

Approved: February 17, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 15, 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
Bud Grant, Kansas Chamber of Commerce and Industry
Mike Murray, Sprint
Mike Reece, AT&T
Doug Smith, Direct Marketing Association
Dick Laverentz, AARP
Erik Sartorius, Johnson County Board of Realtors

Others attending: See attached list.

Upon motion by Senator Donovan, seconded by Senator Jordan, the Minutes of the February 9 and 10th meetings were unanimously approved.

SB 539 - Telemarketers required to honor no call lists

Steve Rarrick, Deputy Attorney General, testified in support of "do-not-call" legislation; however, the Attorney General has been advised that Direct Marketing Association (DMA) only allows telemarketers access to its list. The Attorney General would have access only through using its subpoena powers, rendering **SB 539** unenforceable. The Deputy Attorney General stated **SB 539** raises a question as to whether the Legislature has the constitutional authority to delegate unlimited authority to a private entity without providing any limitations or guidelines. **SB 539** provides a civil penalty on telemarketers for noncompliance based on a privately maintained list, with no statutory or regulator parameters. (Attachment 1)

Mr. Rarrick stated he has reviewed the Oregon law and that it provides for the Oregon Attorney General to advertise for bids and to contract with an outside administrator to maintain the do-not-call list, and believes this is a more feasible way to help consumers lessen unsolicited telephone calls without the use of taxpayer funds. A representative from Oregon advised Mr. Rarrick that there is no start up cost associated with the program. The registration fee for consumers to participate in the program is a \$6.50 initial fee and \$3.00 for each annual renewal. Telemarketers are charged \$10 a month to access the list on a monthly basis.

The Kansas Attorney General's office has the following questions about the Oregon law: 1) who should pay the annual fee - the consumer or the telemarketer; and, 2) should the exemption for pre-existing business relationship be limited to a time certain (12 months, 2 or 3 years).

Mr. Rarrick stated the Attorney General does not support **SB 539** as presently drafted, but does support the bill if amended to include the Oregon model with several modifications.

Bud Grant, Kansas Chamber of Commerce and Industry (KCCI), requested an exemption be included in **SB 539** relating to previous business relationships. Mr. Grant testified manufacturers, doctors, retailers, etc. would be impacted and unable to carry on their businesses if **SB 539** passes in its

CONTINUATION SHEET

present form. (Attachment 2)

Mike Murraray, Director of Governmental Affairs, Sprint, testified in support of **SB 539**, stating DMA provides a free service to all consumers by maintaining a national "do not call" list known as the Telephone Preference Service (TPS). Consumers can request to be added to this list free of charge. Sprint has an efficient process in place for using DMA's files by utilizing DMA's TPS list in its telemarketing division and maintaining its own internal list of consumers who have told Sprint directly that they do not wish to receive calls. Sprint believes that the required use of the DMA TPS list along with the FCC required internal list is all that is necessary to stop unwanted telemarketing phone calls. (Attachment 3)

Mr. Murray submitted two amendments to **SB 539**. A new subsection (d) which provides for a specific time in which a telemarketer has to comply with a consumer request; new subsection (e) which sets out exceptions for violations of the act, and new subsection (f) which requires the Attorney General to investigate any telephone solicitor against whom there are multiple complaints in one quarter. Mr. Murray stated Sprint does not support the creation of an additional bureaucracy having the consumer bear the cost of maintaining a do-not-call list as provided in the Oregon law.

Mike Reeht, AT&T, testified in support of **SB 539**, stating the bill requires telemarketers to consult the TPS list maintained by DMA and to refrain from making unsolicited consumer telephone calls to any number appearing on the list. The use of a centrally controlled nationwide list provides the most cost-effective way for telemarketers and consumers to prevent unwanted calls. National telemarketers oppose state specific "do not call" lists because the patchwork of rules and regulations make compliance an impossibility. Mr. Reeht submitted a proposed amendment to **SB 539, on Page 1, line 43, following the word "thereto" to insert: ", provided that it shall be an affirmative defense in any proceeding brought under this section that the telemarketer has established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations established in this section."** This amendment would establish an affirmative defense for companies who have rules and regulations in effect that insure compliance with state laws. (Attachment 4)

