

Approved: January 14, 2000  
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 12, 2000 in Room 123-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:  
Steve Rarrick Deputy Attorney General  
Dean Gilstrap, AARP

Others attending: See attached list

Lynne Holt, Legislative Research Department briefed the Committee on a survey conducted by the National Association of Attorneys General in November 1999 of 16 states who have no-call list programs. Ms. Holt stated the majority of state laws are enacted to augment and strengthen the federal Telecommunications Consumer Protection Act of 1991 and the rules promulgated by the Federal Communications Commission to reduce the number of unsolicited phone calls.

No-call laws vary in the number and type of exemptions from the prohibition governing solicitations. As an example, Georgia's law includes four exemptions, while Alabama's law exempts 25 types of solicitations and Kentucky's law has 22 exemptions. Ms. Holt stated that the method of funding no-call list programs and penalties for violators vary considerably among states. Ms. Holt stated implementation of no-call legislation costs money for development and maintenance of a database, accounting activities, and enforcement. If there are too many exemptions to the no-call prohibition in state laws, no-call list programs will not be effective. (Attachment 1)

Steve Rarrick, Deputy Attorney General, testified that the Attorney General supports the concept of "no call" legislation. However, colleagues in other states have warned that to be effective, the legislation must have few exceptions; the definition of "an existing or previous business relationship" must establish a definite time limit; and the enforcement program must be adequately staffed. (Attachment 2)

Dean Gilstrap, AARP, presented the reasons that AARP is strongly in favor of "no-call" legislation. (Attachment 3)

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for January 13, 2000



January 10, 2000

**To:** Senate Committee on Commerce  
**From:** Lynne Holt, Principal Analyst  
**Re:** No-Call Legislation in Other States

## Background

This memorandum reviews various approaches taken by states to reduce the number of unsolicited phone calls. According to a survey conducted in November 1999 by the National Association of Attorneys General, 16 states have no-call list programs (Attachment I). The common theme of these laws is that people who do not want telemarketers to call them can subscribe to a no-call list and the telemarketer is prohibited from calling them. There is generally a penalty for violations. In seven states, a database of subscribers is maintained by either the state public utility commission or the state attorney general's office. In those states, fees are assessed to telemarketers and subscribers or to only telemarketers to defray costs associated with program implementation. Eight states require telemarketers to maintain their own no-call lists and one state (New Jersey) requires the local telephone company to maintain the list. In those states, no assessments are made to either subscribers or telemarketers.

Most of these state laws have been enacted in the past two years to augment and strengthen the federal Telecommunications Consumer Protection Act of 1991 and rules promulgated by the Federal Communications Commission in 1992 to implement the Act. Under the federal program, a telemarketer must keep a record of do-not-call requests for ten years. Consumers have the right to sue for \$500 in damages or actual monetary losses for each violation (whichever is greater). Several features of the federal program also appear in many of the state programs summarized below. Specifically, no-call lists apply only to residential consumers. Moreover, telephone solicitations are exempted from no-call list requirements if the call is made: to any person with that person's prior express invitation or permission; to any person with whom the caller has an established business relationship; or by or on behalf of a tax-exempt nonprofit organization.

This memorandum examines no-call programs in eight states: Florida, Georgia, Kentucky, Oregon, Tennessee, Arkansas, Alabama, and Arizona. Of these states, only Arizona requires the no-call list to be maintained by the telemarketer. In that respect, Arizona's program parallels the federal program. With the exception of Florida's law, all the state no-call laws summarized below were enacted in 1998 or 1999. I contacted program staff in Florida and Georgia as these two states (especially Florida) had some implementa-

Senate Commerce Committee

Date: 1-12-00

Attachment # 1-1 thru 1-15

tion experience. Finally, Louisiana's law is summarized below because that state took a different approach to curbing unsolicited telephone calls.

## Implementation of No-Call Programs

### Florida

**Provisions of the Law.** Florida's law 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 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 subscriber's 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 the telemarketer works, the address of the telemarketer, and the phone number of the telemarketer's manager. However, when contacted, many telemarketers will simply hang up or give inaccurate information.

