

Approved: April 5, 2002

Date

Carl D. Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:15 a.m. on March 8, 2002 in Room 526-S of the Capitol.

All members were present except: Representative Jerry Williams

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: None

Others attending: See Attached List

Robert Chapman, Fiscal Analyst for the Kansas Legislative Research Department, briefed the committee on no call legislation in other states (Attachment 1). Mr. Chapman detailed two states, Florida and Georgia, and provided background on the common theme of 'do not call' laws. Additionally, he addressed the no call laws in Kentucky, Oregon, Tennessee, Arkansas, New York, Alabama, and Arizona. Mr. Chapman responded to questions from the committee.

Chairman Holmes announced that beginning Monday, March 11, as soon as a quorum was in attendance, he would begin working any bills the committee may have heard.

The meeting adjourned at 9:56 a.m.

The next meeting will be March 11, 2002.

March 8, 2002

To: House Committee on Utilities
From: Robert Chapman, Fiscal Analyst
Re: No-Call Legislation in Other States

This memorandum reviews various approaches taken by states to reduce the number of unsolicited phone calls. As of January 2002, just less than one-half of the states require some form of licensing or registration by telemarketing firms. At least 26 states currently have telemarketing acts known as "do-not-call" laws (refer to the table below). In November 1999, only 16 states had no-call list programs.

| Current (January 2002) States with Do-Not-Call Laws | |
|--|---|
| Alabama—Code of Ala. § 8-19C-2 | Kentucky—KRS 367.46955 |
| Alaska—Alaska Stat. § 45.50.475 | Louisiana—H.B. 175, Act No. 40 ss |
| Arizona—Ariz. Rev. Stat. § 44-1278 (B)(2)© | Maine—10 M.R.S. § 1499 |
| Arkansas—Ark. Stat. Ann. § 4-99-404 | Missouri—R.S. Mo. § 407.1095; R.S. Mo. § 407.1098 |
| California—SB 771—Enrolled | Nebraska—R.R.S. Neb. § 86-1212 |
| Colorado—Session Law Chapter 324 | New Jersey—N.J. Stat. § 48:17-25 |
| Connecticut—Conn. Gen. Stat. § 42-288a | New York—NY CLS. Gen Bus § 399-z |
| Florida—Fla. Stat. § 501.059(3)(a) | Oregon—ORS § 646.569 |
| Georgia—O.C.G.A. § 46-5-27 | Rhode Island—R.I. 5-61-3.5 |
| Hawaii—H.R.S § 481P-4 | South Carolina—S.C. Code Ann. § 16-17-445(E) |
| Idaho—Idaho Code § 48-1003A | Tennessee—Tenn. Code Ann. § 65-4-405 |
| Illinois—815 I.L.C.S. 413/15(b)(3) | Texas—Tex. Utilities Code § 55.151 |
| Indiana—Enrolled Act No. 1222 | Wyoming—Enrolled Act No. 108 |

Background

The common theme of "do-not-call" laws is that people who do not want telemarketers to call them can subscribe to a no-call list and the telemarketer is prohibited from calling them. There is generally a penalty for violations. In most states, a database of subscribers is maintained by either the state public utility commission, the state attorney general's office, or the state office of consumer affairs. In those states, fees are assessed to telemarketers and subscribers or to only telemarketers to defray costs associated with program implementation. One state (Arizona) requires telemarketers to maintain their own no-call lists and another state (New Jersey) requires the local telephone company to maintain the list. In those states, no assessments are made to either subscribers or telemarketers.

HOUSE UTILITIES

DATE: 3-8-02

ATTACHMENT 1

Most state no-call laws have been enacted to augment and strengthen the federal Telecommunications Consumer Protection Act of 1991 and rules promulgated by the Federal Communications Commission in 1992 to implement the Act. Under the federal program, a telemarketer must keep a record of do-not-call requests for ten years. Consumers have the right to sue for \$500 in damages or actual monetary losses for each violation (whichever is greater). Several features of the federal program also appear in many of the state programs summarized below. Specifically, no-call lists apply only to residential consumers. Moreover, telephone solicitations are exempted from no-call list requirements if the call is made: to any person with that person's prior express invitation or permission; to any person with whom the caller has an established business relationship; or by or on behalf of a tax-exempt nonprofit organization.