Doug Smith, Direct Marketing Association, testified DMA is the oldest and largest national trade association, and has served the direct marketing industry since 1917. DMA's TPS is a private service, without cost to consumers, and provides subscribers a list of names and telephone numbers for an average annual cost of \$400. The TPS list contains over 2.5 million names, 36,000 of which are Kansans. (Attachment 5)

DMA submitted an amendment to **SB 539, on Page 1, line 13, to strike the words "doing business" and to insert the words "making unsolicited consumer telephone calls"; to strike the word "annually" and insert the word "quarterly"; on Line 18, to strike the words "of consumers"; to strike lines 29 through 39 in their entirety and insert the following: "a telephone solicitor will not be liable for violating subsection (b) if it has established and implemented procedures to comply with subsections (a) and (b) and any subsequent call is the result of error."** This amendment establishes an affirmative defense for companies that make every effort to comply with the laws governing telemarketing.

Dick Laverentz, AARP, testified in opposition to **SB 539**, stating the proposed legislation provides no mechanism for determining whether or not DMA is adding a consumer's name to the list in a timely manner, and does not indicate with whom a complaint is to be filed. Mr. Laverentz stated the AARP is opposed to the consumer paying for the service. (Attachment 6)

Erik Sartorius, Johnson County Board of Realtors, Inc., testified in opposition to **SB 539** as drafted, stating the bill requires that anyone who conducts telephone solicitations must contact DMA for their TPS list, which will cost the business approximately \$400 per year. Johnson County realtors request an exemption from this legislation. (Attachment 7)

Senator Barone requested the Revisor submit a list of businesses exempted under current law.

Written testimony from Steve Phillips in support of **SB 539** was submitted to the Committee.

CONTINUATION SHEET

(Attachment 8)

The hearing on **SB 539** was concluded

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 16, 2000.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 15, 2000

NAME	REPRESENTING
Doug Smith	Direct Marketing Association
Mike Murray	Sprint
RS Hodges	KTIA
BOB GRANT	KCC
Erik Sartorius	Johnson Co. Board of Realtors
Jerry Bechtold	AARP
DICK LAVERENTZ	AARP
CHARLES H. FREEMAN	AARP
Stan Parsons	Smoot + Associates
Ivon Wyatt	Ko Farmers Union
Ann Mah	SWBT
Mike Moffet	SWBT
Marcus Ramirez	SWBT
Laura Sells	Attorney General
Coil Bright	Attorney General
Steve Barrick	Attorney General
Christine Aarnes	KCC
Jerry Leatherman	KCCI
Karen Franke	KCC



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Commerce Committee
RE: SB 539
February 15, 2000

Chairperson Salisbury and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify on SB 539. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

SB 539 would require a telemarketer to consult the telephone preference list maintained by the Direct Marketing Association (DMA) before making unsolicited consumer telephone calls to Kansas consumers. Consumers would be required to submit a written request to DMA and their name would then be placed on the telephone preference list for five (5) years.

While Attorney General Stovall is supportive of "do-not-call" legislation that does not contain numerous exemptions, there are concerns related to the unstructured use of the DMA in this bill. First, and most importantly, our office has been advised by the DMA lobbyist that the current position of DMA allows access only to telemarketers for the "...use of removing consumer names from calling lists" and that no change in policy is planned. In other words, the Office of the Attorney General would not be allowed access to the list. This position makes the bill virtually unenforceable.

Other concerns we have relate to the constitutional issue of whether the Legislature can delegate such unlimited authority to a private entity, without providing any limitations or guidelines on charges to consumers to register, access the list to telemarketers who are not DMA members, charges for access to the list for DMA members and non-members, maintenance of the list, and so on. Subjecting telemarketers to civil penalties for noncompliance based on this privately maintained list with no statutory or regulatory parameters is troublesome to our office.

It is my understanding Senator Salisbury, and others, have expressed an interest in the law recently enacted 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

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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 you not to recommend passage of SB 539 as currently drafted based on the DMA list. However, we do support the bill if amended to include the Oregon model with the minor modifications recommended above. I would be happy to answer questions of the Chair or any member of the Committee.

