

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 22, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Feleciano (excused), Senator Umbarger

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 Kearney, Kansas Press Association
Steve Rarrick, Deputy Attorney General

Others attending: See attached list

SB 614 - Use of municipality by fictitious business in printed advertisement as deceptive act under Consumer Protection Act

Steve Kearney, Kansas Press Association, testified the language in **SB 614** is broad and can be interpreted to have liability consequences for newspaper publishers and require written assurances from each advertiser. (Attachment 1)

Steve Rarrick, Deputy Attorney General, submitted an amendment to **SB 614** which would broaden the geographical area in subsection (12), on Page 2, by adding the words "community or region"; and an amendment on Page 3 which would relieve a newspaper publisher of any liability by striking Lines 10, 11 and 12, and inserting, "when such publisher had no knowledge the business was not, in fact, located in such municipality, community or region." (Attachment 2)

The hearing on **SB 614** was concluded

SB 539 - Telemarketers required to honor no call lists

Steve Rarrick submitted a proposed Substitute for **SB 539**, based on the Oregon Do Not Call statute. The proposed legislation establishes an existing "business relationship" as being "within the last thirty-six months"; defines "qualified trade association" and allows an association to purchase a list and disseminate the list to its members; requires the administrator to update the do-not-call list on a monthly basis; establishes a 15 day grace period for telephone solicitors; sets a maximum fee of \$10 annually for inclusion in the do-not-call list; and gives the attorney general the authority to enter into a contract with an entity to act as the administrator of the telephone solicitation program. (Attachment 3)

Lynne Holt, Legislative Research Department, briefed the Committee on the Oregon Do Not Call legislation. Some policy questions to be decided are as follows: Time limitation governing the preexisting business relationship between the telephone solicitor and the consumer; whether the attorney general should maintain the list or contract for the administration; how often the administrator should be required to update the list; what the consumer should pay and the cost of the renewal fee; whether the administrator should charge a fee to consumers who request the list and whether trade associations should be allowed to access the list on behalf of their members; whether consumers should be notified about the program and how that determination should be made. (Attachment 4)

The Committee raised questions as to whether emails and faxes should be included. Mr. Rarrick

CONTINUATION SHEET

stated unsolicited faxes are presently covered under federal law. Email can be screened by the service provider upon request. The majority of scams committed are against the elderly and can be stopped by passage of "do-not-call" legislation.

Doug Smith, Direct Marketing Association, distributed a Memorandum responding to questions posed by the Committee on February 15 during the hearing on **SB 539**. (Attachment 5)

Doug Smith, Direct Marketing Association (DMA) distributed a Memorandum to the Committee, stating DMA's opposition to state specific "do not call" legislation. (Attachment 6)

The Chair informed the Committee a hearing will be scheduled on the Attorney General's proposed substitute for **SB 539**.

Senator Brownlee moved, seconded by Senator Steffes, that the Minutes of the February 18 Meeting be corrected by striking the word "conceptually". The vote was in favor of the Motion.

Senator Steffes moved, seconded by Senator Steiniger that the Minutes of the February 18 Meeting be approved as corrected; and that the Minutes of the February 21 Meeting be approved. The voice vote was in favor of the motion.

The meeting adjourned at 8:45 a.m.

KEARNEY LAW OFFICE

TO: SENATOR SALISBURY AND MEMBERS OF THE SENATE COMMERCE COMMITTEE
FROM: STEVE KEARNEY
SUBJECT: SENATE BILL 614
DATE: 02/21/00

I am appearing in my capacity as legislative counsel for the Kansas Press Association regarding Senate Bill 614. In discussions with the sponsor of this legislation it became clear that the intent of this bill is more narrow than currently drafted. The language of this bill is broad enough to be interpreted to have unintended consequences for newspaper publishers, requiring written assurances from each advertiser, for liability purposes.

