

Approved: April 11, 2002 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on March 12, 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: None

Others attending: See Attached List

HB 2754 - Telecommunications; affordable rates; quality of service; standards

Chairman Holmes opened the debate on **HB 2754**. Representative McClure moved to adopt the substitute bill previously distributed. Representative Kuether seconded the motion. The motion carried. Representative Loyd moved to recommend Substitute for HB 2754 favorable for passage. Representation Kuether seconded the motion. Motion carried. Representative Krehbiel requested his that vote be recorded as present. Representative Loyd will carry the bill.

SB 480 - Retail electric suppliers; service rights in area annexed by city; procedures; compensation when service rights are terminated

Chairman Holmes opened the debate on **SB 480**. Representative Krehbiel moved to recommend SB 480 favorable for passage. Representative Myers seconded the motion. The motion carried. Representative Krehbiel will carry the bill.

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

Chairman Holmes opened discussion on proposed no call legislation and stated there would be no debate or motions.

Representative Kuether distributed a memo from Robert Chapman, Fiscal Analyst, outlining the duties and responsibilities of the FCC and FTC (Attachment 1). Steve Rarrick, Assistant Attorney General for Consumer Protection, addressed the fiscal impact of the proposed legislation. Copies of the Fiscal Notes for **SB 296** (Attachment 2), **SB 538** (Attachment 3), **HB 2767** (Attachment 4), and **HB 2903** (Attachment 5) were distributed to the committee members.

Robert Knapp, Network Manager for the Information Network of Kansas (INK) told the committee they were ready to do whatever is necessary in putting together a state do not call list. Neil Woerman, Director of Budget and Special Projects for the Attorney General's office, spoke to the committee about their responsibility and addressed the details of the fiscal note regarding the Attorney General's staffing needs to implement a state list.

Robert Chapman, Fiscal Analyst, briefed the committee on the memo distributed (See Attachment 1).

Steve Montgomery, MCIWorldcom, provided industry rebuttal to the Attorney General's remarks regarding constitutionality.

Chairman Holmes suspended the discussion on no call legislation.

Chairman Holmes announced we would hear **SB 397** tomorrow.

The meeting adjourned at 10:54 a.m. The next meeting will be March 13, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

Bob Hodges

DATE: March 12, 2002

NAME	REPRESENTING
Joe Dieck	KCK BPU
Don Powers	KCC
Janet Buchanan	KCC
STEVE LARRICK	ATTORNEY GENERAL
Ed Redman	KS, State Council of Lighten
Karla Oser	Western Energy
Shirley Allen	SITA
Dave Holman	Hem Ltd
LARRY R BASH	LHM
George Barber	RTAC
John P. Piregan	State Independent Telephone Assoc
Tom Gleason	Independent Telecom Group
Tim Youally	Verizon Wireless
Colleen Harrell	KCC
Anne Tymeson	KCC
Matt Bergmann	Pat Hubbell Assoc.
Jim Gracberg	S web T
TOM DAY	KCC
Whitney Jamror	KS Information Consortium
Steve Johnson	Kansas Gas Service

FYI: Annie
Kuehler

Memorandum

Kansas Legislative Research Department

Date: Monday, March 11, 2002
From: Robert Chapman, Fiscal Analyst
To: Committee on Utilities
Subject: Duties and Responsibilities of the FCC and FTC

FCC

The Federal Communications Commission (FCC) regulates U.S. broadcast media and communications markets and is an independent United States government agency, directly responsible to Congress. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The FCC is directed by five Commissioners, one of which is designated as the chairperson, who are appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term.

FTC

The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments when requested.

In addition to carrying out its statutory enforcement responsibilities, the Commission advances the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education.

No-call List and Telemarketing Activity

With regard to the national "Do Not Call" registry being proposed by the FTC that would create a centralized database and which industries would be subject to the registry, the following information may be helpful in delineating the jurisdictional responsibilities of the FTC and FCC.

The FTC is limited in its authority to regulate some industries. Some of these industries use telemarketing methods to market products and services, like long distance telephone service providers, credit cards issuers (banks), and sellers of securities and insurance (industries that utilize the practice of cold-calling prospective customers). For purposes of the FTC's proposed registry, the Commission may lack jurisdiction over: (1) banks, savings and loans and other savings associations; (2) federal credit unions; (3) common carriers subject to the Communications Act of 1934, as amended (i.e., telephone companies); (4) insurance companies regulated by state law as provided for in the McCarran - Ferguson Act; (5) securities marketing subject to the Securities and Exchange Act of 1934; and (6) commodity marketing subject to the Commodity Exchange Act.