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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SB 539

February 10, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee Commerce

by

Bud Grant

Madam Chair and members of the Committee:

I am here this morning on behalf of the Kansas Retail Council (KRC) and the Kansas Chamber of Commerce and Industry (KCCI). Thank you for the opportunity to appear and to comment during the committee's consideration of SB 539 affecting unsolicited consumer telephone calls.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

This year, as in the past several years, this committee and the legislature finds itself once again considering several approaches to controlling unsolicited consumer telephone calls. Our organization has not provided testimony during your discussions recently because initially all proposals before you contained the exemption which our members con-

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v) an existing business relationship exists between the two parties. There are several reasons why this business relationship may exist:

- the consumer may have a salesperson with whom he or she works and want to be notified of special sales or opportunities. For instance, there may be a special six-hour jewelry sale, or early risers clothing sale. The rare opportunities that many consumers want to know about.
- a consumer may have a maintenance agreement on a refrigerator, washer, etc., which is about to expire and needs a reminder of the option to extend the contract.
- a manufacturer may be recalling merchandise, such as flammable children's pajamas or a faulty compressor in a refrigerator.
- the consumer may have an open credit account which has fallen severely delinquent and needs help to rearrange payments.
- a doctor or dentist's office may call a consumer to remind them to schedule a routine procedure or examination.

Madam Chair, these are just a few examples of where an unsolicited telephone call is now made. Would SB 539, if enacted into law, make calls such as these a violation and subject to a \$5,000 fine?

As a consumer, it may be my wish to avoid general solicitation calls. Under the provisions of SB 539 I could accomplish this by registering with the direct marketing association. However, I may want to get that last minute call about a great clothing sale at Dillard's. With the language missing from the bill exempting previous business relationships, I could not get that call.

In testimony before the committee on previous telemarketing bills, it was noted that most states with telemarketing statutes provide for this exemption. I urge the committee to insert the exemption in this bill and send the bill to the floor for consideration.

Thank you again and I will be pleased to attempt to answer questions.



Before the Senate Commerce Committee
Tuesday, February 15, 2000
SB 539
Mike Murray
Director of Governmental Affairs

Thank you Madam Chair for the opportunity to appear today in support of SB 539 which would require use of the Direct Marketing Association's Telephone Preference List by telemarketers doing business in Kansas.

We very much appreciate you and Senator Barone introducing this bill.

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.

The State can also require anyone who sells or offers to sell publications or compilations to telephone solicitors for marketing or sales solicitations purposes to exclude the names, addresses, and telephone numbers of everyone on the current Telephone Preference Service list. The requirement would apply whether or not the list was obtained from published telephone directories or from other sources. The list maker must also delete such consumer information from the database used to compile the list. Similarly, these requirements would apply if someone whose name is not on the list makes a written request for deletion.

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.

The Direct Marketing Association is a trade association of businesses that use direct mail and telemarketing to sell goods and services. It operates the Telephone

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Preference Service. A consumer who does not wish to receive telemarketing calls from any business entity can send his/her name, address, and telephone number to the service, which maintains a list of all such consumers. Businesses use the list to purge their own calling lists of consumers.

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

As you may be aware, Madam Chair and Senator Barone, since introduction of SB 539 there have been a number of meetings and conference calls convened to address questions and concerns of the Attorney General and industry representatives.

Those have resulted in two proposed amendments and I've prepared a balloon for your consideration.

Insert Balloon

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.

The Oregon Do Not Call List

As it pertains to the Oregon "do not call" law which you have been asked to consider 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.

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.

SENATE BILL No. 539

By Senators Salisbury and Barone

2-1

9 AN ACT relating to consumer protection; concerning unsolicited con-
10 sumer telephone calls.

11

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

13 Section 1. (a) Prior to doing business in this state and annually there-
14 after, a telephone solicitor shall consult the telephone preference service
15 maintained by the direct marketing association, a national trade associa-
16 tion consisting of firms engaged in all forms of direct marketing including
17 direct mail, catalog sales, electronic mail and telephone solicitation, and
18 delete from such telephone solicitor's list of consumers all state residents
19 who have registered with such service. The direct marketing association
20 may be reached by mail, phone, fax or e-mail through the following: Di-
21 rect Marketing Association Headquarters, 1120 Avenue of the Americas,
22 New York, NY 10036-6700, Telephone: (212) 768-7277, Fax: (212) 719-
23 1946, e-mail: webmaster@the-dma.org.