### **Other State No-Call Programs**

Alabama's law and Tennessee's law 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 residential subscribers and telemarketers for accessing the no-call list are treated differently in each state. Alabama's law requires any fee for telemarketers and subscribers to be established by the Public Service Commission with approval of the Legislative Council. Tennessee's law establishes an annual fee of \$500, to be paid by telemarketers for unlimited access to the no-call list. Subscribers are not assessed.

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; a similar exception is found in Alabama's no-call legislation.

Oregon's law 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 residential 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. Exceptions to the definition of "telephone solicitation" are similar to those in Georgia's law.

Arkansas' law requires the Attorney General to establish and operate a no-call program and leaves most of the development specifications to the discretion of the Attorney General. Like Florida's program, Arkansas' requires initial residential subscriber fees not to exceed \$10 and annual renewal fees not to exceed \$5. Unlike Florida's program, however, telemarketers are not assessed a fee to access the no-call list. Like Tennessee's law, Arkansas' law qualifies the definition of "telephone solicitation" by limiting the time frame of a prior or existing business relationship between telemarketers and subscribers. However, Arkansas' law provides for a three-year time limit and specifically characterizes that relationship as a financial transaction between the parties (also applies to the subscriber's relationship with a telemarketer's affiliates). There are eight exemptions to callers subject to Arkansas' no-call prohibition: realtors, motor vehicle dealers, insurance agents, investment brokers, and persons calling on behalf of charitable organizations, newspapers, banks, and funeral homes.

Kentucky's law, like Arkansas' law, assigns the implementation of the no-call program to the Attorney General's office. Like Tennessee's law, only telemarketers, and not residential subscribers, are assessed. Telemarketers are assessed \$400 annually for access to the no-call list which is published quarterly in hard copy and in other formats at the agency's discretion. Civil penalties of \$2,000 are imposed per willful violation of the law. Any telemarketing company is subject to the law if it is "a company whose primary business is to engage in telephone solicitation." (That definition would appear to exempt any company that does its own telemarketing sales calls rather than contracting them out.) There are 22 listed exceptions to the definition of "telephone solicitation," including authorization for calls made: in response to a person's express request; primarily in connection with the payment or performance of an existing debt or contract; and to whom the telemarketer has a prior or existing business relationship. The other 19 exceptions refer to types of persons or businesses authorized to make telephone calls.

Arizona's law reverses the procedure used by other states in that the law requires most telemarketers to register with the Secretary of State's office. Consumers may search for the telemarketer's registration online instead of telemarketers bearing that responsibility. Like the federal law, Arizona's law requires telemarketers to maintain no-call lists and keep

no-call requests for at least ten years. Arizona's law also parallels federal law in requiring telemarketers to develop, in addition to no-call lists, written procedures for complying with the no-call provisions of the act. Consumer complaints will be investigated by the Attorney General's office and violators could face civil penalties of up to \$10,000 per violation of Arizona's law.

## **Another Approach**

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.) As in Kansas' telemarketing law (Attachment II), Louisiana's law prohibits blocking of the telemarketer's identity and phone number. The Commission is authorized to investigate any complaints received concerning violations and impose a civil penalty not to exceed \$500 per violation.

## **Conclusion**

The no-call laws summarized above vary considerably in the number and type of exemptions from the prohibition governing solicitations. At one end of the spectrum, Georgia's law includes four listed exemptions:

1. express permission from the subscriber for telemarketer to call;
2. a prior or existing business relationship between the subscriber and the telemarketer;
3. political candidates or polling companies; and
4. recognized charities or religious organizations.

At the other end of the spectrum, Alabama's law exempts 25 types of solicitations from the prohibition, such as commercial solicitations that are isolated transactions, noncommercial or charitable solicitations, solicitations not involving major sales pitches, solicitations by securities, commodities, and investment brokers, and solicitations of newspapers and magazines (the list goes on). As previously noted, Kentucky's law has 22 exemptions. A description of Kentucky's no-call law on the Attorney General's website states: "Unfortunately, it is estimated that over 95 percent 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."



Implementation of no-call legislation costs money for development and maintenance of a no-call database, accounting activities, and enforcement. If the law has too many exemptions, it may result in the worst case scenario—the appearance to consumers that something has actually been done to help them when, in fact, very little has been done and staff and funding have been committed to implement an ineffective program.

