

Approved: March 15, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 14, 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, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Upon motion by Senator Ranson, seconded by Senator Barone, the Minutes of the March 10, 2000 meeting were unanimously approved.

HB 2580 - Telephone solicitations; automated dialing machines
HB 2891 - Telemarketer no-call list
SB 539 - Telemarketers required to honor call list

The Chair recalled the Committee's action on **HB 2580**, stating there is presently a substitute motion by Senator Barone before the Committee which would amend modifications to **SB 539 into HB 2580. (Attachment 1)** **The question was asked and a requested roll call vote was taken. The motion failed on a vote of Yes - 3; No - 8. Senators Barone, Feleciano and Steineger voting Yes.**

The Committee considered the original motion made by Senator Ranson that **HB 2580 be amended by directing the Kansas Corporation Commission to adopt rules and regulations reflected in (Attachment 2).**

Senator Umbarger made a substitution motion, seconded by Senator Steffes, that HB 2580 be amended by inserting a New Section 1 which reads as follows: "No later than July 1, 2001, the State Corporation Commission shall adopt rules and regulations that: (a) Require all local exchange carriers and telecommunications carriers to collectively develop a method or methods for annually notifying residential subscribers of their rights and remedies available to them under the Kansas Consumer Protection Act, the Telephone Consumer Protection Act and Telemarketing and Consumer Fraud and Abuse Prevention Act and the availability of the Direct Marketing Association's Telephone Preference Service. (b) Require the information provided to residential subscribers in (a)(1) to specify, at a minimum, the following: the method of registering with the telephone preference service at no cost to the subscribers; the frequency with which the data base maintained by the telephone preference service is updated; the types of calls registered subscribers should still expect to receive; the measures subscribers must take to register if they move or receive a new telephone number; the duration for registration and the procedures for registration renewals; and the remedies available to registered subscribers if they receive unsolicited consumer telephone calls pursuant to K.S.A. 1999 Supp. 50-670, and amendments thereto. (c) Establish guidelines for acceptable methods to inform all telephone solicitors in Kansas of: the requirements for membership in the Direct Marketing Association; charges for members and non-members of the Direct Marketing Association to access the data base of the telephone preference service; and options available to telephone solicitors for accessing Kansas-specific portions of the data base." and renumber Section 1 as Section 2. The voice vote was unanimous in favor of the substitute motion.

CONTINUATION SHEET

Senator Umbarger moved, seconded by Senator Steffes, that HB 2580 be amended on Page 2, by striking Lines 22, 23, 24, 25, 26 and 27, and inserting the following: “a live operator or, for the sole purpose of identifying the telephone solicitor, an automated dialing-announcing device shall answer the line within five seconds of the beginning of the call. It shall not be a violation of this act if the response to a completed call is delayed beyond five seconds due to equipment limitations, equipment failures or a live operator’s physical inability to respond.” The motion failed on a voice vote.

Senator Brownlee moved, seconded by Senator Donovan, that HB 2580 be amended on Page 2, at Line 24, following the word “call” inserting a period (.); strike the balance of the line, strike all of Line 25, 26 and 27 and insert the following: “If answered by an automated dialing-announcing device, the message provided shall include only the information required in section (b)(1) and (2) above, but shall not include any unsolicited advertisement.” The voice vote was in favor of the motion.

Senator Ranson moved, seconded by Senator Brownlee, that a Substitute for HB 2580 be recommended favorably for passage. The recorded vote was unanimous in favor of the motion.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 15, 2000

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 14, 2000

NAME	REPRESENTING
Gail Bright	A.G.
Steve Rarrick	A.G.
MIKE REECHT	AT&T
DAVID FURNAS	KANSAS PRESS
STEVE KEARNEY	KANSAS PRESS
Mike Murray	Sprint
Bennie Koch	Wichita Chamber
TOM DAY	KCC
Christine Aarnes	KCC
Amy Damon	SWB
Debbie Vignatelli	SWBell
Bill Sneed	SW Bell
Denny Koch	SW Bell
Roger Freund	KGC
Mark DARCELFINA	KDOCAH
Stan Kan	WR, Inc.
Stephanie Buchanan	DOB
Kevin Baroni	Hemmer CWB
Doug Smith	Direct Marketing Association

Jim Youally

Cellular One

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Session of 2000
SENATE BILL No. 539

By Senators Salisbury and Barone

2-1

AN ACT relating to consumer protection; concerning unsolicited consumer telephone calls.

