Approved: April 5, 2002 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on March 6, 2002 in Room 526-S of the Capitol.

All members were present.

Committee staff present: Robert Chapman, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Representative Nile Dillmore
Representative Dean Newton
Steve Rarrick, Office of the Attorney General
Barbara Withee, AARP
J. Ted Walters, Kansas Association of Retired School Persons
Matt Fletcher, InterHab
Bob Geers, ARC of Kansas
Kevin Walker, Heart Association
Gary White, Kansas Trial Lawyers Association

Others attending: See Attached List

Chairman Holmes announced the schedule for working bills and asked for a motion to introduce a resolution regarding a national no call list. Representation Compton moved to introduce a resolution to be sent to the Federal Trade Commission to establish a national 'do not call' registry. Representative Kuether seconded the motion. The motion carried.

HB 2100 - Unsolicited consumer telephone calls; do-not call list
HB 2903 - Telemarketer no-call list

Chairman Holmes opened the hearing on **HB 2100** and **HB 2903**. As previously announced, testimony may include reference to any bill currently dealing with no call legislation.

Representative Nile Dillmore, 92nd District and **HB 2903** sponsor, encouraged the committee to pass effective no call legislation (Attachment 1). Representative Dillmore stated that current law is weak and ineffectual in stopping unwanted calls. He detailed the provisions needed in a no call bill and rebutted objections.

Representative Dean Newton, 21st District, appeared as a proponent of no call legislation (Attachment 2). Representative Newton outlined what the legislation would accomplish if the language in **SB 538** was adopted. He stated that the Direct Marketing Association's (DMA) list is not sufficient to protect Kansas consumers. He told the committee to not wait to see what happens at the federal level, but to pass a clean no call list with few exemptions. Representative Newton responded to questions from the committee.

Steve Rarrick, Deputy Attorney General for the Consumer Protection Division, appeared on behalf of the Attorney General in support of no call legislation (Attachment 3). Mr. Rarrick stated that while the Attorney General's office supports no call legislation, it opposes the exclusive use of the DMA list. He posed several possible constitutional problems with **SB 296**. Mr. Rarrick urged the committee to pass no call legislation that is based on **SB 538** and the use of INK for the database.

Barbara Withee, on behalf of AARP, spoke in support of no call legislation (Attachment 4). Ms. Withee stated they had no objections to allowing a private contractor to maintain the list, but the state's oversight, investigatory, and enforcement ability should not be compromised. Ms. Withee included, with her testimony, AARP's Privacy Policy, a printout from the DMA's website, and a statement about conflict of interest and the DMA.

J. Ted Walters, Kansas Association of Retired School Personnel, testified in support of no call legislation (Attachment 5). Mr. Walters told the committee that people shouldn't have to give up their privacy just because they have a telephone. Hanging up on the telemarketer is not a good argument, especially for some of our older people who may have difficulty hanging up on callers. Screening calls with caller ID systems also doesn't work as this could incur additional cost to the consumer for equipment.

Matt Fletcher, on behalf of InterHab, addressed the committee in support of no call legislation (Attachment 6). Mr. Fletcher stated that a do not call list maintained by the Attorney General's office would be an effective way to help disabled consumers. He stated that the unsolicited intrusion of a telemarketer into the life of a person with developmental disabilities could represent a significant challenge to their ability to successfully live independently.

Bob Geers, on behalf of the ARC of Kansas, spoke to the committee supporting **SB 538** and other no call legislation (Attachment 7). Mr. Geers said that the use of the telephone by telemarketers confuses the population represented by ARC.

Kevin Walker, advocate for the Heart Association, spoke to the committee in support of no call legislation.

Gary White, Kansas Trial Lawyers Association, appeared in support of the creation of a do not call list (Attachment 8). Mr. White explained that they supported the creation of the list to protect the privacy of Kansas consumers and to provide an effective means to prevent unwanted telemarketing calls. He also stated that the legislation would only be effective if the Attorney General's office managed the list.

The conferees responded to questions from the committee.

The hearing on **HB 2100** and **HB 2903** was suspended until March 7, 2002.

The meeting adjourned at 10:55 a.m.

The next meeting will be March 7, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 6, 2002

NAME	REPRESENTING
WALKER HENDRIX	CURB
BOB GEERS	The Arc of Kansas
TOM DAY	KCC
STEVE KARRICK	ATTORNEY GENERAL
Neil Woerman	Atty. Gen.
Carolyn Gaston	SPRINT
Mary Peters	Sprint
PATRICE SCOTT	SPRINT
Ernie Pogge	AARP
Barbara Wither	AARP
NIKI CHRISTOPHER	CURB
Gary White	KTLA
Kevin	"
	"
ERNEST KUTZLEY	AARP
Matt Beaumont	Pat Hubbell Assoc.
Susan Makarewicz	Govs Office
Whitney Damron	KS Information Consortium
Robert Collins	Kearney Law Office
J. Ted Walters	KARSP (Retired School Personnel)

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 6, 2002

NAME	REPRESENTING
Darrell Donahue	AARP DIST. COORDINATOR
Dan Lovegrove	AARP - CCTF
KEVIN M. WALKER	AMERICAN HEART ASS'N.
Colleen Harrell	KCC
DEAN NEWTON	STATE Rep.
Scott Heidner	KS Ass. of Financial Services

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FISCAL OVERSIGHT
JUDICIARY
TRANSPORTATION
UTILITIES

March 6, 2002

TESTIMONY TO THE HOUSE UTILITIES COMMITTEE ON PROPOSED TELEMARKETING NO-CALL LEGISLATION

Representative Nile Dillmore
92nd District

Chairman Holmes and members of the House Utilities Committee, I am here today to encourage you to pass legislation that would provide an effective and efficient method for consumers to exclude their telephone numbers from unwanted telemarketing calls. There are a number of proposals that have been put forward to achieve this purpose. Currently the following bills have been introduced:

- SB 296
- SB 538
- HB 2100
- HB 2903

In addition to the above, HB 2767 contains an amendment that is identical to SB 538.

My testimony will address three topics; why this legislation is needed, what provisions should be contained in the law, and lastly an overview and rebuttal to previously stated objections to the bill.

Why is this legislation needed?

The current law on this subject is weak to say the least, and ineffectual in stopping unwanted calls. Consumers must inform each and every caller to remove them from the telemarketer's list, log every call to document their complaints, and register their numbers with the Direct Marketing Association to be included in a voluntary "no-call list". Repeatedly, consumers say the current system does not work. Consumers, code

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word for voters, want a simple and enforceable means to eliminate unwanted solicitation calls.

Many of you have been sending surveys and newsletters to your constituents. I have surveyed the surveyors as it were and have compiled the following unscientific results. Nearly 90% of those who were posed the question "Would you favor No-Call legislation?" responded affirmatively. It is an issue that resonates with consumers as a positive legislative initiative.

Kansas's citizens have long held that our homes are our castles. We have the right to invite into to our homes those we choose. We, in turn, have the right to exclude those we do not want in our homes. Unwanted, uninvited, intrusive, and persistent calling by telemarketers is a violation of that Kansas principal that we control our homes and our privacy.

What provisions are needed in a No-Call bill?

The provisions that I have heard most often from consumers are that they have a simple and no-cost method of registering their preference for inclusion in a "no-call" database. To this end, the following requirements should be made a part of any "no-call" bill:

- Extremely limited exclusions to the bill
- No cost to the consumer for registration
- Frequent up-dates to the data base
- Easy one-time registration
- Sufficient penalties for non-compliance to deter violations

Of all the bills that are in play, SB 538 is the one that incorporates the features that are most requested and needed to protect consumers from unwanted calls.

