaining six positions handle enforcement and complaint responsibilities.

**Program Participation and Program Revenues.** Telemarketers may purchase the "No Sales Solicitation Calls" list on an area code or statewide basis and are assessed accordingly. The charge to a business to purchase the statewide list is \$400 per year or \$120 per year per area code. Presently, the list includes almost 122,000 telephone subscribers. According to my staff contact, approximately \$800,000 was generated for the program in FY 1999 from subscriber fees and fees paid by businesses that purchased the list. In addition, an estimated \$80,000 was collected in fines assessed against businesses for violations.

**Penalties.** The law provides for civil penalties not to exceed \$10,000 per violation. A violation in this context would be each call made by a telemarketer to a number on the list. To date, all complaints have been settled out of court. Since 1992, approximately \$400,000 has been collected through 53 settlements. Generally, a business is assessed \$750 for the first alleged violation and \$1,500 for any subsequent alleged violation.

**Lessons Learned.** I asked one of my staff contacts whether Florida's law presented any problems for implementation. I was told that the most significant problem is the lack of a time frame for "prior or existing business relationship." Such a relationship is listed as one of the exemptions from the definition of "unsolicited telephonic sales call" in Florida's law. For example, a telephone subscriber who is on the list may have had a business relationship with a telemarketer 30 years ago. When the subscriber complains to the Department of Agriculture and Consumer Affairs that the telemarketer has made an unsolicited call, the telemarketer can point to that prior business relationship. Even though the relationship existed 30 years ago, the telemarketer is exempt from the definition of "unsolicited telephonic sales call" and is, therefore, authorized to call that subscriber.

## Georgia

**Provisions of the Law.** Georgia's law ([Attachment II](#)) was enacted in 1998 and program implementation began in January 1999. Georgia's Office of Consumer Affairs is responsible for enforcing the law. Residential customers who do not want to receive telephone solicitations must register with the Georgia Public Service Commission to be placed on the Georgia No Call List. The registration fee is \$5 per telephone number for a two-year period. Like Florida's law, Georgia's law

does not allow business numbers to be included in the list. Also like Florida's law, Georgia's law provides for lists to be updated on a quarterly basis.

Telemarketers located within or outside Georgia who place calls encouraging the purchase or rental of, or investment in, property, goods, or services are prohibited from calling customers on the list. They may subscribe to the list by paying an annual fee of \$10, which allows them unlimited access to the list. As with Florida's law, Georgia's law recognizes exceptions to the prohibition against telephone solicitation to customers on the list. Calls may be made to residential customers: with their prior express permission; if the business had a prior or current business or personal relationship; if the solicitation is made by recognized charitable or religious organizations, or by political pollsters or candidates for public office. In addition, solicitations involving communications services appear to be excluded from the prohibition.

**Program Staff Support.** Four positions are assigned to program implementation in the Office of Consumer Affairs. Two full-time positions handle complaints and two supervisors address program issues on a part-time basis. Staff at the Public Service Commission maintain the no-call list.

**Program Participation.** There are currently 163,000 residential telephone subscribers on the list. The subscribers' fee of \$5 biennially is applied to maintenance of the database. A total of 1,332 companies have purchased access to the list (only available on a statewide basis) for an annual fee of \$10 each.

**Penalties.** Telemarketers who call someone on the no-call list may be subject to a fine per call of \$2,000. To date, two companies (Dixie Home Crafters and TruGreen/Chemlawn) have been fined for repeated violations. TruGreen/Chemlawn was fined for violations in both Georgia and Florida. Dixie Home Crafters was reportedly fined \$94,000 and TruGreen/Chemlawn, \$45,000 for violations under Georgia's law. Most subscriber complaints regarding unsolicited calls are handled by contacting the alleged violators and informing them of the provisions of the law and its penalties. In most cases, no other measure is necessary and the unsolicited calls cease.

**Implementation Problem.** According to my staff contact, one of the greatest problems with enforcement is actually locating the telemarketer against whom the complaint has been lodged. The telephone subscriber is asked to supply the enforcement staff with the name of the telemarketer and company for which they work, the address of the telemarketer, and the phone number of the telemarketer's manager. However, when contacted by the enforcement staff, many telemarketers will simply hang up or give them inaccurate information.

## Other States

Alabama's law (Attachment III) and Tennessee's law (Attachment IV) are very similar to Georgia's law in terms of implementation and penalties, with the exception that enforcement appears to reside with Alabama's Public Service Commission and Tennessee's Regulatory Authority, whereas enforcement in Georgia resides exclusively with the Office of Consumer Affairs. (In Tennessee, the Regulatory Authority may request the Attorney General to bring an action in court for violations of the law.)

In all three states, the regulatory commissions have ultimate responsibility for establishing and operating the databases for the no-call lists. (However, Alabama's and Tennessee's laws expressly

authorize but do not require the regulatory commissions to contract out the operation of the database.)

Fees charged telemarketers for accessing the no-call list are treated differently in each state. In Georgia, the law specifies an annual fee of \$10. In Alabama, the law requires the fee to be determined by the Public Service Commission with approval of the Legislative Council. In Tennessee, the law establishes the annual fee at \$500, allowing the telemarketer unlimited access to the list.

In each of the laws, exceptions apply to the definition of "telephone solicitation." In Tennessee, however, the relationship between the telemarketer and subscriber has a time limit of 12 months. (This provision seems to address the problem my staff contact raised with Florida's law.) Tennessee's law also includes other exceptions allowing for occasional and isolated voice communications which are not found in other states' no-call legislation.

Oregon's law (Attachment V) differs from Florida's and Georgia's in that it requires the Attorney General to advertise for bids and enter into a contract with a person to administer the no-call program. The fees paid by subscribers (not to exceed \$10, to be specified in the contract) and by telemarketers (to be specified in the contract) are considered income to the administrator who is selected by the Attorney General.