24 (b) No telephone solicitor may make or cause to be made any unsol-
25 icited consumer telephone call to any consumer if the consumer's name
26 and telephone number or numbers appear in the then current list of
27 consumers registered with the telephone preference service maintained
28 by the direct marketing association.

29 (c) any person who obtains the name, residential address or telephone
30 number of any consumer from published telephone directories or from
31 any other source and republishes or compiles such information, electron-
32 ically or otherwise, and sells or offers to sell such publication or compi-
33 lation to telephone solicitors for marketing or sales solicitation purposes,
34 shall exclude from any such publication or compilation, and from the
35 database used to prepare such publication or compilation, the name, ad-
36 dress and telephone number or numbers of any consumer if the con-
37 sumer's name and telephone number or numbers appear in the then
38 current list of consumers registered with the telephone preference service
39 maintained by the direct marketing association.

40 (g) ~~(h)~~ This section shall be a part of and supplemental to the Kansas
41 consumer protection act. Violations of this act may be punishable by fines
2 of not exceeding \$5,000 per violation and such other penalties as are
3 provided in K.S.A. 50-636 and amendments thereto.

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

(d) a telephone solicitor will have ninety (90) days from the date of receipt of the most current updated Direct Marketing Association Telephone Preference Service List to cease telemarketing to a phone number placed on that list during the preceding quarter.

(e) a telephone solicitor will not be in violation of the provisions of this Act if:

- (1) the telephone solicitor has implemented procedures to use the Direct Marketing Association Telephone Preference Service List to remove consumers in the State from calling lists consistent with the Direct Marketing Association's approved methods, and has complied with the Federal Communications Commission (FCC) requirement for an internal company-specific do not call list;
- (2) the telephone solicitor has trained its personnel in the procedures established for the use of the Director Marketing Association's Telephone Preference Service List and for the use of the FCC-required internal company-specific do not call list;
- (3) the telephone solicitor has continuously used the Direct Marketing Association's Telephone Preference Service List and the FCC-required internal company-specific do not call list to remove consumers in the State;
- (4) upon the request of the Attorney General the telephone solicitor shall certify that the telephone solicitor has adhered to the procedures, training, and use referred in this Section, and
- (5) Any subsequent call is the result of error.

(f) The Attorney General shall investigate any telephone solicitor for which it receives multiple complaints from consumers. Multiple complaints against one telephone solicitor (or its subsidiaries) is one quarter will justify an investigation by the Attorney General to determine if the telephone solicitor is in compliance with established procedures. One complaint per quarter against one telephone solicitor will be considered to have been the result of inadvertent error.

**Testimony of Mike Reece on behalf of AT&T
Regarding SB 539 before the Senate Commerce Committee
February 15, 2000**

Madam Chairman and members of the Committee:

My name is Mike Reece and I represent AT&T before the Kansas Legislature.

AT&T supports the passage of SB 539 and would ask the committee to consider one proposed amendment that I will discuss later in my testimony.

SB 539 would require telemarketers doing business in Kansas to consult the telephone preference service list maintained by the Direct Marketing Association, and to refrain from making an unsolicited consumer telephone call to any number appearing on the list.

AT&T as a member of the DMA utilizes the list which is updated quarterly. AT&T maintains an internal "do not call" list and supplements that list with the list maintained by the DMA. Lists that AT&T uses for its telemarketing are "scrubbed" against both lists. For that service DMA charges all telemarketers a fee to access its list. SB 539 as proposed would require all telemarketers doing business in the state to comply with the DMA list. It should be noted also that customers could be added to the list free of charge by calling or writing the DMA.