Overview and rebuttal to previously stated objections to a No-Call bill.

Historically the telemarketing industry has relied on the following objections for opposing a state-specific do not call list:

- It is expensive
- There is a procedure in place to reduce unwanted calls
- Would negatively impact employment in Kansas

Rebuttal to cost of system:
The legislation proposed in SB 538 would be revenue neutral to the State, as fees collected from those who wish to engage in telemarketing in Kansas would bear the cost of development and maintenance of the system. The profit motive of the telemarketers drives the industry. Therefore, it should be their expense to ensure the consumers'

wishes are respected. By subscribing and paying for telephone service to your home you should not be expected to subsidize your basic right to privacy and quiet enjoyment of that service.

Rebuttal to current procedure to reduce unwanted calls:
The key here is that consumers want a system to eliminate unwanted telemarketing calls, not simply reduce them. They are aware that the system currently relies on the industry with the greatest incentive to continue calls to be the regulating force to reduce or eliminate unwanted calls. Consumers are aware that the fox is guarding the hen house and they know the current system does not meet the consumers' desire.

Rebuttal to employment impact in Kansas:
Testimony provided by the Direct Marketing Association last year detailed the employment numbers for call centers and out-going telemarketing firms in Kansas. By their testimony approximately 2,400 people are working in out-going telemarketing jobs in Kansas. If the proposed legislation is enacted and it put all 2,400 people of work due to the popularity of consumers signing up for no-call, then what does that tell you about the need for this legislation? On the one hand the industry says we do not need this to regulate no-call, and on the other hand they say if we legislate no-call they will go out of business. Something is very wrong about that argument. If their proposed method of self-regulation is just as good as a state-specific no-call law, then the employment impact should be neutral. If the law is more effective at giving the consumer what they want, then we need to let the controls to the market work and assist the consumer in getting an enforceable method of eliminating unwanted telemarketing calls.

There are thirteen states with no-call legislation. However, the telemarketing industry has not testified as to the employment impact on any of these states. It would seem logical that if the employment impact were significant then the industry would have testified as to the exact nature of the dislocation. I believe that the majority of those telemarketing businesses simply shifted from out-going solicitations to call center functions.

Conclusion

I would like to say that I am grateful to the chair and to this committee for allowing the debate to continue on this issue. The health of our democracy depends on a hearty discussion of the issues that are of importance to our constituents. This particular issue is of great importance to our constituents. In the context of the current policy and economic initiatives, we as legislators are faced with this session; we will have precious little to deliver to our respective voters. Passage of a strong, workable, and effective no-call bill will provide needed relief and approval from our Kansas citizens.

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TOPEKA

HOUSE OF
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RULES & JOURNAL
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EDUCATION & LEGISLATIVE BUDGET
LEGISLATIVE POST AUDIT

March 6, 2002

The Honorable Carl Holmes
Chair, House Utilities Committee
State Capitol, Room 526-S
Topeka, KS 66612

Representative Holmes and Members of the House Utilities Committee:

Thank you for the opportunity to appear before you as a proponent of legislation establishing a no-call list in Kansas. I urge this committee to send a bill to the House containing language mirroring the language in HB 2767 and SB 538. This legislation would put an end to the unwanted and intrusive telemarketing calls which are received by all of our constituents. More importantly, it would help shield senior citizens from consumer fraud. Over 25 states have enacted no-call legislation, including our neighbors in Missouri, and it has proved to be overwhelmingly popular. Kansans deserve the same protections against intrusive phone calls and telemarketing fraud enjoyed by these other states.

What Does The Legislation Accomplish?

The language in HB 2767 and SB 538 would establish a No-Call List in Kansas containing phone numbers of Kansans who do not wish to receive telemarketing calls. Kansans can register their telephone numbers on the list free of charge by dialing a toll free number, signing up via the internet or by mail. Telemarketers would be prohibited by law from calling any number on the list. Each violation of the law would carry a penalty of up to $10,000. Actions to enforce the law and recover damages could be maintained by the attorney general or by the consumer whose number was called in violation of the law. The attorney general would also be authorized to receive and investigate complaints arising under the law.

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Why Do We Need This Legislation?

First, this issue is a clear-cut political winner. If you ask any person anywhere in your district, I can guarantee that virtually every person you talk to would support a do-not-call list. In addition, if someone wants to receive these calls, they do not have to sign up for the list. This legislation is modeled after similar legislation that went into effect in Missouri last July. This is fortunate because we can see the impact and positive track record the no-call list has had in Missouri. Almost 1 million individuals have signed up for the no-call list maintained by the state's attorney general since the Missouri law went into effect last summer. The no-call lists have proved to be equally popular in other states that have enacted them.

Second, Kansans have a right to privacy in their own homes and should not have to receive these unwanted and intrusive calls if they so choose. Third, unscrupulous telemarketers have used the phone to defraud consumers and senior citizens out of tens of billions of dollars nationally. We need to protect Kansas senior citizens and others from such fraud.

Finally, this legislation simply responds to the realities of technological advances. In the past, companies sold goods through door-to-door solicitation. Many cities in Kansas have passed ordinances prohibiting door-to-door solicitation or individuals can put a no-solicitation sign on their door and that is usually honored. All this bill does is provide similar protections with respect to phone solicitation.

Who Should Be Exempt From This Legislation?

I have no doubt that a variety of groups will support this legislation as long as they are exempted. I urge this committee to pass a clean no-call bill that contains very few exemptions. In Kentucky, so many exemptions were added that the state's Web site warns over 95% of telemarketing companies are exempt and not required to honor the no-call list. Constituents in Kentucky were so upset about the ineffectiveness of the list that the Kentucky Senate last week unanimously passed a no-call list that had no exemptions at all. Kentucky House leaders say they easily have the votes to pass the Senate legislation. We simply do want to see this legislation to collapse under the weight of its own exemptions.

Does Federal Law Protect Consumers From Unwanted Calls?

Under federal law, a telemarketer must take an individual's name off a call list if they so request. This provision of federal law does not work because telemarketers simply sell your name to another company and that generates another phone call. In addition, there has been little to no enforcement of the list on the federal level.

Is The DMA List Sufficient To Protect Consumers?

No. This list was created in 1999. Have you heard of anyone who believes their telemarketing calls have decreased since that time? This is a list created by telemarketers and managed by telemarketers. It is like giving the keys to the fox and asking it to manage the chicken coop. It simply doesn't work.

Telemarketers support the DMA list because of one very important fact. The list only applies to DMA members (there are only 4700 and many of them do not engage in telemarketing) and there are more than 150,000 US telemarketing companies. There is no way the DMA list will provide relief from intrusive telemarketing calls and telephone fraud because DMA members represent less than 1% of telemarketing companies. In addition, consumers are charged a fee to register on the DMA list in most circumstances and it is free to register under SB 538 and HB 2767.

Isn't Creation Of A State Do-Not-Call List Unduly Burdensome On Telemarketing Companies?

First, I do not believe this concern should supersede our efforts to protect an individual's right to privacy or prevent consumer fraud. Second, I would suggest that none of us in the legislature should tell our constituents in an election year that we did not support a do-not-call list to protect them because it was burdensome on telemarketing companies. I cannot think of a district where that would be received well.

Shouldn't We Wait To See What Happens On The Federal Level?

There are very few issues that aren't being examined on the federal level. Many of the issues we deal with on the state level are being reviewed on the federal level. Nevertheless, we take action on the state level because we know that issues sometimes take years to get resolved on the federal level. Creation of any significant legislation on the federal level with respect to do-not-call laws could take years and in fact may never happen. We have an obligation to our constituents to stop these calls now.

