

## MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:08 a.m. on February 20, 2001 in Room 521-S of the Capitol.

All members were present

Committee staff present: Renae Jeffries, Revisor of Statutes  
Jerry Donaldson, Legislative Research Department  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Steve Rarrick, Deputy Attorney General  
Jesse Borjon, Secretary of State's office  
Ernest Pogge, AARP  
Jolene Grabill, Direct Marketing Assn.

Others attending: See attached list

**Hearing on: HB 2367 - Unlawful acts and practices under the charitable organizations and solicitations act; telephone solicitations.**

Steve Rarrick, Deputy Attorney General of the Consumer Protection Division, appeared before the committee as a proponent of the bill. The bill would amend the Charitable Organizations and Solicitations Act in three ways: 1) make it a deceptive act to fail to provide, when requested, the percentage of the cost of fund raising, 2) make it a deceptive act to send a solicitation that resembles a bill, invoice, or statement of account, and 3) creates a telephone solicitation statute that would make the provisions in the Consumer Protection Act for commercial telemarketer applicable to charitable solicitations as well. (Attachment 1) Mr. Rarrick finished his testimony by answering questions from the committee.

Jesse Borjon, Public Relations Director, Office of the Secretary of State, appeared on behalf of Secretary of State Ron Thornburgh. Charitable organizations and professional fundraisers and professional solicitors that solicit contributions on their behalf are required to register with the Secretary of State. They must file an annual registration statement listing the percentage of donations that the charitable organizations receives and the amount that is credited to the cost of fundraising. This information is part of public record for the citizens of Kansas. Their office supports the bill in its entirety. (Attachment 2)

Ernest Pogge, AARP, appeared as a proponent of the bill. They believe that when consumers make a donation they have the right to know what percentage is being used by the charitable organization and other costs associated with the solicitation. (Attachment 3)

Jolene Grabill, Direct Marketing Association, appeared as an opponent of the bill in place of Douglas Smith, who submitted written testimony. The association believes that state and federal law should compliment each other, not conflict. They ask that the language in Section 2 of the bill be stricken. (Attachment 4)

No others were present to testify for or against the bill, and Chairman Lane closed the hearing.

**Action on: HB 2367**

Rep. Swenson made a motion to pass out the bill favorably. Rep. Long seconded the motion. Rep. Ballou made a motion to amend the bill to include on page 1, line 32, a font size for the printed notice of a solicitation on page 1, lines 35-39. Rep. Ruff seconded the motion. After discussion, Rep. Ballou withdrew his motion. The original motion was passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S  
Statehouse, at 9:08 a.m. on February 20, 2001.

**Action on: HB 2206**

A motion was made by Rep. Long to pass out the bill favorably. Rep. Grant seconded the motion. The motion carried.

After announcements, Chairman Lane adjourned the meeting at approximately 10:00 a.m. The next meeting is scheduled for March 1, 2001.

# HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 20, 2001

| NAME                    | REPRESENTING        |
|-------------------------|---------------------|
| Ernest C. Pogue         | AARP                |
| FARIBA POURABIAN        | SOS                 |
| BRYCE SPANO             | Sec. of STATE       |
| Jesse Boyer             | SOS                 |
| STEVE LARRICK           | ATTORNEY GENERAL    |
| Nancy Shoughnessy       | Federico            |
| <del>Franklin</del>     | KTHA                |
| John Heavill            | Dehart Darr         |
| Ron Hanson              | Leadership Emporia  |
| Bruce Dimmitt           | Independent         |
| CPT MATT RUZICKA        | FT LEAVENWORTH, KS  |
| CPT SIMONE SCAMENBERGER | FT. Leavenworth, KS |
|                         |                     |
|                         |                     |
|                         |                     |



State of Kansas

## Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

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CARLA J. STOVALL  
ATTORNEY GENERAL

Steve Rarrick, Deputy Attorney General  
Consumer Protection Division

CONSUMER HOTLINE  
1-800-432-2310

Office of Attorney General Carla J. Stovall  
Before the House Business, Commerce & Labor Committee

Re: HB 2367

February 20, 2001

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of HB 2367. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