On January 22, 2002, the Federal Trade Commission (FTC) proposed a national "Do Not Call" registry. The proposal would create a centralized national "Do Not Call" registry. Such a registry would enable consumers to eliminate most telemarketing calls by making one call to the FTC. The proposed national "Do Not Call" registry is one element of the Commission's proposal to modify the Telemarketing Sales Rule (TSR), which protects consumers from unwanted and late-night telemarketing calls and prohibits deceptive sales calls. The proposed amendments are designed to enhance the TSR's ability to prevent deceptive telemarketing practices and to enable consumers to exert better control over unwanted telemarketing calls.

This memorandum examines two no-call programs in detail in states that have established programs: Florida and Georgia. The memorandum also explains no-call programs in the following states: Kentucky, Oregon, Tennessee, Arkansas, New York, Alabama, and Arizona. Of these states, only Arizona requires the no-call list to be maintained by the telemarketer. In that respect, Arizona's program parallels the federal program. With the exception of Florida's law, most of the state no-call laws summarized below were enacted in 1998 or 1999. New York's law was enacted in 2001. Missouri's no-call law has been intentionally omitted from this analysis due to the wealth of information gathered by the Attorney General's office.

Implementation of No-Call Programs

Florida

Provisions of the Law. Florida's law is instructive because it has been in effect since 1990 and program staff have several years of experience with implementation. The Florida No Sales Solicitation Calls law directs the Florida Department of Agriculture and Consumer Services to compile and maintain a "No Sales Solicitation Calls" list for residential, mobile, or telephonic paging device subscribers. Business numbers may not be included on the list. Lists must be updated on a quarterly basis.

The law prohibits the sale of "consumer goods and services" (defined in statute) through calls made from telemarketers located both within and outside the state to telephone numbers which appear on the "No Sales Solicitation Calls" list. However, this prohibition does not apply to any call:

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- In response to an express request of the person being called;
- In connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;
- To a person with whom the telemarketer has an existing or previous business relationship;
- By a newspaper in connection with newspaper business; and
- Which requests a contribution or donation.

The "No Sales Solicitation Calls" list is updated on a quarterly basis. The fee to telephone subscribers wanting to be on the list is \$10 per telephone number for the first year and \$5 for renewals (annual basis).

Program Staff Support. In FY 1999 eight positions were directly assigned to the No Sales Solicitation Calls program, although resources of the legal and accounting divisions also are used. Presently, there are six positions assigned to the same program. Two positions used to handle list production and distribution--now one position does the same, if not more work--and the remaining five positions handle enforcement and complaint responsibilities.

Program Participation and Program Revenues. Telemarketers may purchase the "No Sales Solicitation Calls" list on an area code or statewide basis and are assessed accordingly. The charge to a business to purchase the statewide list is \$400 per year or \$120 per year per area code. Presently, the list includes almost 221,000 telephone subscribers, up from 122,000 subscribers listed at the end of 1999. The program averages about 12,000 new subscribers per quarter, and last quarter 14,000 people signed up. Demand for the program remains consistently high. According to program staff, approximately \$800,000 was generated for the program in FY 1999 from subscriber fees and fees paid by businesses that purchased the list, and in FY 2001 approximately \$1,059,502 was generated. The totals include an estimated \$80,000 collected in fines assessed against businesses for violations in FY 1999; in FY 2001 \$46,500 was collected.

Penalties. The law provides for civil penalties not to exceed \$10,000 per violation. A violation in this context would be each call made by a telemarketer to a number on the list. To date, all complaints have been settled out of court. Since 1992, over \$600,000 has been collected through 70 settlements. Generally, a business is assessed \$750 for the first alleged violation and \$1,500 for any subsequent alleged violation.