The language contained in SB 538 and HB 2767 should take care of almost 99 percent of these intrusive telemarketing calls and help prevent fraud against consumers and senior citizens. You are going to hear testimony from every opponent of this legislation that they are not interested in calling consumers who do not want to be called. If that is the case, why would they be against legislation that will easily provide them a list of those that do not want to be called?

I thank you for the opportunity to testify and urge you to pass a clean no-call list like SB 538 with very few exemptions.

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Utility Committee
RE: no-call legislation, HB 2100 and HB 2903
February 6, 2002

Chairperson Holmes 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 no-call legislation and House Bills 2100 and 2903. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

Kansans enthusiastically support the enactment of a "no-call" or "do-not-call" law. The Consumer Protection Division conducted a survey at the 2000 Kansas State Fair about support or opposition to no-call legislation. Of the 801 Kansans who participated in our survey, 800 supported a no-call law. This overwhelming support is also reflected in the many calls to our office and comments received at educational presentations, which significantly increased after no-call was passed in Missouri.

There are currently five bills before the Kansas Legislature containing no-call provisions: HB 2100, HB 2903, HB 2767, SB 296, and SB 538. While the Attorney General supports the concept behind each of these bills except SB 296, she urges this Committee to adopt the provisions contained in SB 538 and would ask the Committee to substitute the provisions of HB 2100 or HB 2903 with the language contained in SB 538.

Since testifying before this Committee last year on HB 2100, we have spent considerable time conferring with staff at the Missouri Attorney General's office with regard to their experience with their no-call law since it was implemented in July, 2001. Missouri has had nearly 900,000 residents register on the no-call list. As of February, they had received 16,000 complaints, with over 11,000 coming in the first two months. While the Missouri Attorney General's office was significantly impacted by no-call, we believe utilizing the expertise of the Information Network of Kansas (INK) to maintain the database will significantly reduce the impact on our office, and allow us to concentrate on what we do best: investigate and enforce the Kansas Consumer Protection Act.

We have met with representatives and the Board of INK and they have enthusiastically endorsed their proposed role under SB 538 in creating and maintaining the no-call database,

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receiving automated phone and Internet registrations directly from consumers, and providing our office with assistance required to investigate and prosecute violations. The INK board has agreed to underwrite the anticipated $50,000 cost of phone registrations for the first year, to be recouped from access fees paid by telemarketers. As drafted, SB 538 provides that access fees from telemarketers are to be used first to pay for the cost of the database maintained by INK, then paid to the Attorney General to investigate and prosecute violations of the no-call law. Fees and penalties recovered from prosecutions are also paid to the Attorney General to pay for investigation and prosecution costs.

Our office has estimated we will require one additional full time position shortly before registration begins to enter written and non-automated phone registrations and handle phone inquiries, and 3 additional staff positions after the law becomes enforceable to handle investigations and prosecutions. However, we believe we can initially fund these positions from our existing consumer fee fund, provided our balances remain sufficient. We believe the access fees paid by telemarketers in excess of INK's cost of maintaining the database, combined with fees and penalties from prosecutions, will fund these ongoing costs. As a result, we believe the provisions of SB 538, as drafted, will enable the State to provide no-call to Kansans without an infusion of general fund monies. This is an important distinction from SB 296, which provides no mechanism for funding to our office, but instead has all access fees paid to the Direct Marketing Association (DMA). We simply cannot take on no-call responsibilities without an ongoing funding source, and SB 296 would require general fund monies, while SB 538 will not.

While Attorney General Stovall supports no-call legislation, the Attorney General opposes the concept contained in SB 296, specifically the unstructured use of the DMA telephone preference list. We believe there are serious problems associated with investigating and prosecuting violations of a no-call list completely controlled by a private marketing association. SB 296 fails to specify the fee to be charged to telemarketers required to access the list, fails to specify procedures for the maintenance of the list by the DMA, and fails to specify procedures for access to the list by telemarketers. The reason why the bill does not specify these critical issues is obvious: the DMA does not wish to be told how to run its list, and the State has no authority to mandate how they run their list. While the DMA has recently advised it would give the Attorney General access to the list for enforcement, the State has no ability to force them to do so in the event they subsequently return to their previous policy which would preclude our access. Indeed, there are serious constitutional questions about the validity of imposing civil penalties upon telemarketers for their failure to pay a fee set by and access a list maintained by a private marketing association with no specified oversight by the State. As a result, passing a no-call law based on the DMA list would offer consumers false hope in eliminating telemarketing calls, as our ability to enforce the no-call law proposed in SB 296 would be questionable.

Aside from the constitutional problems with SB 296, there are other reasons it is less effective than the provisions of SB 538. First, SB 296 provides only one method for consumers to register without charge, which is in writing. Representatives of the DMA have advised our office that written registrations often take as long as 90 days before the consumer's telephone number is

actually added to the database. The DMA charges $5.00 for Internet registration, and provides no means to register by phone, with or without a charge. Phone registration was the most popular method of registration used in Missouri. Denying this easy method of registration would limit the effectiveness and availability of no-call in Kansas. SB 538 provides for phone, Internet, and written registration without charge to consumers.

The Attorney General supports no-call legislation if it is enforceable by our office and does not contain numerous exemptions. Kentucky's no-call law has so many separate exemptions that the Kentucky Attorney General website advises consumers that over 95% of telemarketers are exempt from their act and are not required to honor the no-call list. Passing a no-call law with numerous exemptions will not provide the intended protection for Kansans who do not wish to receive telemarketing calls.

In addition to exemptions to the law, you will likely be presented with an amendment providing for an affirmative defense when telemarketers have established and implemented practices and procedures to prevent violations of the no-call law. This affirmative defense will substantially limit our ability to enforce this law, and will be raised as a defense by every telemarketer who creates a procedural manual purporting to prevent violations, regardless of the actual practices of the telemarketer. It will add significant costs to each investigation and prosecution because it will require us to develop evidence that the telemarketer didn't intend to follow the procedural manual, which will be extremely difficult and costly in each case. The Attorney General urges you to decline to add such a defense to any no-call law approved by this Committee.

On behalf of Attorney General Stovall, I urge you to recommend passage of no-call legislation based on SB 538. I would be happy to answer questions of the Chair or any member of the Committee.

Direct Marketing Association

We believe that the DMA has a major conflict of interest in enforcing violations of a state DNC list. Is the DMA *really* expected to effectively report violations by its own members?

Nationally, there are fewer than 1,300 subscribers to the DMA list. But there are 150,000+ U.S. telemarketing companies. ***With fewer than 1,300 mandatory subscriptions, the DMA represents less than 1% of U.S. telemarketers.***

Honoring the DMA list is entirely voluntary. Neither the DMA, nor any state or federal government regulatory organization, retains any power to enforce the list. The DMA has also never expelled or disciplined a tele-marketing member for failing to self-regulate or comply with its "Privacy Promise"

According to the DMA, there are 4.5 million consumers registered on the list. Duplicate consumer phone numbers bring the working total to fewer than 2.6 million, less than 1% of the U.S. population base.

As of January 1, there are 5.3 million U.S. consumers on state-maintained Do-Not-Call lists. State participation today is more than double the DMA participation.

State Do-Not-Call laws work. They are enforceable by state regulators and administrative authorities, and consumer confidence in their effectiveness is evident in participation levels.

DMA President & CEO H. Robert Wientzen said in his winter 2002 industry update that:

"A national call list would not pre-empt the state DNC list . . . "

He also said, the DMA supports "the concept of consumer choice." But goes on to say that DMA is opposed to a government list because it is unnecessary and redundant since the DMA already maintains a national list.