**DO-NOT-CALL SURVEY**  
as of November 1999

**Alabama**

citation: ALA.CODE § 8-19A-3 (effective July 1, 2000)

List Maintained By	Fees to Consumers and Companies	Exemptions	Civil Penalties	Criminal Penalties	Private Cause of Action/ Recovery of Attorneys Fees
Public Service Commission	Consumers pay \$5 bi-annually to be placed on the list; Companies pay \$10 bi-annually to obtain list	25 listed exemptions	up to \$2,000 per violation	none	Consumers have a private cause of action, but there is no provision for consumers' recovery of attorneys' fees.

**Arkansas**

citation: House Bill 1564 (effective January 2000)

List Maintained By	Fees to Consumers and Companies	Exemptions	Civil Penalties	Criminal Penalties	Private Cause of Action/ Recovery of Attorneys Fees
State Attorney General Office	Consumers who wish to be on the list pay \$10 per telephone number and a \$5 annual renewal fee. Companies are not charged any fees to obtain the list.	8 listed exemptions	up to \$10,000 per violation; additional penalty of up to \$10,000 if committed against the elderly	Class A misdemeanor	Consumers have a private cause of action and can recover reasonable attorneys' fees

(Source: National Association of Attorneys General)

**Arizona**

**citation:** A.R.S. § 44-1278 (B) (3)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketing companies	No fees to consumers or companies	The provision applies to any person who conducts a telephone solicitation which is defined as a sale of merchandise by a seller.	Up to \$10,000 per violation	none	Consumers have a private cause of action and can recover attorneys' fees

**Florida**

**citation:** Fla.Stat.Chapt. 501.059

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Department of Agriculture and Consumer Services	Consumers pay \$10 to be placed on the list and a \$5 annual renewal. Companies pay \$30 per area code quarterly or \$100 for entire state quarterly.	4 listed exemptions	up to \$10,000 per violation	none	none

**Georgia**

citation: O.C.G.A. § 46-5-27

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Public Service Commission	Consumers pay \$5; companies pay \$10 a year.	Where resident has given prior express or permission resident has prior or current business relationship with caller	Up to \$2,000 per violation	none	Consumers have a private cause of action; however, there is no specific recovery of attorneys' fees

**Hawaii**

citation: Haw.Rev.Stat. § 468.1

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketer	none	11 listed exemptions	\$500 - \$10,000 per violation	none	Consumers have a private cause of action and can recover attorneys fees

**Illinois**

citation: 815 ILCS 413/15(b)3

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketer	none	3 listed exemptions	Violation of the Consumer Fraud and Deceptive Business Practices Act		Consumers have a private cause of action and can recover attorneys fees

**Kentucky**

citation: KRS § 367.46955(15)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
State Attorney General Office	Consumers do not pay; companies pay \$400 a year/\$100 for a quarter/ \$35 for a month	25 listed exemptions	\$2,000 per willful violation	Class B misdemeanor for first offense; Class A misdemeanor for subsequent offenses	none

**Montana**

citation: Mont.Code.Ann. § 30-14-1412(1)(C)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketers	none	2 listed exemptions	\$500 civil penalty for each violation	fine of up to \$500 or up to 6 months imprisonment	Consumers have a private cause of action and recover attorneys fees under the Consumer Protection Act

**New Jersey**

citation: N.J.S.A. § 48:17-25

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Local Exchange Telephone Company	none	none		none	none

**Oregon**

citation: ORS 646.569 (effective July 8, 1999)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Office of the Attorney General	Consumers pay \$10 per listing a year; fees for companies have not yet been determined	4 listed Exemptions	Up to \$25,000 per violation	none	Yes if consumer can prove an ascertainable loss of money or property. Attorneys fees recoverable

**Pennsylvania**

citation: 73 P.S. § 2245(a)(2)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketer	none	3 listed Exemptions	violation of this provision is a violation of PA's Unfair Trade Practices Act		Consumers have private cause of action plus court may award reasonable attorneys' fees