HB 2367 would amend the Charitable Organizations and Solicitations-Act in three ways. First, the bill would include in the list of *per se* deceptive acts at page 1, lines 27-29, the failure to provide, when requested, the percentage of the cost of fund raising incurred or anticipated to be incurred as a percent of contributions received. Charitable fund raisers often take more than 80% of the contribution made. The Attorney General recently contributed to a charity for breast cancer research, and subsequently learned that only 2% of her contribution went to the charitable purpose, with 98% going to the fund raiser. Although our preference would be to require disclosure of this percentage up front, in *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 108 S.Ct. 2667 (1988), the United States Supreme Court determined such a requirement was unduly burdensome under the First Amendment, and held that States must resort to more benign and narrowly tailored means to accomplish its interest in informing donors how their contributions are spent. The *Riley* Court, however, noted that donors are free to inquire how much of their contribution is turned over to the charity and pointed out that another unchallenged North Carolina statute required fund raisers to disclose such information upon request.

Next, the bill would include in the list of *per se* deceptive acts at page 1, lines 30-38, the sending or delivering of a solicitation which could reasonably be interpreted as a bill, invoice, or statement of account due. This provision is modeled after a provision in the Kansas Consumer Protection Act. Anything that resembles a bill, invoice, or statement of account is required to provide the specified notice contained at page 1, lines 30-38 of the bill. We believe this provision is necessary because some charitable solicitors are sending solicitations that appear to be bills, invoices, or statements of accounts due, when the person receiving the solicitation has not agreed to make a contribution.

House Business, Commerce & Labor Committee  
2-20-01  
Attachment 1

Finally, HB 2367 creates a telephone solicitations statute in New Section 2 (modeled after K.S.A. §50-670, the Consumer Protection Act provision applicable to commercial telemarketers) applicable to charitable solicitations. We receive numerous complaints from consumers about charitable solicitors who continue to argue with them after they indicate they are not interested, or imply that they are calling from a local fire department or police station, when in fact they are calling from another location. When we advise them our telephone solicitations statute only applies to commercial solicitors, these consumers consistently indicate their opinion that it should apply to charitable solicitors as well. This provision will:

- require specified disclosures during a telemarketing solicitation, including the disclosure of who is calling, who they are calling for, why they are calling, and where they are calling from.
- require the solicitor to terminate the call if a negative response is given.
- require a live operator or an automated dialing-announcing device to answer the line within five seconds of the call.
- prohibit the use of professional courier services to obtain payment.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably. I would be happy to answer questions of the Chair or any member of the Committee

RON THORNBURGH  
Secretary of State



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## STATE OF KANSAS

### TESTIMONY OF THE SECRETARY OF STATE TO THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE ON HB 2367

February 21, 2001

Mr. Chairman and Members of the Committee:

Good morning and thank you for the opportunity to testify in support of HB 2367 on behalf of Secretary of State Ron Thornburgh.

Charitable organizations and the professional fundraisers and professional solicitors that solicit contributions on their behalf are required to register with the Secretary of State pursuant to the Kansas Charitable Organizations and Solicitation Act. Although the Secretary of State registers these entities, the Attorney General enforces the provisions of the Act. Both of our offices believe that the Charitable Organizations and Solicitations Act would be strengthened by these amendments, which would ensure against the use of misrepresentation and unfair tactics in soliciting Kansas citizens for donations.

Although our office supports the bill in its entirety, I will only speak to Section 1(b)(3). Charitable organizations must file an annual registration statement with our office listing the percentage of donations credited to the charitable purpose and the percentage of money credited to the cost of fundraising. Most of the fundraising costs are generally attributable to the cost of hiring a professional fundraiser. This information is public record and is intended to inform Kansas citizens about the charitable organizations that solicit them for their contributions. Unfortunately, most Kansans do not have the opportunity to call the Secretary of State to inquire about a charitable organization prior to receiving a telephone solicitation at home.