Clearly, the DMA wants it both ways. It is using its own ineffective no-call list as a smokescreen. Behind this smokescreen it can appear to support consumer choice, while opposing government efforts to protect consumer choice. Please, do not be fooled.

Federal Trade Commission

Let me also address the Federal Trade Commission's (FTC) proposed revision of the Telemarketing Sales Rule, which would create a nationwide "do-not-call" registry for consumers who do not want to receive telemarketing calls, an improvement to the current federal provisions, which requires consumers to give a "do-not-call" message to each telemarketer on an individual basis.

The FTC *explicitly* authorizes states to pass stronger laws regulating telemarketing. It was recognized during the original rulemaking process that many states had strong telemarketing fraud laws already in place, and that many important state provisions were not included in the federal rule—provisions such as bans on courier pick-ups, and registration and bonding requirements. The FTC has said that the federal rule is a floor, not a ceiling, of protection.

Additionally, the rule does not cover intrastate calls, meaning the FTC proposal would not stop calls originating within Kansas, only those from out of state. Further, the FTC does not have jurisdiction over common carriers, banks, or insurance companies. State do-not-call laws are needed to regulate these concerns.

State do-not-call laws are also necessary to provide enforcement and oversight at the state level. The FTC has never brought an enforcement action for violation of its current telemarketing sales rule. Several states *have* prosecuted telemarketers for making calls to consumers in violation of state do-not-call law. Even if a national registry is created, there is no guarantee about how vigorously scofflaws would be prosecuted.

Commerce

The DMA encourages the idea that a state no-call-list will have an adverse effect on economic development. Yet, in his 2002 industry updated, DMA President and CEO Robert Wientzen reports that the telephone market is **quote** "a leading direct marketing sales medium," with $668 billion in sales in 2001 and "experiencing strong growth."

Missouri Do-Not-Call List

Our neighboring state of Missouri took a step in the right direction last year by addressing this issue through its own do-not-call legislation. However, the Missouri act, as currently written, is riddled with exemptions. Few telemarketing calls are prevented from reaching those who wish to preserve their privacy. This frustrates both consumers and the intent of the law

As currently written, the Missouri "do-not-call" list law will *exempt* calls made to:

- Consumers who have had a business contact with the telemarketer within the last six months
- Calls made by anyone under the jurisdiction of a federal agency if the entity must have a license, permit, or certificate to engage in telemarketing
- Anyone subject to developing or maintaining a "do-not-call" list
- Anyone working from home
- Anyone setting up an appointment who is licensed by the State.
- Anyone responding to a referral.

It is hard to imagine who is left. Of particular concern is the exemption regarding those who must maintain a "do-not-call" list under the law. The problem with this provision is that consumers must give the "do-not-call" message to *each* telemarketer, and then keep track of whether or not they have been called again by the same telemarketer (difficult to

do in any instance, but impossible if the business has changed its name). A statewide do-not-call list allows consumers to give *one* message to address *everyone* subject to the law. Clearly, this is a much more effective system.

AARP is not enthusiastic about either HB 2100 or HB 2903.

HB 2100

AARP does endorse portions of HB 2100. We believe that consumers should not have to pay to ensure their own privacy.

HB 2903

In regard to HB 2903, we believe that the exemptions in this bill are relatively narrow, which is good, although the "business relationship" exemption should specify an ongoing, current business relationship not terminated by either party. As written, it could cover a past relationship. We support stronger restrictions on automatic dialers, or even the prohibition of their use.

Other changes should include:

The date for the operation of the database should be changed--it now says July 1, 2001--and there should be specific language on how often the list is updated (at least quarterly) and that any telephone solicitor doing business in the state needs to buy it.

The fee is low for telemarketers. We recommend a higher fee. For example, Missouri has a charge of $25 per area code called, with no charge to consumers. The FTC proposal for a nationwide list would be at no cost.

It should also explicitly state that a consumer can be added to the list by calling a toll-free number or through the Internet.

There should be explicit provisions regarding penalties and the ability of consumers to bring a private right of action.

The affirmative defense should not apply if the telemarketer has engaged in a pattern of errors.

SB 296

Let me also mention, SB 296, which we oppose because it provides that the do-not-call list be maintained by the Direct Marketing Association

AARP's general no-call-list requirements are as follows:

- Require telemarketers to buy the list to operate in the state;
- Allow consumers to be placed on the list through e-mail, fax, toll-free number, the Internet or conventional mail, at no charge;

- Updates to the list should be made at least quarterly, but ideally bi-monthly;
- Keep exemptions to a minimum, but in particular do not allow exemptions for existing customers or a variety of businesses;
- Give the attorney general enforcement authority over the law;
- Legislation should contain significant penalties for violations, so that there are true consequences for not adhering to the law;
- Consumers should be notified when they need to renew their do-not-call request (for example, if the time period for remaining on the list is 10 years, the consumer should be notified after 10 years that his or her request needs to be renewed at that time).

Therefore, AARP Kansas supports no-call language as written in SB 538 and ask that that the language in HB 2100 and HB2 903 be replaced with language from SB 538 or the no-call language in HB 2767.

Privacy Issues

Finally, we appreciate the opportunity to correct the misleading impressions created by an Associated Press story in the July 27, 2001 edition of the Kansas City Star. AARP takes very seriously its responsibility to protect members' privacy.

AARP policy, approved by the Board of Directors, is that AARP does not sell or rent member names to outside companies. Our membership list is made available only to official providers of AARP services.

AARP restricts the use of its membership list to a limited number of companies selected to provide AARP member benefits and services. AARP does not make its membership list available for rental in the general marketplace.

AARP appreciates this opportunity to provide testimony on this legislation, and will be happy to address any questions or concerns. Thank you.

AARP Kansas

555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

(785) 232-4070
(785) 232-8259 Fax

AARP Privacy Policy

ON THIS PAGE: Privacy and Webplace Questions and Answers

Related Links:

AARP Facts

How Does AARP Select Member Services?

Computers: Technology Review Policy

AARP understands how important privacy is to our members. We are committed to protecting your privacy and want to make sure that you understand how your membership information is used. We also want you to be aware that you have choices about how we use this information.

What We Collect. When you apply for membership, we ask for basic information such as your name, contact information, and date of birth. We keep track of your participation in AARP activities and member services so we can understand our members' interests and evaluate the effectiveness of our offerings. We also collect demographic information from other sources to help us learn more about member characteristics and needs. As explained in the Questions and Answers below, we may ask for additional information in your visits to AARP Webplace. All of this information helps us better serve our members and improve our programs.

Information Sharing. We share your personal information only with companies we have selected to provide official AARP member services or support AARP operations. Some of the providers of AARP member services, including many of those listed in on our Member Service page, pay a fee for access to our membership list. Our contracts with these companies require them to keep the member information strictly confidential, and allow them to use the information only to offer the contracted services to AARP and AARP members. We oversee the companies' compliance through our wholly owned subsidiary, AARP Services, Inc. Other AARP affiliates, such as the AARP Foundation and the AARP Andrus Foundation, may also have access to member information. Finally, we may release personal member information on the rare occasions when we are required to do so by law, or when necessary or appropriate to comply with legal process or protect or defend AARP and its members. We do not sell or rent member information to telemarketers, mailing list brokers, or any other companies that are not offering AARP endorsed services or benefits.

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Your Choices. We respect your choices. If you do not want us to share your information with providers of AARP member services, you can contact us as specified below. You should then stop receiving AARP service provider mailings in about six to eight weeks. (Note: If you request services or information from an AARP service provider directly, we may still need to confirm to the provider that you are an eligible AARP member). You may also elect not to receive information about AARP activities, such as legislative events and educational programs, or about the activities of other AARP affiliates like the AARP Foundation.