In another section of Kansas law, K.S.A. 21-4403 (c) regarding "Deceptive Commercial Practices" the Legislature created an exemption for both print and broadcast media that could be applied here. I would respectfully request that language similar to that already contained in K.S.A. 21-4403 (c) be added to this bill. That language reads as follows:

This section shall not apply to the owner or publisher of any newspaper, magazine, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement, when such owner, publisher or operator had no knowledge of the intent, design or purpose of the advertisement.

Thank you for your consideration of this concern on behalf of the Kansas Press Association.

SENATE BILL No. 614

By Senator Goodwin

2-9

9 AN ACT concerning the consumer protection act; relating to deceptive
10 use of names of municipalities in printed advertisements; amending
11 K.S.A. 50-626 and repealing the existing section.
12

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

14 Section 1. K.S.A. 50-626 is hereby amended to read as follows: 50-
15 626. (a) No supplier shall engage in any deceptive act or practice in con-
16 nection with a consumer transaction.

17 (b) Deceptive acts and practices include, but are not limited to, the
18 following, each of which is hereby declared to be a violation of this act,
19 whether or not any consumer has in fact been misled:

20 (1) Representations made knowingly or with reason to know that:

21 (A) Property or services have sponsorship, approval, accessories,
22 characteristics, ingredients, uses, benefits or quantities that they do not
23 have;

24 (B) the supplier has a sponsorship, approval, status, affiliation or con-
25 nection that the supplier does not have;

26 (C) property is original or new, if such property has been deterio-
27 rated, altered, reconditioned, repossessed or is second-hand or otherwise
28 used to an extent that is materially different from the representation;

29 (D) property or services are of particular standard, quality, grade,
30 style or model, if they are of another which differs materially from the
31 representation;

32 (E) the consumer will receive a rebate, discount or other benefit as
33 an inducement for entering into a consumer transaction in return for
34 giving the supplier the names of prospective consumers or otherwise
35 helping the supplier to enter into other consumer transactions, if receipt
36 of benefit is contingent on an event occurring after the consumer enters
37 into the transaction;

38 (F) property or services has uses, benefits or characteristics unless
39 the supplier relied upon and possesses a reasonable basis for making such
40 representation; or

41 (G) use, benefit or characteristic of property or services has been
42 proven or otherwise substantiated unless the supplier relied upon and
43 possesses the type and amount of proof or substantiation represented to

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Attachment #2-1 thru 2-3

1 exist;

2 (2) the willful use, in any oral or written representation, of exagger-
3 ation, falsehood, innuendo or ambiguity as to a material fact;

4 (3) the willful failure to state a material fact, or the willful conceal-
5 ment, suppression or omission of a material fact;

6 (4) disparaging the property, services or business of another by mak-
7 ing, knowingly or with reason to know, false or misleading representations
8 of material facts;

9 (5) offering property or services without intent to sell them;

10 (6) offering property or services without intent to supply reasonable,
11 expectable public demand, unless the offer discloses the limitation;

12 (7) making false or misleading representations, knowingly or with rea-
13 son to know, of fact concerning the reason for, existence of or amounts
14 of price reductions, or the price in comparison to prices of competitors
15 or one's own price at a past or future time;

16 (8) falsely stating, knowingly or with reason to know, that a consumer
17 transaction involves consumer rights, remedies or obligations;

18 (9) falsely stating, knowingly or with reason to know, that services,
19 replacements or repairs are needed;

20 (10) falsely stating, knowingly or with reason to know, the reasons for
21 offering or supplying property or services at sale or discount prices; and

22 (11) sending or delivering a solicitation for goods or services which
23 could reasonably be interpreted or construed as a bill, invoice or state-
24 ment of account due, unless:

25 (A) Such solicitation contains the following notice, on its face, in con-
26 spicuous and legible type in contrast by typography, layout or color with
27 other printing on its face:

28 "THIS IS A SOLICITATION FOR THE PURCHASE OF GOODS
29 OR SERVICES AND NOT A BILL, INVOICE OR STATEMENT OF
30 ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE
31 ANY PAYMENTS UNLESS YOU ACCEPT THIS OFFER"; and