Additionally, the Commission cannot reach "intrastate" telemarketing--the telemarketing operations that typically operate locally or within a single state--such as sellers of automobile repair services, water purification systems, television satellite systems, home improvement services, and solicitors for local or purportedly local charitable organizations. It would seem that the FTC's proposed registry would not cover all telemarketing calls without further Congressional legislation. If consumers seek to prevent telemarketing solicitations, they must still enroll in their own State's database system.

HOUSE UTILITIES

DATE: 3-12-02

STATE OF KANSAS



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Bill Graves
Governor

Duane A. Goossen
Director

March 12, 2002

The Honorable Carl Holmes, Chairperson
House Committee on Utilities
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Holmes:

SUBJECT: Fiscal Note for SB 296, as amended

In accordance with your request, the following fiscal note on SB 296 is respectfully submitted.

SB 296, as substituted by the Senate Committee on Judiciary, would allow Kansans to register their residential telephone numbers with the Information Network of Kansas (INK) to be placed in a "No-Call Database." The list would be sold to telemarketers, who would be prohibited from calling such numbers with their telephone solicitations. The telemarketers would access the list by signing a confidentiality agreement and paying \$25 per area code, per quarter. The revenue raised from selling the database would be used to maintain the database, and any additional funds raised by the sale of the database would be used by the Attorney General to support enforcement efforts. Consumers would not be charged to register their phone numbers. Prohibited solicitations would not include those where the solicitor and the consumer have a direct, established business relationship. The bill would become part of the Consumer Protection Act. Violations would be investigated and prosecuted by the Attorney General. Civil fines could be up to \$10,000 per violation. Fines and investigative costs would be used to finance ongoing investigation and prosecution efforts.

HOUSE UTILITIES

DATE: 3-12-02

ATTACHMENT 2

Estimated State Fiscal Effect				
	FY 2002 SGF	FY 2002 All Funds	FY 2003 SGF	FY 2003 All Funds
Revenue	--	--	--	\$47,333- \$136,519
Expenditure	--	--	--	\$149,186
FTE Pos.	--	--	--	4.0

SB 296, as substituted by the Senate Committee on Judiciary, there would be little cost for the development, maintenance, and sale of the No-Call Database. The Database would be maintained on INK equipment, using existing INK database software licenses and utilities. Access to it would be provided through use of existing facilities and software licenses as well. Initial internal costs of database development and related programming would be less than \$10,000.

SB 296 would require the use of telephone, web, or written registration. Telephone registration would cause the highest initial costs. Using a model based on the actual experience of Missouri, it is believed that automated telephone registry costs would be approximately \$50,000 in the first year. Also based on Missouri information, first year database sales are estimated at \$47,333. The INK Board has agreed to underwrite the start-up costs to initiate operation of the No-Call Database.

The Office of the Attorney General states that passage of SB 296 would cause costs beyond the level that could be handled within current resources. Assuming that the early registration period would begin January 1, 2003, the agency would require the equivalent of 1.0 additional FTE position to begin taking the no-call registration telephone inquiries and to handle data entry of registrations received in writing and through voice mail. Two months before the July 1, 2003 effective date of the first no-call list, the agency would hire an attorney and a paralegal to devise a system and procedures to handle complaints. A Consumer Special Agent would be hired shortly before July 1. The cost for these 4.0 FTE positions would be \$29,686 in FY 2003 and \$156,385 in FY 2004. The agency states that it is important to consider that in the first six months of enforcement of its No-Call law, Missouri received approximately 15,000 complaints. It may be possible for the Attorney General to work with INK to develop a No-Call complaint tracking system as an adjunct system to the No-Call Database. However, if that is not feasible, the Attorney General's Office estimates costs of \$25,000 in FY 2003 and \$5,000 in FY 2004 to establish an independent complaint tracking system. Estimated other operating costs, including supplies, furniture, travel, etc., total \$34,500 in FY 2003 and \$55,768 in FY 2004.

The Attorney General's Office would be able to absorb the costs of the four positions and other operating expenditures with recouped fees and expenses received from other consumer protection cases if the agency were allowed to maintain sufficient balances in the Court Cost Fund. If Kansas' enforcement results were similar to those experienced in Missouri, No-Call enforcement would become self-sustaining in the first year. If so, total revenue resulting from

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The Honorable Carl Holmes, Chairperson
March 12, 2002
Page 3—296fn amended for Holmes

passage of SB 296 in FY 2003 would be \$136,519 (\$47,333 registration revenue + \$89,186 enforcement revenue).