For More Information. For more detailed information about our privacy practices, and about privacy on AARP Webplace, please review the frequently asked questions below. To exercise your choices, or ask questions about your membership information, please contact us at:

AARP Membership Center
3200 E. Carson Street
Lakewood, CA 90712
member@aarp.org
1-800-424-3410

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INDUSTRY UPDATE: CHALLENGES AND OPPORTUNITIES

Winter 2002

This seems like an appropriate time to give you an overview of our industry, past and present, as well as an update on how The DMA is doing. Like most of you, I am delighted that 2001 is over and certainly hope that 2002 will be better. However, I have to be honest in reporting that the current landscape does not suggest that the new year is going to be a whole lot better.

There is no doubt about it: 2001 was one of the nation's most challenging years, and our industry was not left unscathed by the recession, two postal rate increases, dot-com closings, the horrific events of September 11, and the anthrax-in-the-mail scare. Many of our members felt the pain.

As an industry, the events of September 11 did slow growth in sales and advertising spending. In fact, when we compared economic data taken before and after that dark day, we found our 2001 sales projection had dropped 2.4 percent ($42 billion), and ad spending projections had dropped one percentage point ($2 billion).

Yet, despite it all, we grew. U.S. direct and interactive marketers last year generated an estimated $1.86 trillion in sales, an 8.9-percent increase over 2000. Catalog sales were up 8.2 percent, and Web-driven sales were up 7.9 percent.

Ad spending also grew. Last year, U.S. marketers spent an estimated $196.8 billion on direct response advertising, a 3.6-percent increase over 2000. That growth is only about half the annual growth that we have experienced over the past five years.

PRIVACY STILL THREATENS DATABASE-DRIVEN MARKETING

Our industry certainly faced major political challenges last year, and privacy remains near the top of the list. As it has for several years now, privacy continues to threaten the database-driven direct and interactive marketing industry, both in Washington and the states. While September 11 did divert some focus, this issue did not go away - and will not go away

anytime in the near future.

On Capitol Hill, the most imminent threat will probably come from efforts

to pass a "blended" type of privacy bill, meaning that opt-in would be required for health, financial and other identified "sensitive" data, and opt-out for less sensitive marketing information. While some consumer issues do need further attention, I remain fearful that Washington's famous "slippery slope" will cause us major injury if we are not careful.

At the Federal Trade Commission (FTC), I know from my recent meetings with FTC Chairman Timothy J. Muris that privacy is prominent on the agency's regulatory agenda this year. In fact, Muris is beefing up FTC resources in the privacy area by 50 percent in order to enforce the laws that are currently on the books. In addition, we know that the FTC, in the next few months will be looking at two areas in particular: (1) Should a company's online privacy policies be extended to cover offline data as well, and (2) should credit card data ever be exchanged among marketers.

The bottom line here is that our industry remains under a microscope. So, if your "house" is not in order, I urge you to act now. If you need support, The DMA has all sorts of information and tools to help you. Just visit www.the-dma.org or contact Patricia Faley at pfaley@the-dma.org.

'SPAM' RESTRICTIONS THREATEN E-MAIL MARKETING

Spam is another hot-button issue for the industry. To date, 18 states have laws on the books relating to unsolicited commercial e-mail, and another 12 states have bills pending. Spam labeling legislation - i.e., having to add "ADV" for advertising to the e-mail's subject line - has emerged as the dominant Internet bill being considered by states so far this year. Already, nine states have "ADV" spam bills pending.

On Capitol Hill, several spam bills have been introduced. A few would require some form of opt-in, while others would severely restrict prospecting efforts. We believe a bill is probably going to be necessary if we are to preserve the viability of e-mail as a marketing tool. So, The DMA will continue working with members of Congress to make sure that any bill is balanced, workable, and does not put unreasonable burdens on prospect marketing.

TELEPHONE MARKETING: 'DO-NOT-CALL' REGISTRIES GROW

While telephone marketing is a leading direct marketing sales medium ($668 billion in 2001 and experiencing strong growth), it also is a target for legislators and regulators, especially in the states.

For example, many state lawmakers have predictive dialers in their cross-hairs. Their constituents are complaining about picking up their phones and finding dead air. In fact, California last year enacted a law requiring zero abandonment of calls. This year, we will see more of these proposals.

Certainly, we will see more proposals for do-not-call (DNC) lists. To date, 20 states have enacted DNC laws, and another 20 have proposals on the table.

And now the chairman of the Federal Trade Commission is calling for a national DNC list. While we support the concept of consumer choice, The DMA is opposed to a government list. It is unnecessary and redundant because The DMA already maintains a national list, the Telephone Preference Service (TPS). Also, a national list would not pre-empt the state DNC lists, and it would have many unfair exemptions. Therefore, we will continue working to remind policymakers and consumers that our TPS is an effective way to suppress names from national calling lists.

To help our members deal with some of these challenges, The DMA soon will announce new services that will help telemarketers comply with the growing complexity of state regulations. In the interim, be sure you employ the TPS file - as well as our Mail Preference Service file - which is required by The DMA's Privacy Promise.

REMOTE SALES TAX: WE WON THE BATTLE BUT NOT THE WAR...YET

Another big industry issue remains remote sales tax collection. Here, we had good news last year. On November 15, The DMA - with the support of many of you - won a major battle in Congress. We helped defeat an amendment that would have put us on track toward collecting sales taxes for the nation's 7,600 taxing jurisdictions. Congress then went on to pass a two-year extension of the Internet access tax moratorium without remote taxation language. This legislation was signed into law by the President, effectively ensuring continued Quill protections (i.e., no mandatory tax collection without nexus) until November 2003.

This was a huge victory for our industry because our adversaries had spent millions of dollars on their campaign to force tax collection on all catalog and Internet transactions.

However, the November 15 win was just one battle. The war over remote sales taxation has not been won. In fact, the next 18 months will be critical in mounting an industry-wide campaign to preserve the Quill protections. Our ultimate success will depend on your support. So, expect to be hearing more from us about this key industry issue. But also please volunteer. We need your support as spokespersons and op-ed signatories.

POSTAL RATES: SETTLEMENT CHECKS DOUBLE-DIGIT HIKES

Postal rates and reform also remain at the top of The DMA's 2002 political agenda. As you know, despite two postal rate increases in 2001, the U.S. Postal Service last September filed a rate case. Earlier this month, The DMA led a coalition to sign a compromise agreement to settle the case. This means that the rates will likely increase June 30, a month later than the USPS had sought in settlement negotiations, which will translate into a

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materials. The member logo assures customers that a company follows our Privacy Promise and the other self-regulatory guidelines we develop and enforce for the industry. The logo is now available in the members-only section of The DMA Web site at www.the-dma.org/logo. Let us know if you need a password.

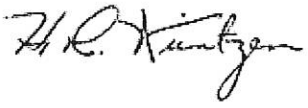
I also hope you will support the work we are doing with The Advertising Council to raise funds to cover the hard costs for its "Campaign For Freedom." We are encouraging members to donate their direct marketing expertise, services, and supplies. Let us know if you want to help by contacting Michael Faulkner at mfaulkne@the-dma.org or 212.790.1598.

Finally, I want to give you a quick report on how The DMA has fared during the recession of the past year. Not surprisingly, we had a very challenging year. Just as many of our members have felt the pinch of the economic downturn, September 11 and anthrax, so, too, has The DMA.