Louisiana's law (Attachment VI) is included in this letter even though it takes a very different approach to discouraging unsolicited phone calls. Louisiana's law requires the Louisiana Public Service Commission to promulgate rules and regulations to ensure that telemarketers who contact residential and mobile telephone subscribers possess an identification code that will appear on a caller identification unit (Caller-ID). The telemarketer will be exempt from this requirement only if the Commission determines that the telephone system used by the telemarketer is not technically capable of transmitting Caller-ID information. (Almost all systems in the U.S. can now support Caller-ID.) The Commission is authorized to investigate any complaints received concerning violations and impose a civil penalty not to exceed \$500 per violation.

Sincerely,



Lynne Holt  
Principal Analyst

LH/mkl



# *in Kansas*

February 15, 2000

Good morning Representative Holmes and Members of the House Utilities Committee. My name is Dr. Larry Bechtold and I am a volunteer member of the AARP Kansas State Legislative Committee. Our State Legislative Committee has several lobbying arms, including Metropolitan Area Satellite Groups (MASGs). I am the Chair of our Wichita MASG. The State Legislative Committee represents the views of our more than 340, 000 members in the state, with over 50,000 residing in Wichita. Thank you for this opportunity to express our views in support of House Bill 2891.

We believe that consumers have a right to personal privacy and should be able to reject intrusive marketing practices and communications. The federal Telemarketing Sales Rule requires each telemarketer to develop a do-not-call list. If a consumer asks the telemarketer to be placed on the list, the telemarketer is prohibited from calling the consumer again. Unfortunately for consumers, they have to receive the call from the telemarketer before they can be placed on the list. This has not been satisfactory for consumers who do not want to receive calls.

The Direct Marketing Association (DMA) created the Telephone Preference Services (TPS). Consumers can contact the service to be placed on its do-not-call list. DMA members are provided the list and are encouraged not to call consumers on the list. This is better for consumers since they can avoid calls from all legitimate DMA members. Unfortunately, all telemarketers are not members of DMA. Therefore, consumers will continue to get some calls.

Recently, several states enacted do-not-call legislation that permits consumers to place their name on a state list. Telemarketers are usually required to obtain the list, and are prohibited from calling anyone whose name appears on the list. These laws in FL, GA, AK, TN, KY, OR, AR, and AL have started a trend in the development of such laws at the state level.

AARP supports HB 2891 and the concept of do-not-call.

- We support recommendations that the Commission or a contracted entity should develop a do-not-call list.
- As you develop rules and regulations we ask that you ensure the entity responsible for updating the list should do so at least quarterly, if not monthly.
- We believe the bulk of the financial responsibility should not fall on the consumer. We ask that you review the proposed fee of \$10.00 for telephone solicitors to ensure its adequacy.

Thank you again for this opportunity. I stand ready to answer questions.

*AARP Southwest Region Office • 8144 Walnut Hill Lane, Suite 700-LB39  
214/265-4060 • Fax 214/265-4061 • www.aarp.org*

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 2



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

Testimony of  
Steve Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the House Utilities Committee  
RE: HB 2891  
February 15, 2000

CONSUMER HOTLINE  
1-800-432-2310

Chairperson Holmes and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today in regard to HB 2891. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

There is a recent trend by many states to enact "do-not-call" legislation to protect their citizens from unwanted telemarketing calls. The purpose of these laws is simply to allow citizens to put a stop to unwanted and unsolicited telemarketing calls. While no law will completely eliminate telemarketing calls, a well-drafted "do-not-call" law can drastically reduce the number of calls Kansans receive in their homes.

We receive countless inquiries and complaints about telemarketing by phone, at the State Fair, and when office representatives give educational presentations throughout the State. Consumers are always asking how to stop telemarketing calls.

While supportive of the concept, the Attorney General has two concerns about "do-not-call" legislation. First, our colleagues in other states with these laws have warned us that their laws are ineffective because of numerous exemptions for selected segments of industry. For example, Kentucky's "do-not-call" law has twenty-two exemptions. At a recent consumer protection conference, the Kentucky representative admitted they were advising consumers not to place their name on the list because it would not significantly reduce their telemarketing calls. The Kentucky Attorney General web site cautions consumers that "over 95% of the businesses or non-profit organizations which conduct telemarketing sales are exempt under the Act and will not be required to honor the no-call list." We urge the Committee not to add exemptions to this bill.

In most states with these laws, consumers are required to pay a fee to register their name on a "do-not-call" list. When the consumers pay this fee, they expect telemarketing calls to cease or greatly diminish. When the calls continue virtually unabated, consumers become frustrated and look to the regulatory authority maintaining the list, and the legislature, to explain why they are getting

HOUSE UTILITIES

DATE: 2-15-00

ATTACHMENT 3

nothing for their money. In short, they feel they have been misled, this time by their own government.

HB 2891 provides for a "do-not-call" list to be maintained and administered by the Kansas Corporation Commission. Telephone solicitors would be required to check the list, and purge the names of consumers on the list, before making unsolicited consumer telephone calls. This provision would be placed in the telephone solicitations section of the Kansas Consumer Protection Act and enforcement would be by the Office of the Attorney General.

While Attorney General Stovall supports the concept of a "do-not-call" statute, our office does have concerns with parts of this proposed statute. First, the fee to a telephone solicitor, to obtain the list, is only \$10. The consumer is charged \$5. We would recommend the Committee consider charging the telephone solicitor significantly more than \$10 and allowing the consumer to register for free. Other state do-not-call laws charge telemarketers as much as \$400 a year for access to the list.

In addition, we are concerned with the language found at page 3, lines 12-15. This section provides a defense for telephone solicitors who have "...established and implemented, with due care, reasonable practices and procedures..." to comply with this section of the law. This type of defense would not only be used to defend claims that the telemarketer had a policy and practice of calling consumers on the do-not-call list, but would be effective in defending individual, admitted violations where it was proven that consumers were called even though they were on the do-not-call list. This provision would make the law very difficult to enforce. Any telephone solicitor could have prepared a manual outlining the procedures to comply with the law even though in practice, whether by oral training or simple lack of training and supervision, employees do not comply with the written procedures.

The Committee may also want to know that I just testified in the last hour on another do-not-call bill, SB 539, being considered in the Senate Commerce Committee. The Senate Commerce Committee is considering amending SB 539 to model our law on the do-not-call law passed last year in Oregon.