32 (B) such solicitation, if made by any classified telephone directory
33 service not affiliated with a local telephone service in the area of service,
34 contains the following notice, on its face, in a prominent and conspicuous
35 manner:

36 " _____ IS NOT AFFILIATED WITH
37 (name of telephone directory service)

38 ANY LOCAL TELEPHONE COMPANY"; and

39 (12) using, in any printed advertisement, an assumed or fictitious
40 name for the conduct of such person's business that includes the name of

41 any municipality in this state in such a manner as to suggest that such _____, community or region, or other description of the municipality, community or region
42 person's business is located in such municipality unless: (A) Such person's _____, community or region

43 business is, in fact, located in such municipality; or (B) such person in- _____, community or region

1 cludes in any such printed advertisement the complete street address of
 2 the location from which such person's business is actually conducted, in-
 3 cluding the city or town and, if located outside of Kansas, the state in
 4 which such person's business is located. The provisions of this subsection
 5 shall not apply to the use of any trademark or service mark registered
 6 under the laws of this state or under federal law; any such name that,
 7 when applied to the goods or services of such person's business, is merely
 8 descriptive of them; or any such name that is merely a surname. Nothing
 9 in this subsection shall be construed to impose any liability on any pub-
 10 lisher that relies on the written assurances of a person placing such
 11 printed advertisement that such person has authority to use any such
 12 assumed or fictitious name.

when such publisher had no knowledge the business was not, in fact, located in such municipality, community or region.

13 Sec. 2. K.S.A. 50-626 is hereby repealed.

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

"Do Not Call" Proposal Modeled on Oregon Law

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~~ a business relationship, *within the last thirty-six (36) months*, 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;

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(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.

(6) *"qualified trade association" means an organization with at least the following characteristics:*

(a) *written bylaws governing documents including a code of conduct for its members; and*

(b) *criteria and procedures for expelling or suspending members who violate the association's bylaws or governing documents.*

(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) *A telephone solicitor shall not engage in an unsolicited consumer telephone call of a consumer at a telephone number included on the then current list published by the administrator*

of the telephone solicitation program established under subparagraph (h) of this section. A telephone solicitor shall not be in violation of this section if the unsolicited consumer telephone call was made within fifteen (15) days of the distribution of the then current list immediately following the consumer's number being added to the list.

(g) The attorney general shall advertise for bids and enter into a contract with an entity to act as the administrator of the telephone solicitation program described in subparagraph (h) of this section. The contract may include any provision that the attorney general determines is in the public interest.

(h) The administrator referred to in subparagraph (g) shall create, maintain and distribute a database containing a list of telephone numbers of consumers who do not wish to receive any unsolicited consumer telephone calls at the listed numbers. Beginning on the date specified in the contract between the administrator and the attorney general and at least once each month thereafter, the administrator shall update the list by:

- (1) Adding the numbers of consumers who have filed notice and paid the fee as required in subparagraph (i); and
- (2) Removing the numbers of those consumers who have requested that their numbers be removed or whose listing has expired without renewal.

(i) A consumer may file a notice together with a fee of \$10 per listed number, or such lesser amount as may be specified in the contract, with the administrator indicating the consumer's desire to place telephone number(s) on the list described in subparagraph (h) of this section. The notice shall be filed in the form and manner specified in the contract between the administrator and the attorney general. The notice shall be effective for the calendar year in which it is filed and may be renewed by the filing and payment of an additional notice and fee as specified in the contract.

(j) The administrator shall not furnish the list or any information about a consumer to any person except as follows:

- (1) Upon request of a telephone solicitor engaging in or intending to engage in unsolicited consumer telephone calls and after payment of a fee in an amount specified in the contract between the administrator and the attorney general, the administrator shall furnish the most recent copy of the list described in subparagraph (h) of this section to the telephone solicitor. The list shall be made available in printed and electronic form.
- (2) Upon request of a qualified trade association and after payment of a fee in an amount specified in the contract between the administrator and the attorney general, the administrator shall furnish the most recent copy of the list described in subparagraph (h) of this section to the qualified trade association. The list shall be made available in printed and electronic form. A qualified trade association receiving a list under this subparagraph may

make the list available to its members on any terms the association and its members may impose.

