

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 1, 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
Doug Smith, Direct Marketing Association
Mike Murrery, Sprint
Mike Reece, AT&T

Others attending: See attached list

HB 2891 - Telemarketer no-call list

SB 539 - Telemarketers required to honor no call list

Steve Rarrick, Deputy Attorney General, testified that the basic difference between **HB 2891** and the proposed substitute for **SB 539** based on the Oregon do-not-call law includes whether to allow registration of only residential telephone numbers on the do-not-call list, or whether non-residential numbers, including business numbers, should be allowed to register; and whether funding of the do-not-call database should be paid by telemarketers and trade associations only, or whether consumers who register their numbers on the list should share the cost of maintaining the list. (Attachment 1)

Mr. Rarrick stated that **HB 2891** broadens the telephone solicitations act to include non-residential telephone solicitations, which gives consumer protections to entities, such as corporations, that are not covered by the "consumer" definition under the Kansas Consumer Protection Act. **HB 2891** deletes any charge to consumers to register on the list. The Attorney General does not advocate for the cost of maintaining the database to be borne by the general fund. Most states require financing be borne by the consumer with a registration fee from \$5 - \$10, together with a telemarketer fee of between \$120 - \$500 per year to access the list.

Mr. Rarrick itemized the similarities and differences between **HB 2891** and the Attorney General's proposed amendments to **SB 539**. 1) Both contain an exemption for existing business relationship, defined as "being within the preceding 36 months". 2) The definitions of "qualified trade association" are similar. 3) The Attorney General strongly opposes the provision in **HB 2891** at page 3, lines 31-33 which would allow an affirmative defense and cause the law to be impossible to enforce. 4) **SB 539** provides for a 15 day grace period for telemarketers to integrate the list into their system while **HB 2891** leaves this to rules and regulations. 5) **HB 2891** at page 2, lines 7-9, removes the exemption for newspaper publishers. 6) **HB 2891** at page 2, lines 18 and 21, changes the definition of "automatic dialing-announcing device" making the provision unfriendly to the consumer. 7) **HB 2891** creates a new definition of "consumer" at page 3, lines 36-37 rather than complying with the present definition as set out in the Kansas Consumer Protection Act in KSA 50-524. 8) **HB 2891** provides the Attorney General with the option of entering into a contract for maintenance of the do-not-call database and the proposed amendments to **SB 539** directs the Attorney General to advertise and contract with an administrator to

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maintain the database. 9) **HB 2891** requires the Attorney General to implement rules and regulations requiring notice by telecommunications providers to inform consumers of the do-not-call law and how a consumer can register, while the proposed substitute for **SB 539** requires the Kansas Corporation Commission to implement the rules and regulations. 10) **HB 2891** mandates a detailed list of rules and regulations be adopted by the Attorney General, whereas the proposed amendments to **SB 539** propose that rules and regulations may be adopted.

Mr. Rarrick testified the Attorney General's office disagrees with the telemarket industry that do-not-call legislation may be preempted by the federal Telephone Consumer Protection Act (TCPA). The 8th Circuit held in *Van Bergen v State of Minnesota*, 59 F.3d 1541, 1548 (1995) that "The TCPA carries no implication that Congress intended to preempt state law".

Mr. Rarrick emphasized opposition to adding exemptions to the proposed legislation stating that if a do-not-call law is passed, it should be made effective.

Bud Grant, Kansas Chamber of Commerce and Industry (KCCI), reported conferring with members of KCCI who have operations in Oregon and found that with the exemption for "existing business relationships", the statute has not impacted their operations. Mr. Grant stated he has some concerns as to whether business to business communications are exempt; whether firms operating through referrals from existing customers would be in violation of the do-not-call legislation; and whether the 36 month existing business relationship is a long enough time, particularly in cases of equipment and appliance warranties. Mr. Grant questioned the wisdom of enacting another bureaucracy and the need for additional dollars to implement the proposed legislation. (Attachment 2)

Doug Smith, Direct Marketing Association (DMA) testified in opposition to **HB 2891** that state specific do-not-call legislation is an unnecessary duplication of federal law. The 1991 Telephone Consumer Protection Act (TCPA) 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. Upon a consumer's request, 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 who do not follow the provisions of federal law or the consumer's request are subject to fines and civil penalties. (Attachment 3)

Mr. Smith testified state specific do-not-call lists: 1) cost consumers money to place their name on the list and for any renewals, 2) cost businesses money to purchase equipment and integrate a state specific list on a regular bases, and 3) cost Kansas money for personnel and office space or additional costs to develop bid documents, contracts, implementation policies, maintenance policies and promotional materials.

The State of Vermont rejected the state specific type of legislation, and chose to educate consumers regarding their rights under the federal law and to promote the Telephone Preference Service. Kansas should concentrate on educating consumers on existing protections prior to developing new requirements as specified in the legislation under consideration.