Lessons Learned. The most significant problem for implementation of the law has been the lack of a time frame for a "prior or existing business relationship." Such a relationship is listed as one of the exemptions from the definition of "unsolicited telephonic sales call" in Florida's law. For example, a telephone subscriber who is on the list may have had a business relationship with a telemarketer 30 years ago. When the subscriber complains to the Department of Agriculture and Consumer Affairs that the telemarketer has made an unsolicited call, the telemarketer can point to that prior business relationship. Even

though the relationship existed 30 years ago, the telemarketer is exempt from the definition of "unsolicited telephonic sales call" and is, therefore, authorized to call that subscriber.

Georgia

Provisions of the Law. Georgia's law was enacted in 1998, and program implementation began in January 1999. Georgia's Office of Consumer Affairs is responsible for enforcing the law. Residential customers who do not want to receive telephone solicitations must register with the Georgia Public Service Commission to be placed on the Georgia No Call List. The registration fee is \$5 per telephone number for a two-year period. Like Florida's law, Georgia's law does not allow business numbers to be included in the list. Also like Florida's law, Georgia's law provides for lists to be updated on a quarterly basis.

Telemarketers located within or outside Georgia who place calls encouraging the purchase or rental of, or investment in, property, goods, or services are prohibited from calling customers on the list. They may subscribe to the list by paying an annual fee of \$10, which allows them unlimited access to the list. As with Florida's law, Georgia's law recognizes exceptions to the prohibition against telephone solicitation to customers on the list. Calls may be made to residential customers: with their prior express permission; if the business had a prior or current business or personal relationship; if the solicitation is made by recognized charitable or religious organizations; or by political pollsters or candidates for public office. In addition, solicitations involving communications services appear to be excluded from the prohibition.

Program Staff Support. Four positions (three of which were interns) were initially assigned to implement the program in the Office of Consumer Affairs. Due to recent budget cutbacks, the three interns were let go, and now one staff member handles the enforcement of the no-call list. Two full-time positions were needed initially to handle complaints and two supervisors addressed program issues on a part-time basis. Presently, one staff member enforces the program but handles none of the no-call list maintenance. The maintenance of the no-call list is contracted out to a private company, Computer Business Services, which handles the data processing and maintains the database. The private company sends out expiration notices to subscribers two months prior to a subscriber's expiration date. Subscribers make checks payable to Georgia's Public Utilities Commission, which administers the funds and the contract with the private company.

Program Participation. In the first year of the program, 163,000 residential telephone subscribers signed up to be on the list. Presently (as of February 2002), there are 229,450 residential telephone subscribers. The subscriber's fee of \$5 paid every two years is applied only to the maintenance of the database. Program staff reports that subscribers expect a lot after paying the \$5 biennial fee. As of February 2002, a total of 2,856 companies (1,332 at the end of 1999) have purchased access to the list (available only on a statewide basis) for an annual fee of \$10 each, which provides them with the subscribers' list. Companies can download the list off the internet, or they can receive it via mail in the form of a CD-ROM.

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Penalties. Telemarketers who call someone on the no-call list may be subject to a fine per call of \$2,000. Some of the most notable penalties processed against telemarketers involved two companies (Dixie Home Crafters and TruGreen/Chemlawn), both of which were fined for repeated violations. TruGreen/Chemlawn was fined for violations in both Georgia and Florida. Dixie Home Crafters was reportedly fined \$94,000 and TruGreen/Chemlawn, \$45,000 for violations under Georgia's law. Both companies had previously violated other states' no-call laws, including Florida and Oregon. Most subscriber complaints regarding unsolicited calls are handled by contacting the alleged violators and informing them of the provisions of the law and its penalties. In most cases, no other measure is necessary and the unsolicited calls cease. Currently, program staff need to take action against 12 companies who have violated Georgia's no-call law.