- (3) Upon request of the attorney general for the purpose of enforcing the provisions of this section, the administrator shall furnish the attorney general with all information requested by the attorney general concerning a telephone solicitor or any person the attorney general believes has engaged in an unsolicited consumer telephone call prohibited by this section. The administrator shall not charge a fee for furnishing the information to the attorney general.*
- (4) Upon request of any consumer who has filed a notice and paid the fee as provided in subparagraph (i) of this section, the administrator shall furnish the consumer with all information requested by that consumer concerning the telephone solicitor or any person who the consumer believes has engaged in an unsolicited consumer telephone call prohibited by this section. The administrator shall not charge a fee for furnishing the information to the consumer.*
- (5) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.*
- (6) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the attorney general. The administrator shall not charge a fee for furnishing the information to the successor administrator.*
- (k) The administrator shall promptly forward any complaints concerning alleged violations of this section to the attorney general.*
- (l) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the attorney general.*
- (m) The attorney general may adopt rules relating to any aspect of the establishment, operation or administration of the telephone solicitation program established under this section.*
- (n) The corporation commission shall by rule require that telecommunications carriers inform consumers of the provisions of this section. Notification may be by:*

 - (1) annual inserts in billing statements mailed to consumers which shall contain the specified notice form; or*
 - (2) conspicuous publication of the specified notice form in the consumer information pages of local telephone directories.*

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

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

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

February 21, 2000

To: Senate Committee on Commerce
From: Lynne Holt, Principal Analyst
Re: Oregon's Law on Telephone Solicitation

Oregon's law was enacted in 1999. Below is a summary of each section of the law with corresponding policy questions in the event the Committee chooses to adapt certain features of Oregon's law to its own bill.

Section 1 prohibits a "person" (telephone solicitor) from calling a "party" (residential consumer) whose telephone number is listed on Oregon's do-not-call list. The term "telephone solicitation" in this Act does not apply to solicitors from whom the consumer previously purchased property, goods, or services.

Policy Question: Should there be a time limitation governing the preexisting business relationship between the telephone solicitor and the consumer? Two other states—Tennessee and Arkansas—have such a provision.

Section 2 incorporates Sections 3-5 into the statutes pertaining to telephone solicitation.

Section 3 (1) requires the Attorney General to advertise for bids and contract for the administration of the do-not-call list.

Policy Questions: Should the Attorney General or another entity maintain the do-not-call list? (Arkansas and Kentucky direct the Attorney General's office to maintain the list. Florida requires the Department of Agriculture and Consumer Affairs to assume that responsibility. Several other states impose that requirement on their public utility commissions or telemarketing companies.) Should the Attorney General be required to contract out the administration of the do-not-call list or should a contractual arrangement be optional, as in several states?

Section 4 (1) requires the administrator of the do-not-call list to update the list on a monthly basis.

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Policy Questions: Is a monthly basis too frequent to update the list? Should there be a provision to protect telephone solicitors from being in violation of the law if they call a consumer only a few days after names have been added to the do-not-call list?

Section 4 (2) sets a maximum fee of \$10 annually for inclusion in the do-not-call list. The fee may be less if so specified in the contract. The contract would specify the renewal fee.

Policy Questions: Should the consumers pay more than or less than \$10 or should the fee be specified in the contract? In Oregon, the fee set by contract is \$6.50 annually. In Kentucky, consumers do not pay for inclusion in the do-not-call list. In Georgia, the fee is \$5 and in Florida and Arkansas it is \$10 annually. Should the renewal fee be specified in the statute or in a contract? In Oregon, the annual renewal is established contractually at \$3.00.