Our office believes this information is crucial for informed giving and welcomes the amendment given in 1 (b)(3), which would require such information be provided at

the time of the solicitation upon request. I have attached a listing of some charitable organizations and the percentages of donations that are attributable to the cost of fundraising. After reviewing this list, the committee should better understand why the public should be provided this information prior to contributing to a charitable organization.

Jesse Borjon, Public Relations Director  
Office of the Secretary of State

CHARITABLE ORGANIZATION

PERCENTAGE OF CONTRIBUTIONS  
TO THE CHARITY TO FUNDRAISING

|                                                              |     |     |
|--------------------------------------------------------------|-----|-----|
| Air Force Enlisted Men's Widows<br>and Dependents Foundation | 40% | 60% |
| American Brain Tumor Association                             | 9%  | 91% |
| American Studies Center                                      | 31% | 69% |
| Bread for the World, Inc.                                    | 8%  | 92% |
| Children's Defense Fund Action                               | 21% | 79% |
| Council on Religious Freedom                                 | 4%  | 96% |
| Institute for Justice                                        | 31% | 69% |
| Muzak Heart & Soul Foundation                                | 20% | 80% |
| National Cancer Center                                       | 14% | 86% |
| National Veterans Service Fund                               | 11% | 89% |
| Petsmart Charities                                           | 9%  | 91% |
| Pregnancy Crisis Center of Wichita                           | 26% | 74% |
| SADD                                                         | 19% | 81% |





# *in Kansas*

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February 20, 2001

Good morning Representative Lane and Members of the House Business, Commerce and Labor Committee. My name is Dr. Ernie Pogge and I am a volunteer member of the AARP State Legislative Committee. The AARP State Legislative Committee represents the views of our more than 350,000 members in the state of Kansas. I am also the coordinator of our Capital City Task Force, which is the lobbying arm of the AARP State Legislative Committee. Thank you for this opportunity to speak in *support* of House Bill 2367.

Telemarketing fraud victimizes people of all ages, ethnic groups, educational backgrounds and income levels. Unscrupulous telemarketers continue to sell inferior merchandise, fail to deliver goods, levy fraudulent charges and misrepresent or fail to disclose complete and accurate information about organizations and charities for which they are soliciting.

We believe, that when asked to make charitable contributions, consumers have the right to know what percentage of their donations are being used for the cause of the charitable organization, what percentage is being used for operations of the organization and any other cost associated with the solicitation.

AARP supports proposals that encourage states to enact meaningful legislation that will provide governmental oversight and consumer protection against telemarketing fraud, including, but not limited to:

- \*All telemarketing business and their agents that operate in the state must be registered.
- \* All telemarketing calls to consumers must immediately state the true purpose of the call in plain language; explain all terms; and provide the name and location of the company/organization.

Therefore AARP supports legislation that would require telephone solicitors to make available to all consumers complete and accurate information regarding organizations, charitable donations and distribution of solicitations for that organization.

AARP supports House Bill 2367.

Thank you again for this opportunity. I stand ready to answer questions.

601 E Street, NW Washington, DC 20049  
Esther "Tess" Canja, President

House Business, Commerce & Labor Committee

2-20-01

Attachment 3



# TESTIMONY

## Direct Marketing Association

### House Business and Commerce Committee

#### House Bill No. 2367

February 20, 2001

Chairman Lane and Members of the Committee:

Through New Section 2 of House Bill No 2367 the State of Kansas seeks to impose upon charitable organizations a provision of the federal Telephone Consumer Protection Act of 1991 and Kansas Consumer Protection Act. When the federal act was initially developed, tax-exempt nonprofit organizations were expressly exempted from the specific provisions included in New Section 2 of this proposed legislation. It was believed that the federal act would create a greater burden on these organizations and the causes they seek to promote.

The Direct Marketing Association believes that state and federal law should compliment each other, not conflict. Charitable organizations perform a great service to communities. These reputable organizations should be able to perform their duties without the state imposing a public policy standard the federal government explicitly rejected.

Unless there is a specific problem with fraudulent organizations that this language would resolve, we ask that you strike the language in Section 2 of House Bill 2367.

Thank you for your consideration.

Douglas E. Smith  
On behalf of the  
Direct Marketing Association