Mr. Smith stated Kansas has spent valuable resources on attracting telemarketing operations to Kansas. The provisions contained in **HB 2891** are counterproductive to the economic development money spent through the Department of Commerce and Housing.

Mr. Smith suggested as an alternative a resolution directing the Kansas Corporation Commission to provide a mechanism for an educational and promotional campaign similar to the one in Vermont. (Attachment 4)

Mike Murray, Sprint, testified in opposition to **HB 2891**, stating the legislation reflects a real "disconnect" between the official policy of the State to recruit telemarketing firms and legislative attempts to pass laws designed to severely restrict the telemarketing business.

Mr. Murray stated it takes about 90 days from the receipt of the most recent state do-not-call list to stop calling a specific consumer. In order for the state to monitor compliance and investigate complaints by consumers who have received calls after a specific time period, it is necessary to record the

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following three dates on the file: 1) the date the consumer requested to be added to the list, 2) the date the consumer's complete record was made available to the telemarketing companies for suppression, and 3) the required compliance date beyond which no calls should be made to the consumer. The 15 day grace period advocated by Mr. Rarrick in his testimony is not adequate. (Attachment 5)

Mr. Murray stated Sprint is willing to work with the Attorney General, the KCC, and other groups in a cooperative effort to educate consumers as to how they can stop unwanted telephone solicitations by placing their names and numbers on the Direct Marketing Association Telephone Preference Service List. Sprint supports **SB 539** with Sprint's proposed amendments and endorses adding a consumer education component as contained in the proposed resolution submitted by Mr. Smith.

Mike Reece, AT&T, testified in opposition to state specific legislation as contained in **HB 2891**. AT&T supports the original version of **SB 539** requiring telemarketers doing business in the state to consult the Telephone Preference Service list maintained by DMA. Mr. Reece submitted an amendment which would exempt from state specific do-not-call legislation those telemarketers who utilize the DMA list and comply with the FCC rules and regulations regarding internal company lists. This amendment would allow the attorney general to prosecute those telemarketers who do not comply with the Federal Trade Commission laws.

Telemarketing is a legitimate form of commerce and to restrict this form of sales practice fails to discourage unscrupulous telemarketers from operating in our state. The telephone preference list can provide privacy as effectively as any state specific do-not-call list at less cost to both the consumer and the telemarketer.

Mr. Reece stated AT&T is opposed to the language proposed by the Attorney General in **SB 539** and **HB 2891** and favors a proposal that encourages a better knowledge and use of existing law. (Attachment 6)

A copy of a letter addressed to the Senate Commerce Committee from John W. Hess, II, Senior Attorney of Direct Selling Association, stating opposition to **HB 2891** was distributed to the committee. (Attachment 7)

In response to questions from the Committee, Mr. Rarrick stated the proposed do-not-call laws would not apply to non-profit charitable, educational or political solicitations.

The hearing was concluded.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 2, 2000.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 1, 2000

NAME	REPRESENTING
Mike Reel at	AT&T
Mike Murray	Sprint
Steve Montgomery	MCI Worldcom
Marlee Berthoff	KCC
Bernie Koch	Wichita Chamber
Christine Aarnes	KCC
Tom DAY	KCC
Erik Sartorius	Johnson Co. Board of Realtors
Jim Gmouzek	KDOC + H
Janette Cushing	KCC
Pat Morris	KAIA
Debbie Vignatelli	Southwestern Bell Telephn
Wade Haggood	Sprint
Roger Franck	KGC
Don Seifert	City of Olathe
Kathy Dameron	Southwestern Bell
KAREN FRANCE	KAC



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: Proposed Substitute to SB 539 and
HB 2891 As Amended by the House Committee of the Whole
March 1, 2000

Chairperson Salisbury and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall to testify on the two do-not-call legislative proposals being considered today, our proposed substitute to SB 539 and HB 2891 as amended by the House Committee of the Whole (hereinafter referred to as HB 2891). My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

As you know, our proposed substitute to SB 539 is modeled after the Oregon do-not-call law enacted in 1999. In our draft, we have adapted the Oregon law to our statutory scheme and language. HB 2891 includes many of the Oregon provisions, but also contains some very significant differences.

Two very important differences between HB 2891 and the proposed substitute to SB 539 based on the Oregon model include issues of: (1) whether to allow registration of only residential telephone numbers on the do-not-call list, or whether non-residential numbers, including business numbers, should be allowed to register; and (2) whether funding of the do-not-call database should be paid by telemarketers and trade associations only, or whether consumers who register their numbers on the list should share the cost of maintaining the list.

In its current form, HB 2891 will broaden the telephone solicitations act, including the new do-not-call provisions, to include non-residential telephone solicitations (page 1, line 33). In addition, HB 2891 gives consumer protections to entities, such as corporations, that aren't within the normal definition of "consumer" under the KCPA (page 5, lines 2-7). This is a significant deviation from the Oregon model and other do-not-call laws. Kansas and other states have passed telephone solicitations acts with the objectives of protecting the privacy of citizens in their homes and protecting our elderly citizens from fraudulent telemarketers. Whether to expand those telemarketing protections to businesses is a policy decision for the legislature.