Implementation Problem. According to program staff, one of the greatest problems with enforcement is actually locating the telemarketer against whom the complaint has been lodged. The telephone subscriber is asked to supply the enforcement staff with the name of the telemarketer and company for which the telemarketer works, the address of the telemarketer, and the phone number of the telemarketer's manager. However, when contacted, many telemarketers will simply hang up or give inaccurate information.

Lessons Learned. The most significant problem the program has encountered is the lack of funding for the enforcement portion of the program. No funds have ever been provided for enforcement, and the Office of Consumer Affairs has never been able to staff the program like it feels it should be staffed. The one program staff member, who is retiring next month and was born and raised in Wichita, Kansas, made some suggestions for other states contemplating setting up a no-call program: Leave it in one agency. Don't fragment it. Keep enforcement and administration together to allow for better communication and handling of information. Provide the program with sufficient funds and at least three positions to handle the consistently high demand the program will produce.

Other State No-Call Programs

Alabama's law and Tennessee's law are very similar to Georgia's law in terms of implementation and penalties, with the exception that enforcement appears to reside with Alabama's Public Service Commission and Tennessee's Regulatory Authority, whereas enforcement in Georgia resides exclusively with the Office of Consumer Affairs. (In Tennessee, the Regulatory Authority may request the Attorney General to bring an action in court for violations of the law.)

In all three states, the regulatory commissions have ultimate responsibility for establishing and operating the databases for the no-call lists. (However, Alabama's and Tennessee's laws expressly authorize but do not require the regulatory commissions to contract out the operation of the database.)

Fees charged residential subscribers and telemarketers for accessing the no-call list are treated differently in each state. Alabama's law requires any fee for telemarketers and subscribers to be established by the Public Service Commission with approval of the Legislative Council. Tennessee's law establishes an annual fee of \$500, to be paid by

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telemarketers for unlimited access to the no-call list. Subscribers are not assessed. New York's law is similar to Tennessee's.

In each of the laws, exceptions apply to the definition of "telephone solicitation." In Tennessee, however, the relationship between the telemarketer and subscriber has a time limit of 12 months. (This provision seems to address the problem raised with Florida's law.) Tennessee's law also includes other exceptions allowing for occasional and isolated voice communications; a similar exception is found in Alabama's no-call legislation.

Oregon's law requires the Attorney General to advertise for bids and enter into a contract with a person to administer the no-call program. The "no-call" list is administered by OTA Services, L.L.C. The fees paid by residential subscribers, a \$6.50 non-refundable registration fee, and by telemarketers, \$120 annually, are considered income to the administrator of the list. Subscribers can renew after the first year for \$3.00 per year. Exceptions to the definition of "telephone solicitation" are similar to those in Georgia's law. Telephone solicitors who unlawfully call someone on the no-call list are subject to civil penalties of up to \$25,000 per violation. Solicitors must obtain monthly updates of the list.

Arkansas' law requires the Attorney General to establish and operate a no-call program and leaves most of the development specifications to the discretion of the Attorney General. Like Florida's program, Arkansas' requires initial residential subscriber fees not to exceed \$10 and annual renewal fees not to exceed \$5. Unlike Florida's program, however, telemarketers are not assessed a fee to access the no-call list. Like Tennessee's law, Arkansas' law qualifies the definition of "telephone solicitation" by limiting the time frame of a prior or existing business relationship between telemarketers and subscribers. However, Arkansas' law provides for a three-year time limit and specifically characterizes that relationship as a financial transaction between the parties (also applies to the subscriber's relationship with a telemarketer's affiliates). There are eight exemptions to callers subject to Arkansas' no-call prohibition: realtors, motor vehicle dealers, insurance agents, investment brokers, and persons calling on behalf of charitable organizations, newspapers, banks, and funeral homes.