The Office of Judicial Administration states that any expansion of the Consumer Protection Act's scope would likely result in increased prosecutions. However, it is not possible to estimate the number of cases that would be brought under SB 296. Any fiscal effect as a result of this bill is not included in *The FY 2003 Governor's Budget Report*

Sincerely,

A handwritten signature in cursive script, appearing to read "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

STATE OF KANSAS



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Bill Graves
Governor

Duane A. Goossen
Director

March 6, 2002

The Honorable Karin Brownlee, Chairperson
Senate Committee on Commerce
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Brownlee:

SUBJECT: Fiscal Note for SB 538 by Senator Adkins, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning SB 538 is respectfully submitted to your committee.

SB 538 would allow Kansans to register their residential telephone numbers with the Information Network of Kansas (INK) to be placed in a "No-Call Database." The list would be sold to telemarketers, who would be prohibited from calling such numbers with their telephone solicitations. The telemarketers would access the list by signing a confidentiality agreement and paying \$25 per area code, per quarter. The revenue raised from selling the database would be used to maintain the database, and any additional funds raised by the sale of the database would be used by the Attorney General to support enforcement efforts. Consumers would not be charged to register their phone numbers. Prohibited solicitations would not include those where the solicitor and the consumer have a direct, established business relationship. The bill would become part of the Consumer Protection Act. Violations would be investigated and prosecuted by the Attorney General. Civil fines could be up to \$10,000 per violation. Fines and investigative costs would be used to finance ongoing investigation and prosecution efforts.

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DATE: 3-12-02

ATTACHMENT 3

Estimated State Fiscal Effect				
	FY 2002 SGF	FY 2002 All Funds	FY 2003 SGF	FY 2003 All Funds
Revenue	--	--	--	\$47,333- \$136,519
Expenditure	--	--	--	\$149,186
FTE Pos.	--	--	--	4.0

There would be little cost for the development, maintenance, and sale of the No-Call Database. The Database would be maintained on INK equipment, using existing INK database software licenses and utilities. Access to it would be provided through use of existing facilities and software licenses as well. Initial internal costs of database development and related programming would be less than \$10,000.

SB 538 would require the use of telephone, web, or written registration. Telephone registration would cause the highest initial costs. Using a model based on the actual experience of Missouri, it is believed that automated telephone registry costs would be approximately \$50,000 in the first year. Also based on Missouri information, first year database sales are estimated at \$47,333. The INK Board has agreed to underwrite the start-up costs to initiate operation of the No-Call Database.

The Office of the Attorney General states that passage of SB 538 would cause costs beyond the level that could be handled within current resources. Assuming that the early registration period would begin January 1, 2003, the agency would require the equivalent of 1.0 additional FTE position to begin taking the no-call registration telephone inquiries and to handle data entry of registrations received in writing and through voice mail. Two months before the July 1, 2003 effective date of the first no-call list, the agency would hire an attorney and a paralegal to devise a system and procedures to handle complaints. A Consumer Special Agent would be hired shortly before July 1. The cost for these 4.0 FTE positions would be \$29,686 in FY 2003 and \$156,385 in FY 2004. The agency states that it is important to consider that in the first six months of enforcement of its No-Call law, Missouri received approximately 15,000 complaints. It may be possible for the Attorney General to work with INK to develop a No-Call complaint tracking system as an adjunct system to the No-Call Database. However, if that is not feasible, the Attorney General's Office estimates costs of \$25,000 in FY 2003 and \$5,000 in FY 2004 to establish an independent complaint tracking system. Estimated other operating costs, including supplies, furniture, travel, etc., total \$34,500 in FY 2003 and \$55,768 in FY 2004.


The Attorney General's Office would be able to absorb the costs of the four positions and other operating expenditures with recouped fees and expenses received from other consumer protection cases if the agency were allowed to maintain sufficient balances in the Court Cost Fund. If Kansas' enforcement results were similar to those experienced in Missouri, No-Call enforcement would become self-sustaining in the first year. If so, total revenue resulting from

The Honorable Karin Brownlee, Chairperson
March 6, 2002
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passage of SB 538 in FY 2003 would be \$136,519 (\$47,333 registration revenue + \$89,186 enforcement revenue).

The Office of Judicial Administration states that any expansion of the Consumer Protection Act's scope would likely result in increased prosecutions. However, it is not possible to estimate the number of cases that would be brought under SB 538. Any fiscal effect as a result of this bill is not included in *The FY 2003 Governor's Budget Report*.