The use of a centrally controlled nationwide list provides the most cost-effective way for telemarketers and consumers to prevent those unwanted calls. As I mentioned consumers are listed free of charge. By contrast, most state specific "do not call" lists charge the customer on annual basis to be listed. And a key point, that charge for a state specific listing offers the customer no greater assurance of not being called than being listed on the free DMA list. Indeed, there is a very real potential that customers are more likely to be called if they only are listed on a state specific list because not all telemarketers may be aware of each state's particular list.

I think it is apparent why national telemarketers oppose state specific "do not call" lists. The patchwork of rules and regulations imposed by each state create a tracking nightmare for companies to be in compliance. As you heard in the staff report presented earlier this year, many of the state specific lists create numerous exemptions; SB 539 before you today contains no exemptions.

Having said that, AT&T sees one potential problem with the bill. Depending on when a customer requests to be listed, there is a lag time for the industry to obtain the list from DMA, update its internal list and then scrub numbers from lists used for telemarketing purposes. Current wording in SB 539 would suggest a violation has occurred when a customer receives an unsolicited telephone call after being placed on the DMA list. As I indicated the DMA list is updated quarterly. Telemarketing companies need a grace

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period in order to update their internal lists and then scrub its lists that are currently being used in the field.

Many telemarketers create sublists to target certain customers to receive certain calls. For example, AT&T might target high long distance users to receive call selling more sophisticated calling plans. Those sublists would have to be scrubbed to insure compliance and that takes time. Sprint will be offering an amendment to provide telemarketers the time necessary to insure compliance.

AT&T would request your consideration of another amendment designed to accomplish the same result. I have attached a balloon amendment. AT&T believes that if a company has rules and regulations in effect that insure compliance with state law, and have the requirement in state law to have implemented those rules and regulations, it should be an affirmative defense.

As an example, if a company can demonstrate that it reasonably has implemented Kansas law through its rules and regulations, the company would have an affirmative defense against an allegation by the AG that a violation has occurred if a call was made to a number which was on the list because of an inadvertent oversight. With this provision a company could argue oversights or one-time occurrences would not be subject to a violation. In the absence of such a defense, SB 539 would impose strict liability for any call made to a consumer listed on the DMA's list, even if that call occurs the first day that the list is available, regardless of the company's diligence to ensure such calls are not made. This type of provision is not intended to allow companies the ability to avoid penalties for blatant violations of the law, but rather to allow a "rule of reason" to be applied. Several states, including Alaska, Arizona, Pennsylvania, have adopted provisions that are consistent with this approach.

I appreciate the opportunity to appear before the committee, and ask for your favorable consideration of the bill and the proposed AT&T amendment.

SENATE BILL No. 539

By Senators Salisbury and Barone

2-1

9 AN ACT relating to consumer protection; concerning unsolicited con-
10 sumer telephone calls.

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

12 Section 1. (a) Prior to doing business in this state and annually there-
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14 maintained by the direct marketing association, a national trade associa-
15 tion consisting of firms engaged in all forms of direct marketing including
16 direct mail, catalog sales, electronic mail and telephone solicitation, and
17 delete from such telephone solicitor's list of consumers all state residents
18 who have registered with such service. The direct marketing association
19 may be reached by mail, phone, fax or e-mail through the following: Di-
20 rect Marketing Association Headquarters, 1120 Avenue of the Americas,
21 New York, NY 10036-6700, Telephone: (212) 768-7277, Fax: (212) 719-
22 1946, e-mail: webmaster@the-dma.org.

23 (b) No telephone solicitor may make or cause to be made any unso-
24 licited consumer telephone call to any consumer if the consumer's name
25 and telephone number or numbers appear in the then current list of
26 consumers registered with the telephone preference service maintained
27 by the direct marketing association.

28 (c) any person who obtains the name, residential address or telephone
29 number of any consumer from published telephone directories or from
30 any other source and republishes or compiles such information, electron-
31 ically or otherwise, and sells or offers to sell such publication or compi-
32 lation to telephone solicitors for marketing or sales solicitation purposes,
33 shall exclude from any such publication or compilation, and from the
34 database used to prepare such publication or compilation, the name, ad-
35 dress and telephone number or numbers of any consumer if the con-
36 sumer's name and telephone number or numbers appear in the then
37 current list of consumers registered with the telephone preference service
38 maintained by the direct marketing association.