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Attachment # 1-1 thru 1-4

HB 2891 has deleted any charge to consumers to register on the list (page 4, lines 28-31). How to fund a do-not-call program is a policy question the legislature must make. Because our office has no existing resources to maintain a do-not-call database and in light of the current budget situation, the Attorney General supports utilizing a database company to maintain the list without using general fund monies.

A representative from Oregon has advised us that there were no significant start-up costs associated with their do-not-call program. In the first month following implementation of their program this year, over 10,000 consumers registered and approximately 100 telemarketers have paid to access the list. 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 \$120 a year to access the list on a monthly basis. In Georgia, consumers are charged \$5 every two years to register on the list.

However, if consumers are not charged to register, fees charged to telemarketers and trade associations to access the list will be higher than the \$120 a year being charged in Oregon in order to fund maintenance of the database. Tennessee is the only state we are aware of that doesn't charge the consumer, and we have been advised that the fee charged to the telemarketers in Tennessee is \$500 per year, substantially more than the \$120 a year charged in Oregon.

If the policy decision is made to charge consumers to register on the list, we would recommend that a maximum fee of \$5 for two years be set. This would allow us to attempt to negotiate a lower fee for subsequent renewals with a database company, but in no event would the annual cost be greater than \$2.50.

Briefly summarized, other similarities and differences between HB 2891 and our proposed substitute to SB 539 include:

- Both proposals have amended the exemption for existing business relationship to require a business relationship within the preceding 36 months. This will give a reasonable limitation to the exemption, yet still allow businesses to offer extended warranties, etc., to customers who have bought products or services within the last 36 months.
- Both proposals contain similar definitions of "qualified trade association (HB 2891, page 2, lines 29-35, and proposed substitute to SB 539, page 2, paragraph (a)(6)). This provision will allow small Kansas businesses to access the list through a trade association rather than purchasing the list directly, thus substantially decreasing the cost to small businesses.
- Neither proposal contains the affirmative defense proposed by industry in HB 2891 at page 3, lines 31-33. We strongly oppose this provision and would urge this Committee not to include it in any do-not-call legislation recommended favorably.

This type of defense would not only be used to defend claims that the telemarketer had a policy and practice of calling consumers on the do-not-call list, but would be effective in defending individual, admitted violations where it was proven that consumers were called even though they were on the do-not-call list. This provision would make the law impossible to enforce. Unscrupulous telemarketers will have prepared manuals outlining procedures to comply with the law even though in practice, whether by specific oral instruction or simple lack of training and supervision, employees will not comply with the written procedures.

- Our proposed substitute to SB 539 contains a 15 day grace period for telemarketers (pages 2-3, paragraph (f)), where HB 2891 appears to leave this to rules and regulations (page 3, lines 21-26). Oregon provides a similar 15 day grace period by regulation. We would oppose any grace period longer than 15 days, as today's modern technology will easily allow telemarketers to integrate the list into their systems. We understand that telemarketers are currently complying with Oregon's law within the 15 day grace period.
- HB 2891, at page 2, lines 7-8, has removed the exemption for newspaper publishers, bringing newspapers within the prohibitions of the telephone solicitations act.
- HB 2891, at page 2, lines 18 and 21, appears to make a technical change. Unfortunately, we are not aware of the purpose for this change and are concerned about the effect. The removal of the word "or," in the definition of "automatic dialing-announcing device" would now require both (A) and (B), as opposed to either in the current definition. This would not appear to be a consumer friendly change in the law, and we would propose amending it to retain the current language.
- HB 2891, at page 2, lines 18 and 21, defines the terms "local exchange carrier," "telecommunications carrier," and "telecommunications service" to use the definitions in K.S.A. 66-1,187.
- HB 2891 specifies the term "consumer" is as defined in K.S.A. 50-624 (page 3, lines 36-37). This isn't in our proposed substitute to SB 539 because K.S.A. 50-670 is part of the Kansas Consumer Protection Act (KCPA), so the definitions in K.S.A 50-524 already apply.
- Although both proposals authorize the Attorney General to contract for maintenance of the do-not-call database, HB 2891 gives the Attorney General the option of doing so (page 3, lines 37-43), while our proposed substitute to SB 539 directs the Attorney General to advertise and contract with an administrator of the database (page 3, paragraph (g)). Since we have no funding to maintain the database and do not anticipate funding being made available, the option to maintain the database in our office contained in HB 2891 is not one we could exercise.