The good news is that our membership numbers remained relatively strong in 2001. The bad news is that our bottom line has been adversely impacted by the worldwide downturn in business travel. As a result, we have had to pare back expenditures, including staff downsizing. But we have endeavored to do so with minimal impact on member services. I believe we have been successful. We know you will understand, and we appreciate your support.

In closing, as I hope this letter makes clear, now more than ever we need a strong association. As we move forward, I will keep you apprised of how we are doing - on the issues that we are facing as well as the other things that are on The DMA's plate for 2002.

Thank you. And my best wishes for a successful 2002.



A CLEAR CONFLICT OF INTEREST: DMA OPPOSITION TO STATE NO CALL LAWS AND INEFFECTIVE STATE LIST MANAGEMENT AS AN ALTERNATIVE

The Direct Marketing Association (DMA) is widely recognized as the largest trade association of direct marketers in the world. In 1999, The DMA created an internal Telephone Preference Service (TPS) list as part of their "Privacy Promise to Consumers." The DMA/TPS is a nationwide list of consumers who elect to have their name, address and home phone number registered to indicate that they do not want telemarketing calls in their home. The DMA/TPS list is available to outbound marketers for a $465 annual fee, plus $375 annually for eight monthly additions. The DMA's initiative is a laudable and proactive action designed to limit calls to unreceptive consumers and to establish clear evidence of the organization's effort to self regulate.

Despite the DMA's ongoing effort to educate their membership on the value of self-regulation, and on the negative impact on productivity of calls to what they describe as "resentful and unresponsive" consumers, the DMA/TPS list has had limited effect on consumer confidence in the industry's ability to self regulate. This is attributable to several causes:

- ***Scope of TPS Participation Among Telemarketers***
  - 3500 companies and their affiliates are DMA members with access to the organization's educational and leadership actions. The DMA claims 4,700 total members.
  - There are fewer than 1,300 subscribers to the TPS list, although some of the subscribers are list vendors who remove TPS numbers from lists purchased by their clients.
  - There are 150,000+ US telemarketing companies. ***With fewer than 1,300 mandatory TPS subscriptions, the DMA represents less than 1% of US telemarketers.***

- ***Membership Commitment***
  - Honoring the DMA/TPS list is entirely voluntary. Neither the DMA, nor any state or federal government regulatory organization, retains any power to enforce the list. The DMA has also never expelled or disciplined a tele-marketing member for failing to self-regulate or comply with the DMA's "Privacy Promise"

- ***Consumer Education and Participation***
  - There is, understandably, no focused marketing effort on consumer education, although the DMA makes no restriction whatsoever on consumers' ability to register for the TPS list.

  - According to the DMA, there are 4.5 million consumers registered on the TPS list. Duplicate consumer phone numbers bring the working total to fewer than 2.6 million, less than 1% of the US population base.

- ***Growth and Success of State DNC Lists***

  - There are 5.3 million US consumers on state-maintained Do-Not-Call lists as of Jan 1, 2002, over 5 million new subscribers since January 2000.

  - State participation today is more than double the DMA/TPS participation.

  - Large population states Texas and California, as well as Colorado, Wisconsin and others with DNC laws awaiting implementation, will more than double total US consumer participation in state lists.

  - Enlightened consumers demanded action and the states responded with dozens of new state laws, public relations campaigns and aggressive enforcement.

  - State Do-Not-Call laws work. They are enforceable by State regulators and administrative authorities, and consumer confidence in their effectiveness is evident in participation levels.

  - In states where consumers have a choice, participation in the state list far outpaces participation in the DMA/TPS list.

Consumer participation:

	STATE LIST	DMA LIST	DELTA
AK	5,625	1,081	4,544
AR	16,712	17,002	-290
CT **	379,815	0	379,815
FL	144,926	112,522	32,404
GA	225,288	49,879	175,409
ID	43,885	12,553	31,332
IN	782,175	66,278	715,897
ME *	18,134	0	18,134
MO	856,368	51,638	804,730
NY	2,118,535	201,122	1,917,413
OR	52,907	37,963	14,944
TN	643,927	47,362	596,565
WY *	5,249	0	5,249
Total	**5,293,546**	**597,400**	**4,696,146**

* DMA manages state list under contract
** DMA hosts state managed list

- ***DMA State List Contract Management***
  - The DMA maintains list relationships with three US states: Connecticut, Maine and Wyoming.

  - In Maine and Wyoming, the DMA manages the state consumer subscriber database under contract. Consumers in these states simply subscribe to the DMA/TPS list; the DMA provides complete list management services.

  - In Connecticut, although the DMA hosts the records within the TPS list under contract, the state manages the program success internally.

  - The effectiveness and subsequent consumer value of DMA state list management is best presented in the organization's historical success. Total consumer participation in DMA-managed states is, by far, the lowest in the nation. Additionally-in the time that the DMA has managed these lists, there has never been one enforcement action taken against a telemarketer in any of the three states.

	TOTAL CONSUMER PARTICIPATION
ME	18,134
WY	5,249
Total	**23,383**

- ***Cost/Benefit Considerations***
  - Although DMA members are required to subscribe to the TPS list, non-members are largely disinclined to spend $840 for an elective list subscription that carries no penalty for non-compliance.

- **DMA Opposition to State Laws**

The proliferation of state DNC laws is clear and unopposed evidence of the steady increase in consumer demand for effective DNC laws. Consumer demand for telephone privacy in the home has driven the explosion of state Do-Not-Call (DNC) laws. Today, 26 states have DNC laws of varying requirements, exemptions, penalties and regulatory enforcement. Each of the remaining 24 states has consumer DNC legislation pending.

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The DMA has a very public position in opposition to state DNC laws, and the organization is generally recognized among the most aggressive lobbies opposing state consumer telephone privacy laws. Failing to defeat state DNC laws, the DMA seeks to manage and/or host the lists created when the laws inevitably pass. The DMA argues that state laws effectively duplicate existing federal law that requires telemarketers to honor a consumer DNC request for 10 years. The existence of the Telephone Consumer Protection Act (TCPA) is the substantial basis of the DMA argument.

Although enforceable since 1991, the FTC has only recently focused on enforcement of Do-Not-Call and call curfew provisions. The Federal Trade Commission's stellar record of exposing and prosecuting other fraudulent telemarketing practices defined under the TCPA stands in sharp contrast. ***It is largely a result of non-compliance with federal DNC laws, and ineffective industry self-regulation that has caused states to take sovereign action.***

Understandably, such state laws effectively limit the number of consumers that telemarketers may call. It is a unique paradigm: The DMA opposes DNC laws that intrude on their target market while consumers oppose telemarketers that intrude on their privacy.

- **State List Database Management**

The steady growth of state DNC laws and the subsequent firestorm of consumer participation spawned a new industry - data management services provided to states with newly implemented consumer DNC laws. The volume of consumer registrations, the size of the typical managed database, and the specialized nature of the application generally prompt states to consider outsourcing the list management to a qualified third party vendor in lieu of managing the task with internal IT infrastructure and personnel resources.

- **DMA State List Management Considerations**

  - ***Potential for Conflict of Interest*** – The DMA's active political lobby opposing state law and their position as the largest association of direct marketers in the world create clear conflicts.
  - ***Fostering Internal Interests*** – State list management drives awareness, membership interest and resultant membership fee charges to join the association.
  - ***Scope of Industry Participation*** – DMA membership is limited to 4,700 of the nations direct marketers; many of these companies do not engage in telemarketing. There are over 150,000 U.S telemarketers. There is a strong reluctance among many outbound marketers to affiliate with the DMA. For example: many prominent financial services companies have

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historically avoided membership in broad industry trade groups to avoid natural association with "typical" industry practices. Goldman Sachs, JP Morgan, Merrill Lynch, et al, with substantial brand equity to protect, will doubtfully associate with industry groups whose member practices are largely associated with aggressive consumer direct marketing. That is not how they want to be perceived. A state list managed by an industry trade group will likely limit its effectiveness by excluding such financial services companies. It is understandable that Merrill Lynch would not want to appear on a DMA membership roster immediately before Miss Cleo's Psychic Hotline.