Sincerely,

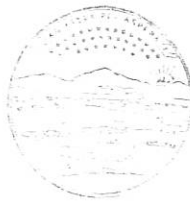


Duane A. Goossen
Director of the Budget

cc: Neil Woerman, Attorney General's Office
Jerry Sloan/Ami Hyten, Judiciary

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STATE OF KANSAS



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Bill Graves
Governor

Duane A. Goossen
Director

March 12, 2002

The Honorable Carl Holmes, Chairperson
House Committee on Utilities
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Holmes:

SUBJECT: Fiscal Note for HB 2767, as Amended

In accordance with your request, the following fiscal note on HB 2767, as amended, is respectfully submitted.

HB 2767, as amended by the House Committee of the Whole, would prohibit suppliers from entering into transactions with consumers without a license, registration, certificate, approval, or other authority regulating the practice required by federal, state, or local law. Some examples of suppliers would be persons selling five or more automobiles per year without a license, persons committing the unauthorized practice of law, persons completing termite inspection/treatment services, and transient merchants who fail to obtain transient merchant licenses. The bill would become part of the Consumer Protection Act, and violation of this bill would be considered an unconscionable act of the Kansas Consumer Protection Act. This bill would allow the Office of the Attorney General to provide assistance beyond mediation to consumers who have entered into transactions with suppliers.

The bill would also allow Kansans to register their residential telephone numbers with the Information Network of Kansas (INK) to be placed in a "No-Call Database." The list would be sold to telemarketers, who would be prohibited from calling such numbers with their telephone solicitations. The telemarketers would access the list by signing a confidentiality agreement and paying \$25 per area code, per quarter. The revenue raised from selling the database would be used to maintain the database, and any additional funds raised by the sale of the database would be used by the Attorney General to support enforcement efforts. Consumers would not be charged to register their phone numbers. Prohibited solicitations would not include those where

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ATTACHMENT 4

the solicitor and the consumer have a direct, established business relationship. Violations would be investigated and prosecuted by the Attorney General. Civil fines could be up to \$10,000 per violation. Fines and investigative costs would be used to finance ongoing investigation and prosecution efforts.

Estimated State Fiscal Effect				
	FY 2002 SGF	FY 2002 All Funds	FY 2003 SGF	FY 2003 All Funds
Revenue	--	--	--	\$47,333- \$136,519
Expenditure	--	--	--	\$149,186
FTE Pos.	--	--	--	4.0

Under HB 2767, as amended by the House Committee of the Whole, there would be little cost for the development, maintenance, and sale of the No-Call Database. The Database would be maintained on INK equipment, using existing INK database software licenses and utilities. Access to it would be provided through use of existing facilities and software licenses as well. Initial internal costs of database development and related programming would be less than \$10,000.

The bill would require the use of telephone, web, or written registration. Telephone registration would cause the highest initial costs. Using a model based on the actual experience of Missouri, it is believed that automated telephone registry costs would be approximately \$50,000 in the first year. Also based on Missouri information, first year database sales are estimated at \$47,333. The INK Board has agreed to underwrite the start-up costs to initiate operation of the No-Call Database.

The Office of the Attorney General states that passage of HB 2767 would cause costs beyond the level that could be handled within current resources. Assuming that the early registration period would begin January 1, 2003, the agency would require the equivalent of 1.0 additional FTE position to begin taking the no-call registration telephone inquiries and to handle data entry of registrations received in writing and through voice mail. Two months before the July 1, 2003 effective date of the first no-call list, the agency would hire an attorney and a paralegal to devise a system and procedures to handle complaints. A Consumer Special Agent would be hired shortly before July 1. The cost for these 4.0 FTE positions would be \$29,686 in FY 2003 and \$156,385 in FY 2004. The agency states that it is important to consider that in the first six months of enforcement of its No-Call law, Missouri received approximately 15,000 complaints. It may be possible for the Attorney General to work with INK to develop a No-Call complaint tracking system as an adjunct system to the No-Call Database. However, if that is not feasible, the Attorney General's Office estimates costs of \$25,000 in FY 2003 and \$5,000 in FY 2004 to establish an independent complaint tracking system. Estimated other operating costs, including supplies, furniture, travel, etc., totaling \$34,500 in FY 2003 and \$55,768 in FY 2004.

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The Honorable Carl Holmes, Chairperson

March 12, 2002

Page 3—2767fn amended for Holmes

The Attorney General's Office would be able to absorb the costs of the four positions and other operating expenditures with recouped fees and expenses received from other consumer protection cases, if the agency were allowed to maintain sufficient balances in the Court Cost Fund. If Kansas' enforcement results were similar to those experienced in Missouri, No-Call enforcement would become self-sustaining in the first year. If so, total revenue resulting from passage of HB 2767 in FY 2003 would be \$136,519 (\$47,333 registration revenue + \$89,186 enforcement revenue).