Kentucky's law, like Arkansas' law, assigns the implementation of the no-call program to the Attorney General's office. Like Tennessee's law, only telemarketers, and not residential subscribers, are assessed. Telemarketers are assessed \$400 annually for access to the no-call list which is published quarterly in hard copy and in other formats at the agency's discretion. Civil penalties of \$2,000 are imposed per willful violation of the law. Any telemarketing company is subject to the law if it is "a company whose primary business is to engage in telephone solicitation." (That definition would appear to exempt any company that does its own telemarketing sales calls rather than contracting them out.) There are 22 listed exceptions to the definition of "telephone solicitation," including authorization for calls made: in response to a person's express request; primarily in connection with the payment or performance of an existing debt or contract; and to whom the telemarketer has a prior or existing business relationship. The other 19 exceptions refer to types of persons or businesses authorized to make telephone calls.

New York's law established a "Do Not Call Registry" on April 1, 2001, and is administered by the state Consumer Protection Board (CPB). Inclusion on the Registry is

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free to New York residents. Telemarketers are encouraged to purchase, at rates established by the CPB, the quarterly Do Not Call Registry to identify those consumers they are no longer legally permitted to call. Consumer information is maintained on the Registry for three years, from the date a consumer's name and number first appears on the registry's quarterly publication. Reminder notices are mailed to registrants approximately two months prior to the expiration of their three-year enrollment term. Once a consumer's number appears on the Registry, telemarketers have a 30-day grace period to remove the number from their call lists. After that, calls to numbers appearing on the Registry may be illegal. The CPB is responsible for creating and maintaining the Registry and for enforcing New York's Do Not Call law. Telemarketers who violate the law by calling a registered number more than 30 days after it appears on a quarterly Registry are subject to penalties of up to \$2,000 for each violation.

New Yorkers who register are guaranteed to be protected from most sales calls. New York's no-call law provides for the following exceptions:

- Charitable organizations;
- Religious corporations;
- Political parties and committees;
- Companies who have a consumer's permission to call;
- Existing customers, unless the customer has told the company not to call again;
- Companies with which a consumer has a prior business relationship; and
- Telemarketers who wish to arrange for a face-to-face meeting before concluding a sales transaction.

Arizona's law reverses the procedure used by other states in that the law requires most telemarketers to register with the Secretary of State's office. Consumers may search for the telemarketer's registration online instead of telemarketers bearing that responsibility. Like the federal law, Arizona's law requires telemarketers to maintain no-call lists and keep no-call requests for at least ten years. Arizona's law also parallels federal law in requiring telemarketers to develop, in addition to no-call lists, written procedures for complying with the no-call provisions of the act. Consumer complaints will be investigated by the Attorney General's office and violators could face civil penalties of up to \$10,000 per violation of Arizona's law.

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CONCLUSION

Exemptions

The no-call laws summarized above vary considerably in the number and type of exemptions from the prohibition governing solicitations. At one end of the spectrum, Georgia's law includes four listed exemptions:

- Express permission from the subscriber for telemarketer to call;
- A prior or existing business relationship between the subscriber and the telemarketer;
- Political candidates or polling companies; and
- Recognized charities or religious organizations.

At the other end of the spectrum, Alabama's law exempts 25 types of solicitations from the prohibition, such as commercial solicitations that are isolated transactions, noncommercial or charitable solicitations, solicitations not involving major sales pitches, solicitations by securities, commodities, and investment brokers, and solicitations of newspapers and magazines (the list goes on). As previously noted, Kentucky's law has 22 exemptions. As has been shared with the Committee, Kentucky's no-call law exempts over 95 percent of the businesses or non-profit organizations which conduct telemarketing sales. These businesses and organizations are not required to honor the no-call list. If a no-call law has too many exemptions, it may result in the worst case scenario—the appearance to consumers that something has actually been done to help them when, in fact, very little has been done and staff and funding have been committed to implement an ineffective program.

Implementation Costs

Implementation of no-call legislation costs money for development and maintenance of a no-call database, accounting activities, and enforcement. Florida's program collects enough fees to sustain program costs. Georgia's program only collects enough to sustain the maintenance of the no-call list, and not the enforcement efforts. Enforcement efforts are paid for under Georgia's Office of Consumer Affairs' Budget.

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