- ***Little or No History of Success in Managing Other State Lists*** – The success of any state consumer DNC list law will ultimately be measured by consumer participation and satisfaction and by solicitors' respect for the law. ***DMA management of lists in Maine and Wyoming has resulted in the lowest consumer participation levels in the nation. Solicitors are much more inclined to subscribe to state lists with high consumer participation levels.***

- ***Database Customization*** - The state list must be managed entirely to the state's definitions and parameters. The DMA/TPS list is created to their own internal definitions, scope and parameters - not to the states. These lists may be restrictive to telemarketers and clearly cannot serve the state's specific requirements The DMA is relatively unable to customize functionality for states. Their database infrastructure is already built to the specification and demands of their in-house TPS management. Independent data management companies are easily able to design and build custom programs, state accessibility and reporting, consumer registration and telemarketer list access options.

- ***Consumer Reaction*** - The potential for negative consumer reaction to public disclosure of the "fox watching the henhouse."

- ***Resale of State Lists*** – DMA access to state DNC lists provides the association opportunity to incorporate state records into the DMA/TPS list and resell the entire list for $840. This is how the DMA is able to offer state list management services free. Although this is the intention of two states that have contracted with the DMA to provide such service, this practice may not be consistent with most states' intention.

- ***Technological Capacity*** – Simply, technology is not the DMA's business focus. What is their in-house ability to troubleshoot, diagnose, respond to downtime / problem escalation to ensure consistently reliable availability of services?

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- **Recommended Elements for Successful State Do-Not-Call List Program**

There are, sadly, examples of state Do-Not-Call programs that are less than successful, due in no small part to insufficient strategic planning, and lack of professional counsel. It is critical that any new Do-Not-Call initiative enacted with good intention, considerable consumer support and high public profile, have the best possible opportunity to succeed. Programs that are not self-sufficient require substantial cash support from general funds to ensure continued success. ***Poorly funded and poorly managed programs are very likely to fail within 3 years, as is the case with New York.***

- ***Telemarketer Fees***: Charged by every state with a Do-Not-Call law for all telemarketers registered in the state, regardless of size.

  Compliance Enforcement: Necessary to ensure adequate telemarketer subscription participation and derived revenue from fines: Also necessary to generate media coverage that the law is working. A good example for examination is the state of Florida where the Department of Agriculture, Trade, and Consumer Protection experienced a company registration surge and an increase in their telemarketer subscriber base to 1,800 soon after aggressive enforcement commenced in 1993. By 1999, Florida's subscriber base had eroded to 380 solicitors following several years of relaxed enforcement. Today, Florida enjoys resurgence of subscribers – up to nearly 1000 – after a renewed commitment to enforcement. From a financial resource perspective, the collection of fines has allowed continuing investigation efforts to proceed without complete reliance on solicitor subscriptions as an enforcement funding mechanism.

- ***Automatic Renewal Generation***: Renewal notices sent to telemarketers and consumers providing an opportunity to re-register each year.

- ***A Capable List Management Contractor:*** There are myriad file formats, operating systems, compatibility issues, download problems, etc. that must be managed efficiently and effectively to ensure a working system. Careful selection of a management company skilled
  in Do-Not-Call is critical.

- ***Fee Collection:*** The contractor is best able to manage fee collection from both consumers and telemarketers and provide a pre-determined share of that revenue back to the state under the terms of the contract to fund enforcement activity. Such a collection arrangement is necessary to ensure sufficient cash flow for the management company to maintain aggressive

Testimony before House Utilities Committee
March 6th, 2002
J. Ted Walters
Kansas Association of Retired School Personnel

Good morning Representative Holmes and Members of the House Utilities Committee. My name is Ted Walters and I am the State Retired Educators Association Liaison and represent the Kansas Association of Retired School Personnel with more than 4,000 members in the state of Kansas. Thank you for this opportunity to express our views on House Bill 2100 and House Bill 2093.

We believe that consumers have a right to personal privacy and should be able to reject intrusive marketing practices and communications. The Federal Telemarketing Sales Rule requires each telemarketer to develop a do-not-call list. If a consumer asks the telemarketer to be placed on the list, the telemarketer is prohibited from calling the consumer again. Unfortunately for consumers, they have to receive the call from the telemarketer before they can be placed on the list. This has not been satisfactory for consumers who do not want to receive calls.

Why don't people just hang up the telephone?" My response is, "Why should people give up their privacy when they purchase telephone service?" Why should telemarketers be given the right to invade anyone's privacy just because they have a telephone? We think individuals should be able to protect their privacy by ASKING to be put on a "No Call" list.

There are other reasons why just hanging up is not a good argument. First, our research shows that older people, in general, have difficulty just "hanging up" on callers. This is just not done! Because telemarketers are often trained to keep consumers on the telephone as long as possible to complete a sale, it is difficult for anyone simply to hang up. Second, just "hanging up does not stop the phone from ringing. For many people this is an unwelcome intrusion into their home, and an invasion of privacy. Many individuals with mobility issues find the continuous barrage of unwanted calls difficult and painful to respond to. Others who are trying desperately to maintain their independence often become frightened and confused with continual calls when there is no answer on the other end of the line. If they do not wish to make purchases over the telephone, they should not be compelled to receive telephone calls to communicate this message.

Another argument made is that consumers can screen their calls through use of caller identification systems, or an answering machine. It should not be incumbent on consumers to incur the expense and great inconvenience of screening calls in this way. Why not use this "screening method" by permitting consumers to ask to be placed on a do-not-call list. This would permit consumers who do not want to receive unwanted calls to stop them but it places the burden, expense, inconvenience, and nuisance on the telemarketer. Consumers who do not want to receive telemarketing calls should have the right to stop them.

HOUSE UTILITIES
DATE: 3-6-02
ATTACHMENT 5

My brother in law is 95 years old and nearly blind. It is extremely difficult for him or my sister to get to the phone. They don't make purchases by phone unless THEY initiate the call. They should have the right to have their telephone number placed on a no call list. No merchant should have the right to continually disturb their peace and privacy. Telling them to hang up is like telling them to avoid local merchants who might use aggressive carnival huckster techniques on the downtown streets by "just stay home." Actually, the unlimited telephoning is worse because it takes place in the privacy of the home. One can avoid going downtown but it's hard to live in your home without being there. People should have the right to say they do not want to be bothered by telemarketing calls. That should be a RIGHT for the consumer. We would not permit established merchants to use the tactics in the malls and markets that telemarketers use to intimidate people with constant telephone calls.

This issue is of great concern to us. KARSP members are very concerned about privacy, and about consumer protection in general. A recent survey of our members showed that they do not believe that current laws are strong enough to protect their privacy. They also believe that KARSP should be an advocate for strong consumer protection practices. We believe that "do-not-call list" laws, combine both goals. These laws do not forbid telemarketing calls, but they do permit consumers to decide whether or not they wish to receive them. They also help telemarketers by weeding out consumers who will be unreceptive to making a purchase.