This law provides for the Oregon Attorney General to advertise for bids and contract with an outside administrator to maintain the "do-not-call" list. We believe this may be a feasible way to help consumers lessen unsolicited telephone calls without providing the use of taxpayer funding. The Oregon law allows the Attorney General to make any contract provisions believed to be in the public interest. Once the program is successfully bid and in place, the Attorney General's responsibility is primarily enforcement. The Oregon law would need to be reworded to utilize the terms that are used in our telephone solicitation law, but this should be a relatively easy task.

I have spoken with a representative from Oregon who advised me that there were no start up costs associated with their program. Even though their law authorizes a maximum \$10 registration fee to consumers, the actual registration fee has been set at \$6.50 for initial registrations and \$3.00

for each annual renewal. Telemarketers are currently charged \$10 a month to access the list on a monthly basis. The company that maintains the list currently maintains do-not-call lists for three or four other states, so it does not appear finding a vendor will be difficult.

The Oregon representative cautioned that if the Kansas legislature truly wants to eliminate telemarketing calls to consumers who do not want to receive them in their homes, any do-not-call law passed should be written broader than our standard consumer protection jurisdiction. Specifically, the law should plainly state that it covers insurance and securities solicitations, two areas that are usually excluded from our authority under the KCPA. Oregon is seeking to amend their law to cover those type of solicitations under their do-not-call authority.

We do want to raise a couple of concerns with the Oregon law. First, although the fee to consumers under this law is minimal, the Committee may want to consider having consumers pay no fee for registration and having the telemarketers pay a larger fee to fund the program. In some of the states that have do-not-call laws, the fee to telemarketers is \$400 a year. In fact, that is the amount the DMA charges its members to access their list. Second, the exemption for the pre-existing business relationship should be limited to a business relationship within the last twelve (12) months to avoid calls to consumers who may have purchased from the telemarketer five or ten years ago.

On behalf of Attorney General Stovall, I urge your favorable consideration of this bill without the affirmative defense provision. I would also recommend consideration of the Oregon model as an alternative. I would be happy to answer questions of the Chair or any member of the Committee.



**TESTIMONY BY MIKE REECHT  
ON BEHALF OF AT&T  
BEFORE THE HOUSE UTILITIES COMMITTEE  
REGARDING HB 2891/2784**

**FEBRUARY 15, 2000**

Mr. Chairman and members of the committee:

My name is Mike Reecht and I appear before you today on behalf of AT&T in opposition to HB 2891, requiring telemarketers to comply with a state specific "do not call" list, and HB 2784, eliminating telemarketing entirely from the state.

State specific "do not call" lists create a patchwork of rules and regulations that legitimate telemarketing companies must track and comply with. Each state updates its list at different times and has different rules of compliance that a telemarketer must observe. It is a much more costly and less effective method than conforming to a list that is centrally controlled and distributed nationwide.

AT&T supports the concepts that are included in SB 539 requiring telemarketers doing business in the state to consult the telephone preference service list maintained by the Direct Marketing Association, and make no unsolicited consumer telephone call to any consumer appearing on the list.

AT&T presently utilizes the DMA's telephone preference list. AT&T also complies with FCC rules and regulations that require a company to remove from its call list any customer who makes such a request of the company. In fact, AT&T would suggest that the committee consider an exemption from the state specific "do not call" legislation for those telemarketers who utilize the DMA list and comply with the FCC rules and regulations regarding internal company lists.

It should be pointed out the HB2891 would require the consumer to pay a fee to be included on the state specific list, but the state list offers no greater assurance of not receiving a call than being listed on the free DMA list.

Telemarketing is a legitimate form of commerce. To eliminate this form of sales practice, as provided for in HB 2784, fails to address the real concern, and that is to discourage unscrupulous telemarketers from operating in our state. Customers should have the right to limit calls to their residence if they so choose. The telephone preference list can provide that privacy as effectively as any state specific "do not call" list at less cost to both the consumer and the telemarketer.

We would suggest that the committee examine the provisions of SB 539. AT&T feels confident that you will concur with our position that SB 539 is superior for both the customer and the telemarketer in terms of cost and effectiveness than HB 2891.

We urge the committee to reject both HB 2891 and 2784.

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 4



Before the House Utilities Committee  
Tuesday, February 15, 2000  
~~SB 539~~ HB 2891  
Mike Murray  
Director of Governmental Affairs

Thank you Mr. Chairman for the opportunity to appear today in opposition to HB 2891 which would require use of a state-specific do not call list under the authority of the Kansas Corporation Commission.

As it pertains to the Kansas "do not call" legislation we respectfully suggest there is significant cost and bureaucracy associated with a State developing, maintaining, updating and distributing its own Do Not Call List. Here are some of the tasks involved which the State would have to perform:

- accurately collect the consumer information including date of request, full name, address, city, state, zip code and telephone number (with all 10 digits).
- store it in a secure facility,
- output updated files on a consistent basis for telemarketing firms to access,
- keep the list up-to-date as consumers move within the state or change their telephone numbers,
- correct area code changes when splits occur,
- remove telephone numbers that are recycled by the local telephone company, and
- remove consumers' records who move out of state or are deceased.

It is vital that the above forms of list maintenance be done continuously in order to enforce the use of such a state do not call list with telemarketers.

If the State plans to re-distribute the updated Do Not Call list monthly, it will need at least 30 days to add new requests to the file, update incorrect information, perform maintenance on area code changes, and output the files for shipping. The frequency of how often the State wishes to update the file is a cost trade-off.

Telemarketing companies realistically require 90 days from the receipt of the most recent state Do Not Call list to stop calling a specific consumer. This timeframe allows the telemarketer 30 days to receive the newly updated file and remove the consumer from all calling lists being loading for calling. An additional 60 day window is required because it takes up to 60 days to call through an entire list of names. Of course, most consumers are called very early in the 60 day window, but a few percent will take longer (up to 60 days) to reach. Consumers who are added to the list should expect to see a significant reduction in the number of telemarketing calls they receive after the first 30 days after the telemarketing company receives the updated list and a complete cessation of calls 90 days after the list is updated and received. This is an realistic and acceptable timeframe to perform the data processing necessary.