Section 4 (3) prohibits the administrator from furnishing the do-not-call list to anyone except for paid-up telephone solicitors and paid-up qualified trade associations. Fees assessed telephone solicitors and trade associations are specified in the contract. The list will be made available in printed and electronic form to telephone solicitors and trade associations. Trade associations may make the list available to their members. The administrator is required to provide information at no cost to the Attorney General, upon request, for the purpose of enforcing the prohibition, and to any paid-up consumer, upon request, who believes a telephone solicitor has made an unsolicited call to him or her. The administrator must promptly forward complaints of alleged violations to the Attorney General. Fees paid to the administrator will be used as administrative income, as specified in the contract.

Policy Questions: Should the administrator charge a fee to consumers who request the list? Should trade associations be allowed to access the list on behalf of their members? (Oregon is the only state with do-not-call legislation that authorizes trade associations to access the list.) Should a fee be assessed telephone solicitors in statute or should it be addressed in the contract? Fees range from \$10 biennially in Alabama to \$400 annually in Florida and Kentucky.

Section 5 authorizes the Attorney General to promulgate rules related to program implementation.

Section 6 defines "qualified trade association" as having, at a minimum, written bylaws or governing documents, including a code of conduct; and criteria for dealing with members who violate the bylaws or governing documents. This section also defines "telephone solicitation" but excludes: calls made in response to a consumer's request; calls

made by or on behalf of charitable organizations; calls made by polling organizations; and business to business contacts.

Section 7 requires the Public Utility Commission by rule to require telephone companies to notify consumers about the do-not-call list program. Notification can be accomplished through annual insets in bills or notice in local telephone directories.

Policy Question: How should consumers be notified about the program and how should that determination be made?

Section 8 authorizes the Attorney General to perform any duties needed to implement the program before any operative date specified in the law.

Section 9 requires the first contract to be awarded by January 1, 2000.

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dictional authority of the city, in a justice or municipal court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall, if the action is commenced in a circuit court, be governed by the provisions of ORS 131.305 [to], 131.335, 131.345, 131.355, 131.363, 131.375, 131.385, 131.395, 131.405 and 131.415. [If the action is commenced in a justice court a request for change of the place of trial shall be governed by the provisions of ORS 156.100.]

(3) When the state traffic offense is punishable as a crime, the action shall be commenced in the county in which the offense was committed.

Approved by the Governor July 8, 1999
Filed in the office of Secretary of State July 8, 1999
Effective date October 23, 1999

CHAPTER 564

AN ACT

SB 915

Relating to telephone solicitation; creating new provisions; amending ORS 646.567, 646.569 and 646.571; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646.569 is amended to read:

646.569. (1) A person [is in violation of ORS 646.608 (1)(cc) if the person engages in the telephone solicitation of a party and that party is identified in the party's telephone directory as a party that does not wish to receive any telephone solicitation] shall not engage in the telephone solicitation of a party at a telephone number included on the then current list published by the administrator of the telephone solicitation program established under sections 3 and 4 of this 1999 Act.

(2) For purposes of this section, "telephone solicitation" [also] does not include a person soliciting business from prospective purchasers who have previously purchased from the person making the solicitation or the business enterprise for which the person is calling.

SECTION 2. Sections 3 to 5 of this 1999 Act are added to and made a part of ORS 646.567 to 646.571.

SECTION 3. The Attorney General shall advertise for bids and enter into a contract with a person to act as the administrator of the telephone solicitation program described in section 4 of this 1999 Act. The contract may include any provision that the Attorney General determines is in the public interest.

SECTION 4. (1) The administrator referred to in section 3 of this 1999 Act shall create, maintain and distribute a database containing a list of telephone numbers of parties who do not wish to receive any telephone solicitation at the listed numbers. Beginning on the date specified in the contract between the administrator and the Attorney General and at least once each month thereafter, the administrator shall update the list by:

(a) Adding the numbers of parties who have filed notice and paid the fee as required in this section; and

(b) Removing the numbers of those parties who have requested that their numbers be removed or whose listing has expired without renewal.