- HB 2891 requires the Attorney General to implement rules and regulations requiring notice by telecommunications providers and wireless telecommunications service providers to inform consumers of the do-not-call law and how a consumer can register (page 4, lines 1-8). Our our proposed substitute to SB 539 requires the Kansas Corporation Commission to implement these rules and regulations (page 4, paragraph (n)). We believe Corporation Commission rules requiring these notices may be more appropriate because they currently regulate the telecommunications industry.
- Both proposals authorize the Attorney General to implement rules and regulations regarding the operation and administration of the do-not-call program. However, HB 2891 mandates a detailed list of rules and regulations to be adopted by the Attorney General (page 4, lines 1-22), where our proposed substitute to SB 539, based on the Oregon law, doesn't mandate rules and is more general (page 4, paragraph (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"). However, our proposed substitute to SB 539 contains more detailed provisions that wouldn't have to be covered by rules and regulations (page 3-4, paragraphs (h) through (l)).

We heard testimony from the telemarketing industry during the hearing on HB 2891 in the House Utilities Committee that do-not-call legislation may be preempted by the federal Telephone Consumer Protection Act, 47 U.S.C. §227 (TCPA). We have researched the TCPA and reviewed the 8th Circuit case referred to by the industry representative, and respectfully disagree. The 8th Circuit specifically held that

"The TCPA carries no implication that Congress intended to preempt state law; the statute includes a preemption provision expressly not preempting certain state laws. If Congress intended to preempt other state laws, that intent could have easily been expressed as part of the same provision." *Van Bergen v. State of Minnesota*, 59 F.3d 1541, 1548 (1995).

Finally, I would again emphasize our opposition to adding exemptions to this law. If you are going to pass a do-not-call law, make it effective. If you add exemptions, telephone solicitations will not cease, and consumers will have been misled.

On behalf of Attorney General Stovall, I urge your favorable consideration of do-not-call legislation without further exemptions, without an affirmative defense provision, and based on the Oregon model. 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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March 1, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Commerce

by

Bud Grant

Madam Chair and members of the Committee:

My name is Bud Grant and I appreciate the opportunity to present very brief comments this morning on behalf of the Kansas Chamber of Commerce and Industry and the Kansas Retail Council.

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.

We recognize the frustrations of the Committee and its attempts to develop solutions to the concerns of some citizens relating to telemarketing. I have conferred with our members who have operations in Oregon, and to date they have found that with the exemption for existing business relationships in Oregon law, the statute does not impact their operations. However, we do have some concerns, e.g.:

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Attachment # 2-1 thru 2-2

- Are business to business communications exempt? As you know there are a significant number of home based companies that could be impacted if not exempt.
- Could firms such as Amway, Mary Kay, and Avon, that operate through referrals from existing customers, call those referrals to arrange for a future meeting? There is some concern that this type of call, even though not soliciting a sale, would be a violation.
- There are many types of equipment, e.g., furnaces, air conditioners, refrigerators, warranties in excess of the 36 month time limit under consideration. Would the seller be required to consult the "no call" list before contacting their customer about a possible extended warranty or service contract?

Overall, KCCI and KRC want to commend this committee and the Legislature for their efforts in this area. But I hope you will ask yourself if the added bureaucracy, the hundreds of thousands of dollars in additional cost to operate and participate in the program, and the potential for lost business, and the income and taxes associated with it, are worth it when a simple NO could avoid the problem.

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

Direct Marketing Association

TESTIMONY
SENATE COMMERCE COMMITTEE
Oregon No Call Program
March 1, 2000

Dear Senator Salisbury and Honorable Members of the Senate Commerce Committee:

The Direct Marketing Association (DMA) believes that state specific "do not call lists" are an unnecessary duplication of federal law.

We know that there are consumers in Kansas who want and desire the goods and services marketed by our member companies. 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 (TCPA) and the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act (also known as the "Telemarketing Sales Rule") 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 service similar to the federal requirements, the Telephone Preference Service (TPS). The 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, the federally mandated 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.

- It will cost consumers money to place their name on the list and for any renewals. In the end, consumers may ultimately bear the costs of the database through higher retail prices.
- It will cost businesses, especially smaller businesses, to purchase equipment and integrate a state specific

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Attachment # 3-1 thru 3-2

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 State may also incur additional costs to develop bid documents, contracts, implementation policies, maintenance policies and promotional materials.

In 1998, the State of Vermont rejected legislation to create a state specific list. They chose instead to create a partnership, on a handshake with the industry, 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 promoted 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.

The Direct Marketing Association feels very strongly that all states, like Vermont, should increase their consumer education programs - informing consumers of federal law and the no cost options available. When a state implements a state specific "do not call list" they generally conduct new education programs to inform consumers and businesses of the new statutory requirements. The State Kansas should concentrate on educating the consumer on existing protections before developing new requirements.

DMA will continue to support Senate Bill No. 539 with the amendments introduced by Sprint, over a state specific "do not call list".

As an alternate proposal we would suggest the Committee consider the attached resolution. This resolution provides the mechanism for a promotional campaign conducted by the interested parties, mediated by the Kansas Corporation Commission. This suggested language in the resolution could be used on its own, or incorporated into Senate Bill No 539 as an educational component.