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 5

In order for the state to monitor compliance and investigate complaints by consumers who have received calls after the 90 day grace period has elapsed, it will be important for the state to record on the Do Not Call file three dates.

- The date the consumer requested to be added to the Do Not Call list.
- The date the consumer's complete record was made available to the telemarketing companies for suppression.
- The required "compliance date" beyond which no calls should be made to that consumer. This date is derived by adding 90 days to the date the updated list was made available to the telemarketing companies for suppressions.

These dates can then be looked up by the State to determine if a consumer's complaint is beyond the grace period or "compliance date." Without this information stored on each consumer's Do Not Call record, it is impossible to tell if a telemarketing company has broken the law.

These are but a few of the technical considerations required to keep a State Do Not Call list functioning properly. Without all of this effort and expense on the part of the State, any list that is created will soon grow out of control with out-dated and incorrect information, making its use for telemarketers impossible to enforce. Telemarketers cannot be held accountable to remove telephone numbers that are no longer owned by the original consumers who requested to be put on the list. The new owner of the telephone number has a right to receive telemarketing solicitations.

There are many other pitfalls of a government-run state do not call list which can lead to customer and constituent dissatisfaction. We have even experienced some of these in our own FCC-required, internal company-specific do not call list.

- When a person asks to have their name and number on the do not call list, the request may not be complete.
- Some forget to write down their phone number or area code.
- Some are completely illegible.
- Some people think they mailed them, but didn't. Others are lost in the mail.
- Some register their phone number today, then they move and forget to register the new number.
- Some register only one phone number and forget to register the other phone numbers in their household.

- Some people are impatient, and while their request is being processed, they get called and they are unhappy.
- And finally, there are human data entry errors.

Consumers, as do constituents, have high expectations. They expect to send in their request and have their phone stop ringing in a few days. When that doesn't happen, due to processing time and updating cycles, the State is likely to be criticized for not processing requests fast enough. And this is especially a problem if the consumer has paid a fee to be placed on the list.

When a request is incomplete, illegible, or lost in the mail, the State is going to get the blame.

All of this angst and effort is unnecessary when there is a solution that meets the needs of the consumers with no cost or bureaucracy for the state. The Direct Marketing Association's Telephone Preference Service is the answer.

The Direct Marketing Association provides a FREE service to all consumers in the United States by maintaining a national "Do Not Call" list known as the Telephone Preference Service. Consumers can request to be added to this list free of charge. Sprint, like many telemarketing firms, already has efficient processes in place for using the DMA's file to suppress consumers. It is easy for most telemarketers to comply with a law that requires use of the DMA's list.

Kansas can effectively leverage the DMA's Do Not Call List to protect its consumers from unwanted calls. The State can prohibit telephone solicitors from making unsolicited telephone sales calls to anyone who has registered with the Telephone Preference Service maintained by the Direct Marketing Association.

### **Sprint's Current Do Not Call Procedures and Policies**

First, Sprint utilizes the Direct Marketing Association Telephone Preference Service List in its telemarketing. There are about 35,000 Kansans on this list.

Second, Sprint maintains its own internal list of consumers who have told Sprint directly that they do not wish to receive telemarketing calls. Creation and maintenance of such an internal list is an FCC requirement. Sprint is subject to fines and lawsuits if consumers continue to be called by Sprint after adding their name and number to this list.

As a result, we have an amendment for your consideration should the Committee decide to pursue passage of HB 2891. It would exclude from the provisions of New Section 2 any entity which utilizes the Direct Marketing Association Telephone

Preference Service List and which maintains and utilizes the FCC-required internal company-specific do not call list.

#### Insert Balloon

Sprint believes required use of the DMA Telephone Preference Service list as contained in SB 539 along with the FCC required internal list, is all that is necessary to stop unwanted telemarketing phone calls.

With years of experience collecting and maintaining direct marketing lists, the DMA processes consumer requests quickly and efficiently, distributes the Telephone Preference Service list on a timely basis so that telemarketers can remove consumers promptly, and provides a solution which is FREE to the consumers and constituents, and requires no taxpayer support.

## HOUSE BILL No. 2891

By Representatives Johnston, Aday, Adkins, Alldritt, Ballard, Barnes, Beggs, Campbell, Cox, Crow, Dean, Faber, Farmer, Feuerborn, Findley, Flaharty, Flora, Flower, Freeborn, Garner, Gatewood, Gilbert, Grant, Hayzlett, Helgerson, Henderson, Henry, Hermes, Horst, Huff, Hutchins, Jenkins, Kirk, Klein, Kuether, Larkin, M. Long, P. Long, Mayans, Mays, McClure, McCreary, McKechnie, McKinney, Merrick, Minor, Mollenkamp, Jim Morrison, Judy Morrison, Myers, Nichols, O'Brien, O'Neal, Osborne, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, Powell, Powers, Ray, Reardon, Rehorn, Reinhardt, Ruff, Schwartz, Sharp, Showalter, Shriver, Spangler, Stone, Storm, Swenson, Tanner, Tedder, Thimesch, Toelkes, Tomlinson, Toplikar, Vickrey, Vining, Wagle, Weiland, Wells and Welshimer

2-8

20 AN ACT concerning unsolicited consumer telephone calls; prohibiting  
21 certain acts and providing remedies for violations; amending K.S.A.  
22 1999 Supp. 50-670 and repealing the existing section.  
23

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

25 Section 1. K.S.A. 1999 Supp. 50-670 is hereby amended to read as  
26 follows: 50-670. (a) As used in this section *and section 2 and amendments*  
27 *thereto:*

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

35 (2) "Unsolicited consumer telephone call" means a consumer tele-  
36 phone call other than a call made:

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

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

40 (C) to any person with whom the telephone solicitor or the telephone  
41 solicitor's predecessor in interest had an existing business relationship if  
42 the solicitor is not an employee, a contract employee or an independent  
43 contractor of a provider of telecommunications services; or

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

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

7 (4) "Automatic dialing-announcing device" means any user terminal  
8 equipment which:

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

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

16 (5) "Negative response" means a statement from a consumer indi-  
17 cating the consumer does not wish to listen to the sales presentation or  
18 participate in the solicitation presented in the consumer telephone call.