Kansas Association of Retired School Personnel supports no call legislation that includes:

* A statewide "do-not-call" list established and maintained by the State Attorney general.
* No cost or nominal charge to consumers.
* A plan for publicizing the existence of the list and how consumers can have their names included or deleted.
* The list must be updated on a quarterly basis.
* Exemptions are limited and specifically defined.
* Telephone solicitors are required to obtain the list and are subject to civil and /or criminal penalties for contacting consumers whose names appear on the list.

Therefore, KARSP supports no call language drafted into SB 538 or as amended into HB 2767.

Once again, thank you for this opportunity to provide testimony on this legislation. I will be happy to address any questions or concerns that you or the committee members may have.

Ted Walters
NRTA State Retired Educators Association Liaison for Kansas.

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InterHab
The Resource Network for Kansans with Disabilities

700 SW Jackson, Suite 803, Topeka, KS 66603-3737 phone 785/235-5103, tty 785/235-5190, fax 785/235-0020 interhab@interhab.org www.interhab.org

March 6, 2002

TO: Representative Carl Holmes, Chairman
Members, Kansas House Utilities Committee

FR: Matt Fletcher, InterHab

RE: Concerning establishment of a statewide "do not call" list to ensure consumer protection from unwanted tele-solicitation

Thank you for giving me time today to share concerns of the membership of InterHab.

As you may know, our membership includes all 28 of the state's Community Developmental Disability Organizations, another 27 community service provider organizations and many families of Kansans with disabilities. Our members are directly engaged in the provision of services and supports for people with disabilities in every county of Kansas. As such, they have a unique perspective of the dark side of unregulated solicitation via the telephone.

Our members are charged with the worthwhile task of integrating and maintaining people with developmental disabilities in the least restrictive community environment possible. Often that means the culmination of lifelong dreams for those who might have spent the majority of their lives behind institutional walls. Every day across Kansas, persons with disabilities celebrate the victory of independence by gaining housing, finding employment and giving back to the communities they live in. However, the potential exists in every ring of the telephone to impair that fragile victory.

We believe that a statewide "do not call" list maintained by the Attorney General's office will be an effective way to help disabled consumers to not be taken advantage of. Individuals with a disability and their families could then make the choice whether or not to receive soliciting phone calls.

Before going further, we feel it necessary to state our belief that many, if not most telemarketers would adhere to the ethical standards their industry promotes. However, there are some who do not. We know this to be true because our members have experienced it.

We recently conducted an informal poll of our members to gauge their level of support for such a bill. We suspected, as you might have, that Kansans with disabilities are particularly vulnerable to telemarketers, and that instances of exploitation of the disabled by such salespersons probably already existed. We were disheartened to find that in several parts of the state, our suspicions proved correct.

Twenty (44%) of our organizational members responded. All twenty indicated they would support the legislation, while many relayed specific information regarding past telemarketing incidents with the consumers they serve. One member wrote that, "We would be in support of this legislation as we have had consumers buy everything from tickets to tanning beds sold to them by telemarketers." Another organization relayed that, "There are several individuals that I support that have been sent things, billed for items or services due to telemarketers." Still another wrote, "We have had consumers who have been sold hundreds of dollars of magazines, and I'm sure there are similar horror stories statewide."

While our poll was informal and anecdotal in nature, we feel it represents a disturbing trend. The unsolicited intrusion of telemarketers into the life of a person with a developmental disability could represent a significant challenge to their ability to successfully live independently in the community.

We believe this issue represents an essential need for consumer protection regulation that cannot reliably be delivered until it becomes the responsibility of government. We respectfully urge your support of "do not call" legislation.

HOUSE UTILITIES

DATE: 3-6-02

ATTACHMENT 6

The Arc of Kansas

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Date: March 6, 2002

To: The Chair and Committee Members

From: Robert E. Geers, Administrative Coordinator, The Arc of Kansas

RE: Senate Bill #538 (Telemarketing)

I sincerely appreciate the opportunity of visiting with you today regarding Senate Bill #538. On behalf of approximately 800 members of The Arc of Kansas and the thousands of members that are advocated for by this organization we support the aforementioned bill.

During the past several years, thanks to the efforts of committees such as yours, the developmentally disabled have come a long way. Many more of these individuals now hold jobs in the community and have more taxable disposable income than ever before in the history of Kansas. Along with this increase in self-direction has come more reliance on the telephone. In almost all instances the telephone serves as an emergency vehicle and is a security device.

The use of the telephone by telemarketers confuses the population represented by The Arc of Kansas. In many cases there is more than confusion involved, many times there are actually questionable sales practices used in exploiting an exceptionally vulnerable group of individuals. By nature the individuals represented by The Arc of Kansas are generally good-natured and especially appreciative of any complimentary remarks or comments. Telemarketers have taken advantage of the "good disposition" of these individuals, which has resulted in the loss of hard earned dollars by the phone call recipient.

The Arc of Kansas sincerely believes that the provision included in Senate Bill #538 will go a long way in protecting the use of the telephone by telemarketers and at the same time eliminate a significant dollar loss by this population.

Another group that I feel should be protected from the telemarketers is the ever-aging population of the state of Kansas. This population includes a great many of the individuals advocated by The Arc of Kansas and other individuals, which, because of age, do not fully grasp the content of the telemarketers conversation.

The members of The Arc of Kansas once again thank you for the opportunity of bringing our beliefs and finding to your committee.

HOUSE UTILITIES

DATE: 3-6-02

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Utilities Committee

FROM: Gary White
Kansas Trial Lawyers Association

RE: HB 2100 and HB 2903

DATE: March 6, 2002

Chairman Holmes and members of the House Utilities Committee, thank you for the opportunity to offer comments on HB 2100 and HB 2903. My name is Gary White and I am a Topeka attorney and a member of the Executive Committee of the Kansas Trial Lawyers Association.

KTLA supports legislation to create a "do not call" list to protect the privacy of Kansas consumers and to provide an effective means to prevent unwanted telemarketing calls. KTLA agrees with the proponents of this bill that this legislation is needed and will only be effective if the list is managed by the Attorney General's office.

HB 2903, however, provides a simple but powerful mechanism that will allow telemarketers to circumvent the consumer protections created by the do not call list. Specifically, Sec. 1(i) provides:

> It shall be a defense in any action or proceeding brought under this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls in violation of this section.

Under this section, telemarketers could establish written policies that would serve as a defense for the telemarketer to a consumer complaint regardless of whether the written policies were followed.

For example, a telemarketing company could have a written policy regarding unsolicited telephone calls but could either not enforce the policy, or orally instruct the persons making the calls to ignore the policy and not follow the mandates of the law. Under either situation, the telemarketing company would have a defense to the consumer's complaint despite their willful failure to follow the law concerning unsolicited consumer telephone calls.

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ATTACHMENT 8

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The reality is that this defense will often create an insurmountable burden on consumers to pursue a telemarketing company for unsolicited consumer telephone calls. The reason for this burden is that the only way to overcome the defense is to depose the employees or former employees of the company to determine what the persons making the calls were instructed or how the company enforced its policy. This substantially increases the cost of the litigation and thereby the risk undertaken by the consumer.

The reason that it will be necessary to depose current and former employees is that the rules of professional conduct for attorneys make it improper for attorneys to contact current employees and many former employees of the telemarketing company. For this reason, the only way the information can be obtained is to depose current employees and subpoena former employees to testify if they can be located. Again, this defense substantially increases litigation costs and creates a serious burden on Kansas consumers who are the victims of unsolicited consumer telephone calls.

For these reasons, KTLA supports no-call legislation as written in SB 538 and would ask that the language in HB 2100 and HB 2903 be replaced with language from SB 538 or HB 2767.

Thank you again for the opportunity to express our support and concerns with HB 2100 and 2903.