The State of Kansas, through the Department of Commerce and Housing, has made it a clear policy decision to attract telemarketing operations to Kansas. The State has spent valuable resources on programs to locate telemarketing businesses and their employees to Kansas. The Department of Commerce and Housing provides workforce-training programs to these businesses in order to make them more competitive in today's business environment. We must do what we can to keep our practices consistent with our policies.

We request that favorable consideration be given to the proposal outlined here ,and in the attached resolution, before the implementation of a state specific "do not call list".

Thank you for the opportunity to appear today.

A CONCURRENT RESOLUTION directing the Kansas Corporation Commission to form the "Do Not Call" task force and implement rules and regulations educating the public of their right to refuse telephone solicitations.

WHEREAS, In excess of 175,000 Kansans are employed in direct marketing positions; and

WHEREAS, The Kansas Department of Commerce and Housing actively recruits telemarketing firms to locate their operations within the state and assists in work force training; and

WHEREAS, Telecommunications are an essential function in home and business environments; and

WHEREAS, Legitimate business practices include the reliance upon solicitations by telephone; and

WHEREAS, The public presently has a right to refuse to participate in business solicitations by telephone; and

WHEREAS, Kansas law currently prohibits telephone solicitors from continuing a solicitation if a consumer communicates such a desire; and

WHEREAS, The Federal Communications Commission and Federal Trade Commission presently require telephone marketers to maintain and adhere to internal do not call lists; and

WHEREAS, The Direct Marketing Association presently maintains the Telephone Preference Service, a nationwide do not call list free to consumers, which contains approximately 36,000 Kansans; and

WHEREAS, Many legitimate telemarketing firms, including telecommunications carriers, currently utilize the Direct Marketing Association do not call list; and

WHEREAS, Insufficient and/or uncoordinated information is available to educate the public of the right to promptly terminate telephone solicitations and the enforcement of violations of the law; and

WHEREAS, The Kansas Corporation Commission is assigned responsibility for the regulation of the telecommunications industry: Now, therefore,

' Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Kansas Corporation Commission shall establish a "Do Not Call" task force which shall provide recommendations to the Commission with respect to the content of the rules and regulations to be adopted for the purpose of educating the public of the existing laws curbing and enforcing unwanted telephone solicitation. The task force shall consider requiring to provide annual notice to consumers by a conspicuous publication in the consumer information pages of the local telephone directory and/or by billing message relating to telephone solicitations from the Kansas Consumer Protection Act, Telephone Consumer Protection Act, Telemarketing and Consumer Fraud and Abuse Prevention Act and Direct Marketing Association's Telephone Preference Service.

Be it further resolved: That the Kansas Corporation Commission shall report its findings and recommendations to the House Committee on Utilities and the Senate Committee on Commerce during the first week of the 2001 legislative session. The Legislative Research Department and the Office of the Revisor of Statutes shall provide staff support to the task force as necessary. Such legislative staff shall prepare the report and any legislation recommended by the task force.



Before the Senate Commerce Committee
Wednesday, March 1, 2000
Do Not Call Legislation
Mike Murray, Director of Governmental Affairs

Thank you for the opportunity to appear in opposition to an Oregon-style Do Not Call list and to HB 2891 which would create a Kansas-specific Do Not Call list under the authority of the Attorney General.

There is a very real "disconnect" between the official policy of the State of Kansas to recruit telemarketing firms to Kansas, and legislative attempts to pass laws designed to severely restrict the telemarketing business.

According to the Kansas Department of Commerce, telemarketing is one of six job categories targeted by the Department to bring to Kansas. Others include warehousing and distribution, aviation, plastics, value-added agriculture and administrative service centers. The Department spent \$2 million in 1999 from the Kansas Existing Industry Expansion Program and the Kansas Economic Opportunity and Initiatives Fund to keep and recruit telemarketing jobs.

In addition, during 1999 the Department spent \$4.3 million in workforce training for telemarketing positions from the Investment in Major Projects and Comprehensive Training Fund.

And these numbers don't include incentives and funds spent by local economic development organizations to recruit such jobs to their respective communities.

Also, there are at least 20 telemarketing firms headquartered in Kansas, and another 27 have locations in the state. Many have received Kansas Department of Commerce assistance including those centers in Fort Scott, Kansas City, Kansas, Hays, Topeka, Wichita, Manhattan, Lenexa, Independence, Coffeyville and Lawrence. Of the 175,000 direct marketing jobs in Kansas, according to the Kansas Department of Commerce, 45,000 are full-time telemarketing jobs.

We seem to want the jobs, but it appears we want to make it very difficult for these people to be successful.

As for HB 2891 it originally had 86 cosponsors. However, it was significantly amended in the House Utilities Committee. As a result, it received only 78 votes on final passage, 47 voted no. Nineteen of the original cosponsors ended up opposing the bill.

We respectfully suggest there is significant cost and bureaucracy associated with a state Do Not Call List. The fiscal note attached to the House bill is at least \$250,000.