19 (6) "*Commission*" means the state corporation commission.

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

22 (1) Identify themselves;

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

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

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

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

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

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

42 (e) A telephone solicitor shall not obtain by use of any professional  
43 delivery, courier or other pickup service receipt or possession of a con-

5-6

1 consumer's payment unless the goods are delivered with the opportunity to  
2 inspect before any payment is collected.

3 (f) No telephone solicitor shall make or cause to be made any unsol-  
4 licited consumer telephone call to the residence of any consumer in this  
5 state who has given notice to the commission, in accordance with rules  
6 and regulations adopted under section 2 and amendments thereto, of the  
7 consumer's objection to receiving unsolicited consumer telephone calls.

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

10 (h) Any violation of this section is an unconscionable act or prac-  
11 tice under the Kansas consumer protection act.

12 (i) It shall be a defense in any action or proceeding brought under  
13 this section that the defendant has established and implemented, with due  
14 care, reasonable practices and procedures to effectively prevent unsol-  
15 icited consumer telephone calls in violation of this section.

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

18 New Sec. 2. (a) The commission shall establish and provide for the  
19 operation of a data base to compile a list of telephone numbers of con-  
20 sumers who object to receiving unsolicited consumer telephone calls. It  
21 shall be the duty of the commission to have such data base in operation  
22 no later than July 1, 2001. Such data base may be operated by the com-  
23 mission or by another entity under contract with the commission.

24 (b) No later than July 1, 2001, the commission shall adopt rules and  
25 regulations that:

26 (1) Require each local exchange company to inform its residential  
27 subscribers that a consumer has the opportunity to give notice to the  
28 commission or its contractor that the consumer objects to receiving un-  
29 solicited consumer telephone calls;

30 (2) specify one or more methods by which a consumer may give no-  
31 tice to the commission or its contractor of the consumer's objection to  
32 receiving unsolicited consumer telephone calls and one or more methods  
33 by which a consumer may revoke that notice;

34 (3) specify the time period for which a notice of objection shall be  
35 effective and the effect of a change of telephone number on such notice;

36 (4) specify the methods by which objections and revocations shall be  
37 collected and added to the data base;

38 (5) specify one or more methods by which a telephone solicitor can  
39 obtain access to the data base as required to avoid calling the telephone  
40 numbers of consumers included in the data base; and

41 (6) specify such other matters relating to the data base that the com-  
42 mission deems desirable.

43 (c) If the federal communications commission establishes a single na-

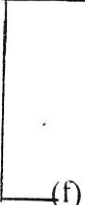
1 tional data base of telephone numbers of subscribers who object to re-  
2 ceiving telephone solicitations, the commission shall include the part of  
3 such single national data base that relates to Kansas in the data base  
4 established under this section.

5 (d) A residential subscriber shall pay the commission a fee of \$5 for  
6 each notice for inclusion in the data base established under this section.  
7 A telephone solicitor shall pay the commission a fee of \$10 per year for  
8 access to or for paper or electronic copies of the data base established  
9 under this section.

10 (e) Information contained in the data base established under this sec-  
11 tion shall be used only for the purpose of compliance with this section or  
12 in a proceeding or action under K.S.A. 50-670, and amendments thereto.  
13 Such information shall not be subject to public inspection or disclosure  
14 under the open records act.

15 Sec. 3. K.S.A. 1999 Supp. 50-670 is hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its  
17 publication in the statute book.



(f) Telephone solicitors who utilize the Direct Marketing Association  
Telephone Preference Service List and who maintain and utilize  
company-specific do not call lists as required by the Federal  
Communications Commission are exempt from the provisions  
of this Section.

*Direct Marketing Association*

TESTIMONY  
HOUSE UTILITIES COMMITTEE  
HOUSE BILL NO. 2891  
February 15, 2000

*Dear Chairman Holmes and Honorable Members of the House Utilities Committee:*

Thank you for the opportunity to appear before you this morning. My name is Doug Smith. I appear on behalf of the Direct Marketing Association (DMA), which serves as a professional trade association for direct marketers, with over 4,500 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917. Our representative membership includes such businesses as IBM, Time Inc., Proctor & Gamble, Microsoft and many others.

We have 20 member companies headquartered in Kansas and 27 member companies with operations in Kansas. The employment opportunities and financial impact generated by this industry is important to the Kansas economy.

We oppose the do not call list as outlined by House Bill No. 2891.

The Direct Marketing Association sponsors, at no cost to consumers, three national name-removal services - the Mail Preference Service for direct mail marketers, a newly created Email Preference Service and the Telephone Preference Service (TPS). The TPS is a compilation of telephone numbers from consumers, nationwide, who desire to receive fewer telephone-marketing calls at home. The DMA's Telephone Preference Service is a private service, free to consumers, paid for by the industry and provided to subscribing members for the past 20 years.

This TPS list is just one of two free options available to consumers wanting to reduce the number of telemarketing calls they receive. The other option is the in-house suppression list, which is maintained by telephone solicitors as required by FCC rules.

We know that there are consumers in Kansas who need and require the goods and services marketed by our members. Yet, we are aware of consumers who do not want to have telephone solicitations in their home. If they tell us not to call we won't call - it's the law.

HOUSE UTILITIES  
DATE: 2-15-00  
ATTACHMENT 6



*Direct Marketing Association*

TESTIMONY  
HOUSE UTILITIES COMMITTEE  
HOUSE BILL NO. 2784  
February 15, 2000

*Dear Chairman Holmes and Honorable Members of the House Utilities Committee:*

Thank you for the opportunity to present the position of the Direct Marketing Association (DMA) on House Bill No. 2784. The Direct Marketing Association serves as a professional trade association for direct marketers, with over 4,500 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917.

The Direct Marketing Association opposes House Bill No. 2784.

The bill would severely impact Kansas marketers and their share of legitimate telemarketing sales. In 1999, U.S. telemarketing generated \$538 billion. Kansas employees over 175,000 workers in direct marketing and generates sales of over \$13 billion. Nearly all direct marketers use the telephone to communicate with consumers. Especially hard hit by this legislation would be small business in Kansas and Kansas retail sellers.