The Office of Judicial Administration states that any expansion of the Consumer Protection Act's scope would likely result in increased prosecutions. However, it is not possible to estimate the number of cases that would be brought under HB 2767. Any fiscal effect as a result of this bill is not included in *The FY 2003 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget



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 March 7, 2002

Bill Graves
 Governor

Duane A. Goossen
 Director

The Honorable Carl Holmes, Chairperson
 House Committee on Utilities
 Statehouse, Room 115-S
 Topeka, Kansas 66612

Dear Representative Holmes:

SUBJECT: Fiscal Note for HB 2903 by Representative Dillmore, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2903 is respectfully submitted to your committee.

HB 2903 would add a "No Call" rule to current law. The bill states that no telephone solicitor could make any unsolicited call to the residence of any consumer who has given notice to the Attorney General that such calls are not wanted. The bill would give telemarketers a defense in any action brought under HB 2903, if reasonable practices and procedures to prevent unsolicited consumer telephone calls that violate the No Call rule had been established and implemented. The bill would require the Attorney General to establish a No Call Database and to have it operational by July 1, 2002. The database could be operated through the agency or by another organization through a contract with the Attorney General. Prior to July 1, 2003, the agency would be required to adopt rules and regulations that would:

1. Require local exchange carriers, telecommunications carriers, and wireless telecommunications services to provide consumers with information about the No Call List;
2. Specify how consumers would be added to the list and how they could be deleted from the list;
3. Specify how long a consumer would remain on the list without a new request and how a change in telephone number would affect the consumer's status on the list;
4. Specify how objections and revocations would be collected and added to the database;
5. Specify how telemarketers would access the database; and
6. Specify other matters related to the database that the Attorney General found necessary.

If the Federal Communications Commission established a national No Call Database, the Attorney General would be required to add the part of that database that relates to Kansas to the database established through this bill. Each consumer would be required to pay a \$5 fee to be included in the database. Telemarketers would be required to pay a \$10 fee each year for access to paper or electronic copies of the database.

HOUSE UTILITIES

DATE: 3-12-02

ATTACHMENT 5

The Honorable Carl Holmes, Chairperson

March 7, 2002

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If the Attorney General contracted with INK, there would be little cost for the development, maintenance, and sale of the No-Call Database. The Database would be maintained on INK equipment, using existing INK database software licenses and utilities. Access to it would be provided through use of existing facilities and software licenses as well. Initial internal costs of database development and related programming would be less than \$10,000. The bill would allow the Attorney General, through establishment of rules and regulations, to determine the method(s) consumers would use to include their information in the database. Telephone registration would cause the highest initial costs. Using a model based on the actual experience of Missouri, it is believed that automated telephone registry costs would be approximately \$50,000 in the first year. The INK Board has agreed to underwrite the start-up costs to initiate operation of the No-Call Database.

Also based on Missouri information, first year database sales are estimated at \$4,730. Because Missouri does not charge consumers a fee, its experience cannot be used as a basis for estimating the number of consumers who would want to include their information in the database. Therefore, income from consumer fees cannot be estimated.

The Office of the Attorney General states that passage of HB 2903 would cause costs beyond the level that could be handled within current resources. The agency would require at least 8.0 additional FTE positions to perform the investigation and prosecution activities associated with the No Call Database. These positions would include 2.0 FTE Office Assistants, 2.0 FTE Assistant Attorney Generals, 2.0 FTE Legal Assistants, and 2.0 FTE Special Agents. The cost for these 8.0 FTE positions would be \$312,770 annually. The agency cannot be certain that this level of staffing will provide adequate enforcement of the bill. The agency states that it is important to consider that in the first six months of enforcement of its No-Call law, Missouri received approximately 15,000 complaints. It may be possible for the Attorney General to work with INK to develop a No-Call complaint tracking system as an adjunct system to the No-Call Database. However, if that is not feasible, the Attorney General's Office estimates costs of \$25,000 in FY 2003 and \$5,000 in FY 2004 to establish an independent complaint tracking system. Estimated annual other operating costs, including supplies, furniture, travel, etc., total \$111,536.

The Office of Judicial Administration states that any expansion of the Consumer Protection Act's scope would likely result in increased prosecutions. However, it is not possible to estimate the number of cases that would be brought under HB 2903. Any fiscal effect as a result of this bill is not included in *The FY 2003 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Neil Woerman, Attorney General's Office
Jerry Sloan/Ami Hyten, Judiciary

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