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Attachment # 5-1 thru 5-5

Here are some of the tasks which the State or its contractor would have to perform:

- notify consumers of a the new Kansas Do Not Call List and advise people how they can have their names and telephone numbers placed on the list,
- accurately collect the consumer information including date of request to be put on the list, the full name, address, city, state, zip code and telephone number (with all 10 digits),
- store the information in a secure facility,
- produce 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 area code splits occur,
- remove telephone numbers that are recycled by the local telephone company,
- remove consumers' records who move out of state or are deceased, and
- send a renewal notice so consumers can continue to have their name and telephone number on the Do Not Call list.

If we go the route of a state Do Not Call list, the state or its contractor will need at least 30 days to add new requests to the file, update incorrect information, perform maintenance on area code changes, and produce the files for shipping.

It takes about 90 days from the receipt of the most recent state Do Not Call list to stop calling a specific consumer. This includes about 30 days to receive the newly updated file and remove the consumer from all calling lists being loaded for calling, and another 60 days to call through an entire list of names. While most consumers are called very early in the cycle (their phones stop ringing), others can take 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, and a complete cessation of calls 90 days after the list is updated and received. This is a realistic and acceptable timeframe to perform all the necessary data processing.

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

- 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, and
- the required "compliance date" beyond which no calls should be made to that consumer.

With this information the State can 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 useless for enforcing the law.

There are other pitfalls and trip-wires associated with a government-run Do Not Call list which can lead to customer and constituent dissatisfaction:

- When a person seeks to have their name and number added to a Do Not Call list, the request may not be complete. For instance, some forget to write down their phone number or area code.
- Some requests are completely illegible.
- Some people say or think they mailed them, but they didn't. Other requests get lost in the mail.
- Some register their current phone number, then they move and forget to register their 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, updating cycles, consumer or data entry errors, the consumer is likely to attribute the blame to the state government.

A couple of years ago, the industry was admonished by some legislators to get a handle on cramming or the Legislature would. Well, we did. And SB 431 was the result of that effort.

We find ourselves in much the same situation today on this issue. The industry would welcome the opportunity to make the same kind of good faith effort in this case.

Sprint would be willing to work with the Attorney General, the KCC, and other interested groups in a cooperative effort to educate consumers as to how they can stop unwanted telephone solicitations by placing their names and numbers on the Direct Marketing Association Telephone Preference List.

Sprint continues to support SB 539 along with our proposed amendments. In addition, we endorse adding a consumer education component along the lines of the resolution presented by the Direct Marketing Association.

HOUSE BILL No. 2891

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

2-3

21 AN ACT concerning ~~unsolicited consumer~~ **certain unsolicited** tele-
22 phone calls; prohibiting certain acts and providing remedies for vio-
23 lations; amending K.S.A. 1999 Supp. 50-670 and repealing the existing
24 section.
25

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

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

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

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

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

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

43 (C) to any person with whom the telephone solicitor or the telephone

SEQUENCE #124

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

HB2891

VOTE TABULATION

2-24-00

CHAIR - MAYS

9:33 AM

FINAL ACTION PASSED AS AM

YEAS - 78

ADAY	GRANT	MCKECHNIE	REINHARDT
ADKINS	HALEY	MCKINNEY	RUFF
ALLDRITT	HELGERSON	MINOR	SHARP
ALLEN	HENDERSON	MOLLENKAMP	SHOWALTER
BALLARD	HENRY	MORRISON, JIM	SHRIVER
BARNES	HOLMES	MORRISON, JUDY	SPANGLER
BEGGS	HOWELL	NICHOLS	STORM
BURROUGHS	HUFF	O'BRIEN	SWENSON
COX	HUTCHINS	O'NEAL	TEDDER
CROW	JENKINS	PAULS	THIMESCH
DEAN	JOHNSTON	PETERSON, E.	TOELKES
EDMONDS	KIRK	PETERSON, J.	TOMLINSON
FEUERBORN	KLEIN	PHELPS	TOPLIKAR
FINDLEY	KREHBIEL	POTTORFF	VICKREY
FLAHARTY	KUETHER	POWELL	WAGLE
FLORA	LARKIN	*POWERS	WEILAND
GARNER	LONG, M.	RAY	WELLS
GATEWOOD	MAYANS	REARDON	WELSHIMER
GILBERT	MAYS	REHORN	WILK
GLASSCOCK	MCCLURE		

NAYS - 47

AURAND	FARMER	KLINE , PHILL	NEUFELD
*BALLOU	FLOWER	*LANDWEHR	O'CONNOR
BENLON	FREEBORN	LANE	OSBORNE
BETHELL	GERINGER	LIGHT	PALMER
BOSTON	GREGORY	LIGHTNER	SCHWARTZ
CAMPBELL	HAYZLETT	LLOYD	SHULTZ
CARMODY	HERMES	*LONG P.	*SLOAN
COMPTON	HOEFT	*LOYD	STONE
DAHL	HUMERICKHOUSE	MASON	TANNER
DREHER	JENNISON	*MCCREARY	VINING
EMPSON	JOHNSON	*MERRICK	WEBER
*FABER	KLINE PHIL	MYERS	