Telephone service bureaus alone employ over 5,000 Kansas citizens. This bill is ill-advised legislation, which would negatively affect the Kansas economy. All studies have shown that when lists are offered to consumers to cease or reduce telephone sales calls, fewer than 2% of consumers have registered on the list.

We urge the Committee to take no action on this proposed legislation.

Thank you for your consideration.

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 7



**DIRECT SELLING ASSOCIATION**  
1666 K Street, NW, Suite 1010, Washington, DC 20006-2808  
202/293-5760 • Fax 202/463-4569

February 14, 2000

The Honorable Carl D. Holmes  
Chair, Committee on Utilities  
Kansas House of Representatives  
Room 522-S  
The Statehouse  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

**Re: House Bill 2891 – Telephone Solicitations**

Dear Chairman Holmes:

I am writing on behalf of the Direct Selling Association (DSA) to express our concerns with HB 2891, a bill relating to telephone solicitations. As it is currently drafted, HB 2891 would adversely impact direct sellers. While we oppose HB 2891 in its current form, we would support the adoption of the attached amendments to rectify our concerns. This language has been used in several states to protect direct sellers from unintentional regulation as telemarketers.

By way of background, DSA is a national trade association representing approximately 180 companies that sell their products and services by personal presentation and demonstration, primarily in the home. Our association members include some of the nation's most well known commercial names, such as Amway, Avon, Tupperware, Mary Kay, and Shaklee. The direct selling industry attracts individuals who seek job flexibility, with low startup costs and minimal work experience. Many direct sellers are women, minorities and the elderly who work on a part-time basis to supplement their income. Direct sellers typically sell to their neighbors, relatives and friends. While they might occasionally use the telephone, direct sellers are never considered telemarketers.

We understand that the intent of HB 2891 is to regulate intrusive telemarketing calls. Unfortunately, the bill as currently drafted would unintentionally include some innocuous uses of the telephone by direct sellers. On occasion, a direct seller will be referred by a current customer to a prospective customer and will contact that person by telephone to set up an appointment.

*HOUSE UTILITIES*

DATE: 2-15-00

ATTACHMENT 8

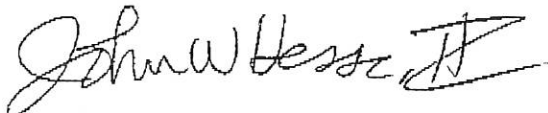
The Honorable Carl D. Holmes  
February 14, 2000  
Page 2

Alternatively, a hostess of a direct selling party might use the telephone to invite potential guests. These legitimate, occasional and harmless uses of the telephone by direct sellers are not the telemarketing practices so often cited by consumers as problems. Nonetheless, under the bill, these infrequent activities could deem direct sellers as being engaged in telephone solicitations and subject them to burdensome regulation. More importantly, direct sellers could be subject to significant penalties upon violation of the law.

Consequently, we are suggesting the adoption of the attached amendments. The first exempts personal relationships from regulation under the legislation. The second is currently used to exempt direct sellers from telephone solicitation laws in many states. Additionally, the Federal Trade Commission (FTC) has adopted language in its Telemarketing Sales Rule exempting telephone sales calls made without the intent to complete the sales presentation during the telephone solicitation, but rather at a later face-to-face meeting. The American Association of Retired Persons also uses face-to-face exemption language in their model telemarketing fraud legislation. The third would make clear that using the telephone in an isolated manner would not be considered telephone solicitation under the legislation. We believe that these amendments serve to protect the interests of the Kansas public and the thousands of direct sellers who reside and work in Kansas.

Thank you for your time and consideration of this matter. If you have any questions, please do not hesitate to contact me at (202) 778-3369 or email to [jhesse@dsa.org](mailto:jhesse@dsa.org).

Very truly yours,



John W. Hesse, II  
Senior Attorney and Director, Government Relations

Attachment

cc: Members, House Utilities Committee  
Marlee Bertholf, Executive Director, Kansas Retail Council

**DSA SUGGESTED AMENDMENTS TO  
HB 2891 – TELEPHONE SOLICITATIONS**

1. Insert the following language into section (2) as follows:

(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 or the ~~telephone~~ solicitor's predecessor in interest had a prior or existing business or personal relationship if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services; ~~or~~

(D) by a newspaper publisher or such publisher's agent or employee in connection with such publisher's business << ; ->> <<+ . +>> or

(E) BY A PERSON SOLICITING WITHOUT THE INTENT TO COMPLETE. AND WHO DOES NOT IN FACT COMPLETE THE SALES PRESENTATION DURING THE CALL, BUT WHO COMPLETES THE SALES PRESENTATION AT A LATER FACE-TO-FACE MEETING BETWEEN THE SOLICITOR AND THE PROSPECTIVE PURCHASER.

(F) THAT IS AN ISOLATED TRANSACTION AND NOT MADE IN THE COURSE OF REPEATED TRANSACTIONS OF LIKE NATURE

**Key:**

Underlined material indicates suggested amendment.

~~Stricken~~ material indicates suggested deletion.

Regular indicates language in existing bill.

*Jay Prochnow*

**Testimony of the American Teleservices Association**  
**In Opposition To Senate Bill 2891**

This testimony is delivered on behalf of the American Teleservices Association in opposition to Senate Bill 2891. This bill, if passed, will cost the State of Kansas jobs, while limiting the opportunities for consumers to make their own informed purchasing decisions. There are also a number of questions surrounding the constitutionality of a "Do-Not-Call" list like the one proposed in Senate Bill 2891. Many states that have introduced similar legislation have felt that the constitutional questions raised were sufficient to warrant defeat of the bill. California rejected a similar bill in 1998, citing among a number of concerns, that such a state controlled list was unconstitutional. The Governor of Rhode Island vetoed a similar bill just a few years ago citing the fact that he considered such regulation to be an unconstitutional act.

By way of background, the American Teleservices Association was founded in 1983 to provide leadership and education in the professional and ethical use of the telephone, to increase service effectiveness, enhance customer satisfaction and improve decision making. Today, the Association has more than 2,000 member companies in 43 states and 19 countries.