**South Carolina**

citation: S.C. Code Ann. § 16-17-445

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Telemarketer	none	3 Exemptions	\$100 for the first violation; \$200 for second; and up to \$1,000 for subsequent violations	misdemeanor - if found guilty, fine of not more than \$200 and/or 30 days imprisonment	none

**Tennessee**

citation: Tenn.Code.Ann. § 47-18-120

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
Tennessee Regulatory Authority	Companies charged \$500 to obtain list	7 Listed Exemptions	Up to \$2,000 per violation	none	none

**Washington**

citation: RCW § 19.158.110

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
telemarketer	none	none	Up to \$2,000 per violation	none	Consumers have a private cause of action and can recover reasonable attorneys' fees

**Wisconsin**

citation: Wis.Admin.Code § 127.16(4)

<b>List Maintained By</b>	<b>Fees to Consumers and Companies</b>	<b>Exemptions</b>	<b>Civil Penalties</b>	<b>Criminal Penalties</b>	<b>Private Cause of Action/ Recovery of Attorneys Fees</b>
telemarketer	none	3 exemptions	\$100 - \$10,000 per violation	fine of not less than \$25 nor more than \$5,000 and/or imprisonment of up to 1 year	Consumers have a private cause of action for double damages, costs, and attorneys' fees



Kansas Law

TELEPHONE SOLICITATIONS

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

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

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

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

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

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest had an existing business 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;

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

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

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

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

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

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

(1) Identify themselves;

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

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

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

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

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

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

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before any payment is collected.

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

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

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

**History:** L. 1991, ch. 158, § 2; L. 1992, ch. 252, § 9; L. 1997, ch. 172, § 1; L. 1998, ch. 156, § 2; July 1.



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 Senate Commerce Committee  
RE: "Do Not Call" legislation  
January 12, 2000

CONSUMER HOTLINE  
1-800-432-2310

Chairperson Salisbury and Members of the Committee:

Thank you for asking me to appear before you this morning on behalf of Attorney General Carla J. Stovall to provide information on "do not call" legislation. 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.

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."

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

Senate Commerce Committee

Date: 1-12-00

Attachment # 2-1 thru 2-2

Second, there would be a serious staffing concern if our office is charged with the responsibility of maintaining the list. Currently, the Consumer Protection Division staff of nine agents and six attorneys is supported by one legal secretary, two receptionist/secretaries, and a part-time file clerk. If our office is responsible for maintaining the list and database, we would need to add one full-time employee. In addition, funding would have to be provided up front to establish a computer database and registration forms. As an alternative, it might be worth exploring whether the database could be developed and maintained by the Information Network of Kansas.

In 1999, we received approximately 816 complaints with a telemarketing component. 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.

For this type of law to be effective in stopping unwanted telemarketing calls, it must not contain a laundry list of exemptions. The Attorney General would oppose spending taxpayer money for a program that would not provide the benefits promised citizens who truly want to stop unwanted telemarketing calls into their homes. If numerous exemptions are going to be included, we recommend against passing the law. However, if passed without numerous exemptions to allow it to actually accomplish its intended purpose (stopping unwanted telemarketing calls), the Attorney General would support a "do not call" law.

Thank you again for the opportunity to provide information on this very important topic. I would be happy to respond to any questions you may have on these issues.

# AARP LEGISLATIVE ALERT

## AARP Supports Telemarketing Protections for Consumers

**Description:** Telemarketing industry listed overwhelmingly (98%) as business most in need of improved consumer protection by Kansas AARP members in 1999.

**Proposed legislation:** Provides for a “no sales solicitation calls” listing of telephone subscribers.

**Proposed legislation:** Requires telephone solicitors to possess an identification code that appears on a solicited caller’s identification unit.

**Purpose(s):**

- Allows consumers the freedom to choose when they wish to receive telephone solicitations.
- Senior citizens are major recipients of telephone marketing and have suffered losses due to deceptive sales practices.
- Costs borne by consumer choosing for the service (either paying to be placed on “no call” list or paying for a caller I.D. device).
- Does not impose financial hardship to telemarketing industry.
- Public Service Commission oversight assures more strict adherence and compliance than current voluntary efforts.