39 (d) This section shall be a part of and supplemental to the Kansas
40 consumer protection act. Violations of this act may be punishable by fines
41 of not exceeding \$5,000 per violation and such other penalties as are
42 provided in K.S.A. 50-636 and amendments thereto.
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Direct Marketing Association

TESTIMONY

SENATE COMMERCE COMMITTEE

SENATE BILL NO. 539

February 15, 2000

Dear Senator Salisbury and Honorable Members of the Senate Commerce 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.

The Direct Marketing Association sponsors three national name-removal services for consumers - 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, without cost to consumers, provided to subscribing industry 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.

In addition to these free options, there are other technological options available to consumers to reduce telemarketing calls.

DMA members, as a condition of their membership are required to use the TPS list to remove consumers' names from calling lists. The TPS is generally used to compliment in-house suppression lists maintained by individual companies. It should be noted non-members companies also subscribe to the Telephone Preference Service.

The TPS not only helps consumers to reduce the number of calls they receive, but aids the telemarketing industry in removing unresponsive consumers from their calling lists. *We must emphasize that the DMA does not provide calling lists.*

Senate Commerce Committee
Date: 2-15-00

Attachment #5-1 thru 5-5

How Does the TPS work? When a consumer registers with Telephone Preference Service their name, address and telephone number are placed on a do not call file. This file is updated and distributed to subscribers four times a year - January, April, July and October. Once a consumer's name is entered it remains on this list for a five-year period from the date of entry. Subscribers to the TPS receive the updates in electronic format and compare these "do not call" telephone numbers to those on their prospect calling lists. The company then purges or deletes the "do not call " telephone number from their prospect calling lists.

A consumer will typically see a reduction in the number of calls they receive approximately two months after their name goes into the quarterly file. The reason for the delayed reduction is because many telephone solicitors have their lists, in various forms, out in the field being used to make calls. When the telemarketer generates a new list the TPS "do not call" names will have been removed and deleted for all future versions of the list.

At this time, the TPS list contains over 2.5 million names. Just over 36,000 of these names are Kansas consumers.

DMA supports Senate Bill No. 539 with the attached amendments. Companies utilizing the TPS to comply with the Kansas Consumer Protection Act may have an occasion where consumers may be accidentally called. This should not be deemed a deceptive and unconscionable business practice, if the company is making every effort to comply. Small businesses that use infrequent telemarketing to boost sales can create another enforcement problem.

We have been able to determine that direct marketing in Kansas accounts for over 175,000 jobs, and sales revenues over \$13 billion have a tremendous economic impact to the state.

The Direct Marketing Association feels very strongly that all states should increase their consumer education programs - informing consumers of federal law and the no cost options available. These increased educational services are of much greater benefit to the public. We applaud the diligent efforts of the Kansas Attorney General's Office to assist and educate consumers throughout Kansas.

It is our desire to work with the staff of the Consumer Protection Division of the Attorney General's Office to ensure that there will be fair enforcement of the laws without impeding fair trade practices. The employment and economic impacts, created by this industry, are important to Kansas.

Thank you for your consideration.



The DMA Telephone Preference Service

If you want to reduce the number of unsolicited national telemarketing calls you receive at home, you may register with TPS, a free service, by printing out this form, filling it in and mailing it to:

TELEPHONE PREFERENCE SERVICE
DIRECT MARKETING ASSOCIATION
P. O. BOX 9014
FARMINGDALE, NY 11735-9014

The DMA does not provide marketers with consumer telemarketing lists. The TPS file is available to companies for the sole purpose of removing your name, address and home telephone number from their calling lists. Your information will remain on TPS for 5 years. This service does not apply to telemarketing calls coming to your business phone.

After several months you will begin receiving fewer telemarketing calls. Local businesses and organizations usually do not use this program. You will continue to receive calls from companies with which you already do business.

Not all companies use TPS to purge their calling lists, therefore, you may continue to receive some companies' calls. If you are sure you do not want to do business with the company now or in the near future, ask to be placed on the company's do-not-call file.