The Association is dedicated to promoting a positive image of telephone marketing through the highest standards of ethical practices throughout the industry. We have established a Code of Ethics which attempts to educate Association members, the public and public officials concerning the legal and ethical behavior for telemarketing and we distribute a free brochure, entitled Consumer Guidelines, which contains tips for consumers on how they can obtain safe and satisfying sales and services through the convenience of the telephone.

While Senate Bill 2891 is certainly well intentioned, consumers and legitimate users of the telephone will ultimately be the ones who bear the burden of this bill. As the legislature has recognized in the past, telemarketing provides many benefits to the consumer, the state and the economy. Telemarketing provides a cost-effective way for legitimate businesses to reach potential consumers. Telemarketing also provides consumers with lower costs for goods or services, a wider variety of choices, and increased convenience to make their purchasing decisions. Consumers are able to complete their transactions quickly and conveniently from the comforts of their own home, thereby saving the time, effort and inconvenience of traveling to the store.

Additionally, the telemarketing industry is one of the fastest growing industries in the country. It is now the single largest direct marketing system in the country, employing more than 3.4 million people nationwide, and generating \$550 billion in annual revenue. Job growth in this industry is more than three times that of the overall national job growth average. According to a recent survey, there are approximately 120,000 people in this state employed by the telemarketing industry. With those kind of numbers, it is obvious that Kansas consumers are making use of the telephone to purchase goods and services, they enjoy having that option, and will continue to use it. Those numbers also suggest that the vast majority of telemarketing companies are doing it legally, ethically and responsibly.

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Kansas consumers already have two nationwide, “no-cost” options for limiting unwanted telephone calls. Individuals who do not want to receive calls can register for free with the Direct Marketing Association’s Telephone Preference Service. This option provides Kansas consumers nearly the exact same service that Senate Bill 2891 proposes at no cost to the consumer or the state.

In addition to the DMA list, the telemarketing industry is already regulated nationwide by both the FCC rules implementing the Telephone Consumer Protection Act and the FTC’s Telemarketing Sales Rule (“TSR”). One of the key areas in each of these rules is the requirement that companies keep specific Do-Not-Call lists of individuals who have requested not to receive any more telemarketing calls from that company. The telemarketing industry is a unique industry. The primary expenses of the business are determined by the time spent on the telephone. A company is often measured by an amount of dollars generated per telephone or per chair. The single greatest predictor of failure in the industry is low per chair production. And the single greatest contributor to low per chair production is spending time on the telephone with people who don’t want to talk to you. Thus the industry goes to great lengths to target only those consumers who are likely purchasers of their products. The successful telemarketer is the business that talks to the fewest uninterested parties.

Consequently, it is in the industry’s best interests to keep a detailed “Do-Not-Call” list. Not only does it make sense for a company’s bottom line, but it increases morale and production among the sales force if they are not talking to hundreds of people who say “No” at the beginning of the call. Additionally, the company specific “Do-Not-Call” list is the best way to empower consumers to make the type of informed purchasing decisions that are necessary for a satisfactory sale. For consumers who do not want to receive calls, all they have to do is tell the telemarketer that up front. However, for those consumers who want to receive calls or really only want to receive certain types of calls, the existing federal rule allows them the freedom to determine which calls they want to receive and prohibits those calls they don’t.

This is an area that, if consumers are aware of their rights, they alone hold the key to keeping telemarketers out of their home.

Unlike some state statutes, the TSR allows the Kansas Attorney General’s office to go after a thief calling from outside the state who has been victimizing Kansas consumers. This cross-border enforcement strategy creates a national blanket of protection for consumers. No longer can the thieves escape prosecution by simply picking up their operations and moving them to another state.

It is this borderless regulation that supplies the real teeth to the TSR. These teeth make additional regulation and restrictions at the state level redundant, unnecessary, and overburdensome. In this day and age, when States are trying to shoulder an increased load of government service without an increase in revenues, to enact redundant regulations is just not an option.

As noted above, in addition to the economic problems in this bill, a number of questions surrounding the constitutionality of such legislation must be addressed also. The key question is whether this legislation violates the Commerce Clause.

When Congress enacted the TCPA in 1991, it established federal standards regarding telephone solicitations applicable to all telemarketers regardless of where they were located. Congress specifically instructed the FCC, in determining whether to require such a national database, to “consider the different needs of telemarketers conducting business on a national, regional, State or local level.” It is immediately apparent from that instruction, that Congress was aware that independent regulation by the fifty states creating their own “Do-Not-Call” lists would place a ruinous cumulative burden on interstate telemarketers. Congress committed to the FCC the determination of how best to protect residential telephone subscribers from receiving unwanted telephone solicitations.

Further, Congress specifically spelled out the extent to which states may go in regulating telemarketing by stating, “Except for the standard prescribed under subsection (d) [which deals with fax machines and automated telephone equipment] and subject to paragraph (2) of this subsection, [not relevant because the FCC did not create a national “Do-Not-Call” list] nothing in this section or in the regulations prescribed under this section shall preempt any state law that imposes more restrictive intrastate requirements or regulations on, or which prohibits...(D) the making of telephone solicitations.” By declaring that “intrastate” regulation is not preempted, Congress has just as clearly asserted that “interstate” regulation is preempted. Thus the State of Kansas has the authority to impose stricter requirements on intrastate calls. However, to the extent that Senate Bill 2891 attempts to regulate interstate calls, it clearly falls outside of the carefully tailored exception to the TCPA and is therefore unconstitutional.

We thank you for accepting our testimony and hope that the Committee will look past the rhetoric, and focus on the real story of job creation, economic growth and consumer opportunity and act so as to support all three of these goals. We urge the Committee to vote against this bill and offer the American Teleservices Association’s full assistance to address this and any other issues.

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# POWER PLAY

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## 'Green' energy supporters want retail connection

● **Stephen H. Hill**, owner of the state's largest producer of hydroelectric energy, wants to take his power to the retail market — and change the way utilities do business in the process.