PRESENT - 0

NOT VOTED - 0

MIKE REECHT

GOVERNMENT AFFAIRS CONSULTANT

SMOOT & ASSOCIATES
800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206
(913) 649-6836

TESTIMONY BY MIKE REECHT
ON BEHALF OF AT&T
BEFORE THE SENATE COMMERCE COMMITTEE
REGARDING PROPOSED LANGUAGE FOR SB 539 and HB 2891

MARCH 1, 2000

Madam Chairperson and members of the committee:

My name is Mike Reecht and I appear before you today on behalf of AT&T in opposition to the proposed language suggested by the Attorney General and in HB 2891, requiring telemarketers to comply with a state specific "do not call" list.

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

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

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

Telemarketing is a legitimate form of commerce. To restrict this form of sales practice, as proposed in the Attorney General's balloon and HB 2891, fails to address the real concern, and that is to discourage unscrupulous telemarketers from operating in our state. Customers should have the right to limit calls to their residence if they so choose. The telephone preference list can provide that privacy as effectively as any state specific "do not call" list at less cost to both the consumer and the telemarketer.

Further, AT&T would encourage the committee to consider a proposal that would encourage the better knowledge and use of existing law to curb telemarketing solicitation rather than enact state specific "do not call" legislation, which unscrupulous telemarketers will likely not comply with anyway.

We urge the committee to reject the language proposed by the Attorney General and the Senate Commerce Committee provisions in HB 2891.

Date: 3-01-00

Attachment # 4-1 thru 6-10

"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;

(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

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

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

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

(p) Any telephone solicitor who utilizes the Direct Marketing Association Telephone Preference List and/or complies with federal rules and regulations requiring the maintenance of an internal company "do not call" list shall be exempt from the provisions of this section.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2000

HOUSE BILL No. 2891

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

2-8

23 AN ACT concerning ~~unsolicited consumer~~ **certain unsolicited** tele-
24 phone calls; prohibiting certain acts and providing remedies for vio-
25 lations; amending K.S.A. 1999 Supp. 50-670 and repealing the existing
26 section.
27

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

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

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

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

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

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

6-6

6-7

1 or

2 (C) to any person with whom the telephone solicitor or the telephone
3 solicitor's predecessor in interest had ~~an existing business relationship a~~
4 **business relationship within the preceding 36 months** if the solicitor
5 is not an employee, a contract employee or an independent contractor of
6 a provider of telecommunications services; ~~or~~

7 ~~(D) by a newspaper publisher or such publisher's agent or employee~~
8 ~~in connection with such publisher's business;~~

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

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

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

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

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

25 ~~(6) "Commission" means the state corporation commission.~~

26 (6) "Local exchange carrier," "telecommunications carrier"
27 and "telecommunications service" have the meanings provided in
28 K.S.A. 66-1,187, and amendments thereto.

29 (7) "Qualified trade association" means an organization that
30 has:

31 (A) Written bylaws, or other governing documents, that in-
32 clude a code of conduct for the organization's members; and

33 (B) criteria and procedures for expelling or suspending mem-
34 bers who violate the association's bylaws or other governing
35 documents.

36 (8) "Consumer" means any person, as defined in K.S.A. 50-624,
37 and amendments thereto.

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

40 (1) Identify themselves;

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

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

4

8-9
6-9

1 solicitation;

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

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

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

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

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

21 (f) *No telephone solicitor shall make or cause to be made any unso-*
22 *solicited consumer telephone call to the residence of any consumer in this*
23 *state who has given notice to the commission attorney general, in ac-*
24 *cordance with rules and regulations adopted under section 2 and amend-*
25 *ments thereto, of the consumer's objection to receiving unsolicited con-*
26 *sumer telephone calls.*

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

29 ~~(g)~~ (h) Any violation of this section is an unconscionable act or prac-
30 tice under the Kansas consumer protection act.

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

35 ~~(h)~~ (j) (i) This section shall be part of and supplemental to the Kansas
36 consumer protection act.

37 New Sec. 2. (a) The ~~commission attorney general~~ shall establish
38 and provide for the operation of a data base to compile a list of telephone
39 numbers of consumers who object to receiving unsolicited consumer tel-
40 ephone calls. It shall be the duty of the ~~commission attorney general~~
41 to have such data base in operation no later than July 1, 2001. Such data
42 base may be operated by the ~~commission attorney general~~ or by another
43 entity under contract with the ~~commission attorney general~~.

(j) any telephone solicitor who utilizes the Direct Marketing Association telephone preference list and/or complies with federal rules and regulations requiring the maintenance of an internal company "do not call" list shall be exempt from the provisions of this section.