PLEASE REGISTER MY NAME WITH TELEPHONE PREFERENCE SERVICE.

NAME: _____

STREET: _____ **APT#:** _____

CITY: _____

STATE: _____ **ZIP CODE:** _____ - _____

TELEPHONE NUMBER: _____

SIGNATURE: _____

5-4

SENATE BILL No. 539

By Senators Salisbury and Barone

2-1

9 AN ACT relating to consumer protection; concerning unsolicited con-
10 sumer telephone calls.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Prior to ~~doing business~~ in this state and ~~annually~~ there-
14 after, a telephone solicitor shall consult the telephone preference service
15 maintained by the direct marketing association, a national trade associa-
16 tion consisting of firms engaged in all forms of direct marketing including
17 direct mail, catalog sales, electronic mail and telephone solicitation, and
18 delete from such telephone solicitor's list of ~~consumers~~ all state residents
19 who have registered with such service. The direct marketing association
20 may be reached by mail, phone, fax or e-mail through the following: Di-
21 rect Marketing Association Headquarters, 1120 Avenue of the Americas,
22 New York, NY 10036-6700, Telephone: (212) 768-7277, Fax: (212) 719-
23 1946, e-mail: webmaster@the-dma.org.

making unsolicited consumer telephone calls

quarterly

24 (b) No telephone solicitor may make or cause to be made any unso-
25 licited consumer telephone call to any consumer if the consumer's name
26 and telephone number or numbers appear in the then current list of
27 consumers registered with the telephone preference service maintained
28 by the direct marketing association.

29 ~~(c) any person who obtains the name, residential address or telephone~~
30 ~~number of any consumer from published telephone directories or from~~
31 ~~any other source and republishes or compiles such information, electron-~~
32 ~~ically or otherwise, and sells or offers to sell such publication or compi-~~
33 ~~lation to telephone solicitors for marketing or sales solicitation purposes,~~
34 ~~shall exclude from any such publication or compilation, and from the~~
35 ~~database used to prepare such publication or compilation, the name, ad-~~
36 ~~dress and telephone number or numbers of any consumer if the con-~~
37 ~~sumer's name and telephone number or numbers appear in the then~~
38 ~~current list of consumers registered with the telephone preference service~~
39 ~~maintained by the direct marketing association.~~

a telephone solicitor will not be liable for violating subsection (b) if it has established and implemented procedures to comply with subsections (a) and (b) and any subsequent call is the result of error.

40 (d) This section shall be a part of and supplemental to the Kansas
41 consumer protection act. Violations of this act may be punishable by fines
2 of not exceeding \$5,000 per violation and such other penalties as are
3 provided in K.S.A. 50-636 and amendments thereto.

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

5-5



in Kansas

February 15, 2000

Good morning Senator Salisbury and Members of the Senate Commerce Committee. My name is Dick Laverentz and I am a volunteer member of the AARP Capital City Task Force. We represent the views of our more than 344,000 AARP members in Kansas. Thank for this opportunity to express our views and concerns regarding Senate Bill 539.

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 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.

SB 539 introduces a new state level mechanism. It requires telemarketers to consult with the DMA and delete from their list of consumers all Kansas residents whose names appear on the TPS list. Telemarketers are required to do this on an annual basis. In addition, telemarketers are prohibited from calling the consumers whose names appear on the TPS list. Penalties for violating the Act include fines not exceeding \$5000 and any other penalties that are provided under the Kansas Consumer Protection Act.

Although AARP can support the concept of do-not-call, there are several concerns we have with SB 539.

- The telemarketer only has to consult with DMA once a year. Therefore, anyone whose name goes on the list after the consultation must wait up to a year before the calls will stop.

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

Senate Commerce Committee
Date: 2-15-00

Attachment # 6-1 thru 6-2

- The bill does not provide information to consumers about the availability of the service.
- The state has no mechanism for determining whether or not DMA is adding a consumer's name to the list in a timely manner.
- The bill does not indicate who the consumer is to call when he or she wants to file a complaint or how the state will determine if the telemarketer is in fact in violation of the bill.