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

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

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

(c) any person who obtains the name, residential address or telephone number of any consumer from published telephone directories or from any other source and republishes or compiles such information, electronically or otherwise, and sells or offers to sell such publication or compilation to telephone solicitors for marketing or sales solicitation purposes, shall exclude from any such publication or compilation, and from the database used to prepare such publication or compilation, the name, address and telephone number or numbers of any consumer if the consumer's name and telephone number or numbers appear in the then current list of consumers registered with the telephone preference service maintained by the direct marketing association.

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

(e) Thereafter, any subsequent violation shall be subject to the provisions of this act. A telephone solicitor will not be in violation of the provisions of this Act if:

(1) the telephone solicitor has implemented procedures to use the Direct Marketing Association Telephone Preference Service List to remove consumers in the State from calling lists consistent with the Direct Marketing Association's approved methods, and has complied with the Federal Communications Commission (FCC) requirement for an internal company-specific do not call list;

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Attachment # 1-1 thru 1-2

1 (2) the telephone solicitor has trained its personnel in the
2 procedures established for the use of the Direct Marketing
3 Association's Telephone Preference Service List and for the use of the
4 FCC-required internal company-specific do not call list;

5 (3) the telephone solicitor has continuously used the Direct
6 Marketing Association's Telephone Preference Service List and the
7 FCC-required internal company-specific do not call list to remove
8 consumers in the State;

9 (4) upon the request of the Attorney General, the telephone
10 solicitor shall certify that the telephone solicitor has adhered to the
11 procedures, training, and use referred in this Section, and

12 (5) Any subsequent call is the result of error.

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

20 (g) The provisions of this act shall not apply to firms with 50
21 employees or less that are domiciled within the state of Kansas.

22 (h) This section shall be a part of and supplemental to the Kansas
23 consumer protection act. Violations of this act may be punishable by
24 finances of not exceeding \$5,000 per violation and such other penalties as
25 are provided in K.S.A. 50-636 and amendments thereto. The
26 enforcement of the violation of this act shall commence July 1, 2001.

27 Sec. 2. The Kansas Corporation shall establish a task force to:

28 (1) study and develop recommendations to address consumer
29 concerns regarding unsolicited consumer telephone calls;

30 (2) establish guidelines to educate consumers on existing remedies to
31 curb unwanted telephone solicitations, specifically providing
32 information on the Kansas Consumer Protection Act, Telephone
33 Consumer Protection Act, Telephone Consumer Fraud and Abuse
34 Prevention Act and the Direct Marketing Association's Telephone
35 Preference Service; and

36 (3) address any other related matters concerning unsolicited telephone
37 calls. On or before the first day of the 2001 legislative session the
38 Kansas Corporation Commission shall adopt rules and regulations to
39 implement the recommendations of the task force.

40 The Kansas Corporation Commission shall submit a report, including
41 the task force recommendations, to the House Committee on Utilities
42 and Senate Committee on Commerce during the first week of the 2001
43 legislative session.

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

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

(1) Require each local exchange carrier and each telecommunications carrier to inform its residential subscribers about the availability of the Telephone Preference Service maintained by the Direct Marketing Association at no cost to such subscribers.

(2) Require the information provided to residential subscribers in (a)(1) to specify, at a minimum, the following: the method of registering with the Telephone Preference Service; the frequency with which the data base maintained by the Telephone Preference Service is updated; the types of calls registered subscribers should still expect to receive; the measures subscribers must take to register if they move or receive a new telephone number; the duration for registration and the procedures for registration renewals; and the remedies available to registered subscribers if they receive unsolicited consumer telephone calls pursuant to KSA 1999 Supp. 50-670.

(3) Specify a method or methods to inform all telephone solicitors in Kansas of: the requirements for membership in the Direct Marketing Association; charges for members and non-members of the Direct Marketing Association to access the data base of the Telephone Preference Service; and options available to telephone solicitors for accessing Kansas-specific portions of the data base.

(4) Require all local exchange carriers and telecommunications carriers to collectively develop a method or methods for annually notifying residential subscribers of their rights and remedies available to them in the Kansas Consumer Protection Act, the Telephone Consumer Protection Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, and the Direct Marketing Association's Telephone Preference Service.

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Attachment # 2