6-9

1 (b) No later than July 1, 2001, the ~~commission attorney general~~
2 shall adopt rules and regulations that:

3 (1) Require each local exchange ~~company to inform its residential~~
4 **carrier, each telecommunications carrier and each wireless tele-**
5 **communications service provider to inform its** subscribers that a con-
6 sumer has the opportunity to give notice to the ~~commission attorney~~
7 **general** or its contractor that the consumer objects to receiving unsoli-
8 cited consumer telephone calls;

9 (2) specify one or more methods by which a consumer may give no-
10 tice to the ~~commission or its attorney general or the attorney gen-~~
11 **eral's** contractor of the consumer's objection to receiving unsolicited con-
12 sumer telephone calls and one or more methods by which a consumer
13 may revoke that notice;

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

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

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

21 (6) specify such other matters relating to the data base that the ~~com-~~
22 **mission attorney general** deems desirable.

23 (c) If the federal communications commission establishes a single na-
24 tional data base of telephone numbers of subscribers who object to re-
25 ceiving telephone solicitations, the ~~commission attorney general~~ shall
26 include the part of such single national data base that relates to Kansas
27 in the data base established under this section.

28 (d) ~~A residential subscriber shall pay the commission attorney general~~
29 ~~a fee of \$5 for each notice for inclusion in the data base established under~~
30 ~~this section. A telephone solicitor shall pay the commission a fee of \$10~~
31 ~~per year or qualified trade association shall pay the attorney gen-~~
32 ~~eral a fee for access to or for paper or electronic copies of the data base~~
33 ~~established under this section. Such fee shall be prescribed by rules~~
34 ~~and regulations adopted by the attorney general in accordance~~
35 ~~with K.S.A. 45-219, and amendments thereto. A qualified trade~~
36 ~~association may make information obtained pursuant to this sec-~~
37 ~~tion available to the association's members on any terms the as-~~
38 ~~sociation and its members may impose, but use of such information~~
39 ~~shall be subject to the restrictions imposed by subsection (e).~~

40 (e) Information contained in the data base established under this sec-
41 tion shall be used only for the purpose of compliance with this section or
42 in a proceeding or action under K.S.A. 50-670, and amendments thereto.
43 Such information shall not be subject to public inspection or disclosure

6

6/10

1 under the open records act.

2 (f) All enforcement provisions of the Kansas consumer pro-
3 tection act shall be deemed to apply to violations of K.S.A. 50-670,
4 and amendments thereto, involving a person not included in the
5 definition of "consumer" under K.S.A. 50-624, and amendments
6 thereto, to the same extent as if the person were a consumer as
7 defined in K.S.A. 50-624, and amendments thereto.

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

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

6-10



DIRECT SELLING ASSOCIATION
1646 K Street, N.W., Suite 1010, Washington, DC 20006-2808
202/293-8700 • Fax 202/463-4569

Date: 02/29/00 3:19 PM

Facsimile Cover Page

SEN. SALISBURY 1208

To: Senate Commerce Committee Members
(Please see the Distribution List)
Company: Kansas Senate
Fax #: (785) 296-6718

From: John W. Hesse, II, Senior Attorney and Dir. of Government Relations

Phone: (202) 293-5760
Fax #: (202) 463-4569

Number of pages including cover: 4

Distribution List

- The Honorable Jim Barone**
- The Honorable Karin Brownlee**
- The Honorable Les Donovan**
- The Honorable Paul Feleciano, Jr.**
- The Honorable U.L. Gooch**
- The Honorable Nick Jordan**
- The Honorable Don Steffes**
- The Honorable Chris Steineger**
- The Honorable Duane Umbarger**

Message: Re: Opposition to House Bill 2891- Telephone Solicitations

Senate Commerce Committee
Date: *3-01-00*

Attachment # *7-1 three* 3

**DIRECT SELLING ASSOCIATION**

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

February 29, 2000

The Honorable Alicia Salisbury
Chairperson Committee on Commerce
Kansas Senate
Room 123-S
The Statehouse
300 SW 10th Avenue
Topeka, KS 66612-1504

Re: Opposition to House Bill 2891 – Telephone Solicitations

Dear Chairperson Salisbury:

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

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

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

The Honorable Alicia Salisbury

February 29, 2000

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

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

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

Very truly yours,



John W. Hesse, II

Senior Attorney and Director, Government Relations

Attachment

cc: Members, Senate Commerce Committee
Marlee Bertholf, Executive Director, Kansas Retail Council

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

1. Insert the following language into section (2), "unsolicited consumer telephone call", as follows:

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

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

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

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest had a prior or existing business or personal relationship ~~within the preceding 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 PERSON SOLICITING WITHOUT THE INTENT TO COMPLETE, AND WHO DOES NOT IN FACT COMPLETE THE SALES PRESENTATION DURING THE CALL, BUT WHO COMPLETES THE SALES PRESENTATION AT A LATER FACE-TO-FACE MEETING BETWEEN THE SOLICITOR AND THE PROSPECTIVE PURCHASER; OR

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

Key:

Underlined material indicates suggested amendment.

~~Stricken~~ material indicates suggested deletion.

Regular indicates language in existing bill.