For these reasons, we oppose SB 539. Thank you again for this opportunity. I stand ready to answer questions.

Dick Laverentz
913/441-8148

KS AARP Office
785/228-2557



Johnson County Board of REALTORS®, Inc.
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The Voice for Real Estate®

Testimony of Erik Sartorius
 Governmental Affairs Director
 Before the
 Senate Commerce Committee
 Regarding
 Senate Bill 539 Excise Tax Act

February 15, 2000

The Johnson County Board of REALTORS® opposes this bill as drafted. While we are not opposed to the underlying goal of the legislation, the mechanism used to reach this goal is overly burdensome to small business.

Senate Bill 539 seeks to address the frustrations of individuals who receive unsolicited consumer calls. Certainly, many of us have had experiences that make us sympathetic to individuals in such situations.

Many of our members, particularly those new to the profession, do make unsolicited consumer calls in the hopes of establishing a business relationship. These calls are not made in a blanket manner using a sequential dialing mechanism. More often than not, these calls are placed to individuals that the agents reasonably believe would be interested in their service.

For instance, an agent in Johnson County calls the residents surrounding the houses he lists. He asks if the residents know prospective buyers or would be interested in listing their house with him. Another agent frequently calls to offer her services to residents who are selling their houses on their own. In both instances, these agents have called upon individuals they reasonably believe could be interested in the services of a REALTOR®.

Furthermore, both agents described above are subject to the Brokerage Relationships in Real Estate Act. As such, they must have an agreement in writing to become an agent of a buyer or seller. This situation, where a business transaction cannot be completed without a face-to-face meeting between the consumer and the solicitor, is actually not considered telemarketing under the federal Telemarketing and Consumer Fraud & Abuse Prevention Act.

Although we could take issue with whether REALTORS® should be subject to Senate Bill 539, we recognize the frustrations of some consumers with receiving unwanted calls. Our concern, therefore, lies with the high cost of adhering to the proposed legislation.

As drafted, the bill requires anyone conducting telephone solicitations to contact annually the Direct Marketing Association for their Telephone Preference Service (TPS). The TPS is a collection of residential telephone numbers of consumers wishing to not receive telephone solicitations. Senate Bill 539 would then prohibit unsolicited consumer calls to individuals on the TPS list. In contacting the Direct Marketing Association, we were informed that receiving the TPS list (updated quarterly) would cost a minimum of \$400.

As you probably know, most REALTORS® are independent contractors and pay the majority of their expenses themselves. An added annual expense of \$400 or more to comply with SB 539 is excessive, particularly when one considers that ninety-eight percent of the list purchased would be useless to Kansas real estate licensees.

In looking at how other states have addressed this issue, we believe numerous options exist that will ensure the protection of consumers without creating an undue burden on our members.

We respectfully urge you to not pass Senate Bill 539 in its current form.

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Senate Commerce Committee

Date: 2-15-00

Attachment # 7

From: Steve Phillips <stevephillips@yahoo.com>
To: <salisbury@senate.state.ks.us>
Date: Sat, Feb 5, 2000 10:49 AM
Subject: SB 539 restricting unsolicited marketing calls

Dear Sen. Salisbury,

Because of my work schedule I will be unable to attend any committee hearings to testify, but I want to express my strong support for S539 which has been introduced in the Senate Commerce committee. This bill prohibits unsolicited telemarketing calls to persons who have registered with the Direct Marketing Association.

Current restrictions on telemarketing are not working. Unsolicited calls are a significant intrusion. My wife and I both work full time and have two young children. Every minute of peace and quiet is precious. Nothing is more annoying than finally finding time for a nap on a weekend, only to have it interrupted by some idiot who wants to talk to me about vinyl siding, triple pane windows, or dubious investments.

This is not an issue of free speech. Companies that want to send me this information have other less intrusive means of doing so. I don't object to junk mail. It doesn't wake me up from a nap or disturb supper.

I hope your committee will give his bill a hearing, and send it to the floor with a recommendation that it passes.

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Senate Commerce Committee
Date: 2-15-00

Attachment # 8