(2) A party may file notice together with a fee of \$10 per listed number, or such lesser amount as may be specified in the contract, with the administrator indicating the party's desire to place telephone numbers on the list described in subsection (1) of this section. The notice shall be filed in the form and manner specified in the contract between the administrator and the Attorney General. The notice shall be effective for the calendar year in which it is filed and may be renewed by the filing and payment of an additional notice and fee as specified in the contract.

(3) The administrator shall not furnish the list or any information about a party to any person, except as follows:

(a) Upon request of a person engaging or intending to engage in telephone solicitations and after payment of a fee in an amount specified in the contract between the administrator and the Attorney General, the administrator shall furnish the most recent copy of the list described in subsection (1) of this section to the person. The list shall be made available in printed and electronic form.

(b) Upon request of a qualified trade association and after payment of a fee in an amount specified in the contract between the administrator and the Attorney General, the administrator shall furnish the most recent copy of the list described in subsection (1) of this section to the qualified trade association. The list shall be made available in printed and electronic form. A qualified trade association receiving a list under this subsection may make the list available to its members on any terms the association and its members may impose.

(c) Upon request of the Attorney General for the purpose of enforcing ORS 646.569, the administrator shall furnish the Attorney General with all information requested by the Attorney General concerning a party or any person who the Attorney General believes has engaged in a solicitation prohibited by ORS 646.569. The administrator shall not charge any fee for fur-

nishing the information to the Attorney General.

(d) Upon request of any party who has filed a notice and paid the fee as provided in subsection (2) of this section, the administrator shall furnish the party with all information requested by that party concerning the party or any person who the party believes has engaged in a solicitation prohibited by ORS 646.569. The administrator shall not charge any fee for furnishing the information to the party.

(e) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(f) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the Attorney General. The administrator shall not charge any fee for furnishing the information to the successor administrator.

(4) The administrator shall promptly forward any complaints concerning alleged violations of ORS 646.569 to the Attorney General.

(5) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the Attorney General.

SECTION 5. In the manner provided by ORS 183.310 to 183.550, the Attorney General may adopt rules relating to any aspect of the establishment, operation or administration of the telephone solicitation program established under sections 3 and 4 of this 1999 Act.

SECTION 6. ORS 646.567 is amended to read: 646.567. As used in ORS 646.567 to 646.571, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Party" means a residential telephone customer of a telecommunications company.

(3) "Qualified trade association" means an organization with at least the following characteristics:

(a) Written bylaws or governing documents including a code of conduct for its members; and

(b) Criteria and procedures for expelling or suspending members who violate the association's bylaws or governing documents.

[(3)] (4) "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, goods or services, or make a donation. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party;

(b) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have donated or expressed an interest in donating goods, services or real estate;

(c) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(d) Business to business contacts.

SECTION 7. ORS 646.571 is amended to read:

646.571. [(1)] The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.567 to 646.571 and 646.608. Notification may be by:

[(a)] (1) Annual inserts in the billing statements mailed to parties; or

[(b)] (2) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

[(2)] *Telecommunications companies may provide for the identification of those parties in a telephone directory who do not wish to receive telephone solicitations.*

SECTION 8. (1) Sections 3 to 5 of this 1999 Act and the amendments to ORS 646.567 by section 6 of this 1999 Act become operative November 1, 1999.

(2) The amendments to ORS 646.569 and 646.571 by sections 1 and 7 of this 1999 Act become operative January 1, 2000.

(3) The amendments to ORS 646.569 and 646.571 by sections 1 and 7 of this 1999 Act apply to telephone solicitations made on or after January 1, 2000.

(4) The Attorney General may take any action before any operative date set forth in this section that is necessary to enable the Attorney General to exercise, on and after any operative date set forth in this section, all the duties, functions and powers conferred on the Attorney General by sections 3 to 5 of this 1999 Act and ORS 646.567, 646.569 and 646.571, as amended by sections 1, 6 and 7 of this 1999 Act.

SECTION 9. The first contract described in section 3 of this 1999 Act shall be awarded not later than January 1, 2000.