BY MARK FAGAN  
JOURNAL-WORLD BUSINESS WRITER

Water is money at Bowersock Mills & Power Co., the state's largest producer of hydroelectric power.

Behind Lawrence's city hall, the Kansas River flows into a stone-lined flume, which pours 2,300 cubic feet of water per second onto seven turbines. The turbines' blades crank 78-year-old generators, which produce 2.34 megawatts of electricity that's pushed into a 3/8-inch-thick strand of copper wire reaching 200 yards under the Kansas River bridge and into a KPL substation at Sixth and Kentucky streets.

That's where, to hear owner Stephen H. Hill tell it, the power may as well be going down the drain. His only customer, Western Resources, buys the plant's power at prices 40 percent below retail.

"We're making a Mercedes that's sold as a Chevrolet," said Hill, Bowersock's president and a backer of renewable energy sources. "They're not paying for what customers are willing to pay for it."

...

"Citizens are willing to pay a premium to be able to use, in their homes and businesses, 'green power.' And I believe that's probably true in Kansas."

### New law sought

As co-owner of a riverfront power plant started 126 years ago, Hill is pushing to change state law to allow companies like his — or anyone else with envi-

ronmentally clean generating equipment, such as a windmill or solar panel — to sell electricity directly to customers.

Proponents say the change would help farmers fight a depressed agricultural economy through the sale of power from their own wind turbines. Encouraging green energy also could cut demand for power generated through the burning of coal, bolstering the fight against global warming.

But others — particularly the state's biggest utilities and distribution networks — aren't convinced. They see the bill, proposed by the House Utilities Committee, as a step toward deregulation of the electric industry and a loss of their exclusive markets in the state.

While Hill argues that his operation is so small it "isn't even on the radar screen" — it would take 300 Bowersocks to produce as much power as KPL's Lawrence Energy Center, for example — others aren't so sure.

"You're a small shrew with very sharp teeth," said Rep. Richard Alldritt, D-Harper, a member of the utilities committee.

Topeka-based Western Resources, the parent company of KPL, holds the regulatory approval to generate, deliver and sell electricity to customers in the eastern two-thirds of Kansas, or about 627,000 customers. The company uses coal and nuclear power to run its plants.

It also has two wind turbines. Western Resources spent \$2 million last year to establish its own green power test program, and so far less than a third of its available energy has been sold. Using only the wind energy would cost the typical homeowner an extra \$25 to \$35 a month.

"You can have all the interest you want," said Ed Schaub, a Western

Resources lobbyist. "We're trying to find out ... if there's a market. If there is, you'll probably see some more windmills built. You're not going to see something that doesn't have a market."

### Market interest

Chuck Magerl, proprietor of Lawrence's Free State Brewing Co., is convinced there is a larger market out there for green power. Just as social investment mutual funds are gaining popularity, he said, people want to support power providers that are mindful of the environment.

Magerl gladly would pay extra to get power from the Bowersock plant a block away from the brewery instead of the KPL plant north of town, which burns 1.3 million tons of low-sulfur coal a year.

"I don't know that it's going to be cheaper than bringing in coal from Wyoming or running a nuclear power plant, but it would be another way for consumers to exercise a choice," said Magerl, whose business already composts its food waste.

Hill wants the new law to help his plant stay above water.

Bowersock, with six employees, generated \$300,000 in sales

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last year against \$250,000 in expenses. Hill has poured \$500,000 into equipment, renovations and other maintenance since he bought the plant in 1972, and it still needs more.

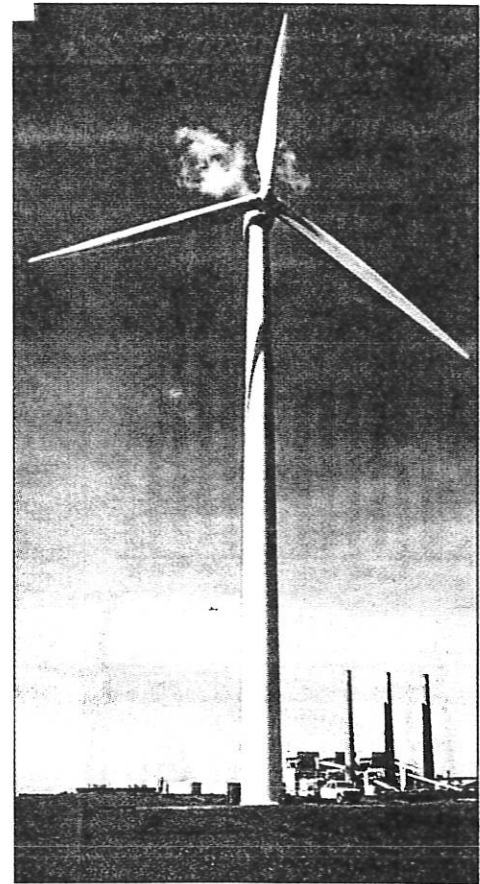
Hill figures that he could sell his power on the retail market for about 8 cents per kilowatt hour — more than the 2.45-cent rate paid by Western Resources, which made \$47 million from

electricity last year — and use the extra money to expand his own plant to the north side of the river.

And it wouldn't cost the environment a thing. All the water that flows into the plant rushes back out again — only without the soda cans, trash bags and packs of Lord Calvert Canadians that get caught in the turbines' protective metal grates.

"We get all the flotsam and jetsam of humanity here," said Hill, whose grandfather J.D. Bowersock built the plant. "We think of this as a cheap way to clean things up."

— Mark Fagan's phone message number is 832-7188. His e-mail address is [mfagan@ljworld.com](mailto:mfagan@ljworld.com).



FILE PHOTO

**Western Resources** has two wind turbines at its Jeffrey Energy Center near St. Marys. Only a third of the power from the turbines has been sold.



MELISSA LACEY/JOURNAL-WORLD PHOTO

**Stephen H. Hill**, president of Bowersock Mills & Power Co., explains how the Kansas River turns turbines 20 feet below the generator room at his company's hydroelectric power plant east of the Kansas River bridge. Hill — standing in front of the plant's 1920s-era generating equipment — sells all of his electricity to Western Resources, but he's seeking permission to sell directly to local customers.