SECTION 10. This 1999 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect on its passage.

Approved by the Governor July 8, 1999

Filed in the office of Secretary of State July 8, 1999

Effective date July 8, 1999

Memorandum

To: Senator Salisbury
From: Doug Smith
Direct Marketing Association
Date: February 17, 2000
RE: Senate Bill No. 539

The Senate Commerce Committee had some questions during the public hearing on Senate Bill No. 539 that I was unable to answer on Tuesday, February 15th.

Here is what I am able to provide in response.

Question 1

What process is used for consumers to renew the Telephone Preference Service (TPS)?

At the end of the 5-year registration period when the consumer's name is deleted from the TPS, no notice of expiration or request for renewal is provided. It is the consumer's responsibility to resubmit their name for the no cost Telephone Preference Service. In the past DMA offered a renewal service. But it became too expensive for the DMA to continue providing these notices, so they stopped.

Question 2

Can the TPS list be sub-grouped by state, instead of receiving the entire U.S. file?

Yes. The TPS list can be provided based on zip code if required by a telephone solicitor.

Question 3

Is there a reduced charge for a smaller list?

Yes. I do not have the price for a list of only Kansas consumers. I am still waiting on that information.

Question 4

What are the different charges for subscription to the TPS?

The cost is \$400 for the annual list with quarterly updates, and \$700 for monthly updates.

I hope this information is helpful. Should you need further clarification please let me know.

Senate Commerce Committee

Date: 2-22-00

Attachment # 5

To: Members of the Senate Commerce Committee

From: Doug Smith
Direct Marketing Association

Date: February 21, 2000

RE: State Specific "Do Not Call" Lists

The Direct Marketing Association (DMA) believes that state specific "do not call lists" are an unnecessary duplication of federal law. State specific "do not call lists" will not stop all unwanted calls. Consumers may still receive calls from exempted businesses and organizations.

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

The 1991 Telephone Consumer Protection Act and the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act provide consumers with the ability to have their names removed from a company's prospect list. Under federal law - upon the request of a consumer, a company must place a consumer's name on an in-house "do not call list" and must keep the name on the list for 10-years. Companies that do not follow the provisions of federal law or honor a consumer's request subject themselves to fines and civil penalties. This service is all done at no cost to the consumer.

DMA has been an advocate for a consumer's ability to opt-out.

In fact, we have sponsored a similar service, the Telephone Preference Service. TPS is free to consumers and paid for by the industry. DMA has been providing this service for the past 20 years. National firms who regularly utilize, as a part of their business practice, in-house lists and the TPS generate a majority of the telephone solicitations made throughout the U.S.

State specific "do not call lists" are an unneeded expense for consumers, businesses and state governments.

Senate Commerce Committee
Date: 2-22-00

Attachment # 6-1 thru 6-2

- It will cost consumers money to place their name on the list and for any renewals. Consumers may ultimately bear the costs of the database through higher retail prices
- It will cost businesses, especially smaller businesses, money to purchase equipment and integrate a state specific list on a regular basis. The greater the cost to small business to comply the more likely the compliance costs will be passed on to the consumer.
- It will cost Kansans money for personnel and office space should a state agency maintain the list.

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 efforts can be inexpensive. If a state is going to implement state specific list they will conduct new education programs to inform consumers and business of the new statutory requirements. Why not figure out the depth of the problem before developing solutions?

In 1998, the State of Vermont rejected legislation to create a state specific list. They chose create a partnership with the industry, both telecommunications and telemarketing companies, to educate consumers. Through a series of bill stuffers, press conferences and public service announcements the State of Vermont informed consumers of their rights under federal law and the Telephone Preference Service. Through these increased education efforts the registration of Vermont consumers in the TPS went from 9,800 in January 1999 to over 40,000 by October of that same year.

We urge that careful consideration be given to the cost benefits of a state specific "do not call lists" before implementation. First, you should consider educating consumers on their existing rights and other remedies available to them.