Approved: April 12, 2002 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on March 18, 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: Steve Johnson, Kansas Gas Service
James Flaherty, Greeley Gas Company
Colin Hansen, Kansas Municipal Utilities

Others attending: See Attached List

SB 546 - Natural gas supplier, termination of franchises

Chairman Holmes opened the hearing on **SB 546**.

Steve Johnson, Manager of Community Affairs for Kansas Gas Service, testified in favor of **SB 546** (Attachment 1). Mr. Johnson explained there are similar statutes in place for retail electric suppliers and now was the time to address compensation for a natural gas utility.

James Flaherty, appearing on behalf of Greeley Gas Company, spoke in favor of **SB 546** (Attachment 2). Mr. Flaherty stated they support the bill because it will provide better guidance to all parties involved. Both parties will have a clearer idea of what the acquisition cost or compensation will be earlier in the process and will have a statutory formula to determine the final compensation.

Colin Hansen, Executive Director for the Kansas Municipal Utilities, appeared in opposition to **SB 546** (Attachment 3). Mr. Hansen explained they were not strongly opposed, but questioned the necessity of the proposed legislation.

Mr. Johnson, Mr. Flaherty and Mr. Hansen responded to questions from the committee.

Chairman Holmes closed the hearing on **SB 546**.

HB 2100 - Unsolicited consumer telephone calls; do-not call list

The debate on **HB 2100** resumed. A copy of the bill, as amended, was distributed to the committee. Representative Sloan distributed proposed amendments (Attachment 4). Representative Sloan moved to adopt the proposed amendments. Representative Kuether seconded the motion. Representative Myers distributed a balloon (Attachment 5). Representative Myers also indicated he had additional amendments not printed on the balloon, but would address at a later time. On Call of the Question, motion carried. Representative Sloan moved to strike section (h)(2) of the adopted amendment and add the last sentence to the first amendment listed. Representative McClure seconded the motion. Motion carried. Representative Myers moved to change the word 'may' to 'shall' and to strike 'No later than December 31, 2002,' in section g on page 5 of his balloon (Attachment 5). Representative Dahl seconded the motion. Motion carried.. Representative Myers moved to adopt new subsection (I) dealing with legislative reporting. Representative McLeland seconded the motion. Motion carried. Representative McClure moved to strike subsection f on page 5 of the adopted balloon. Representative Dillmore seconded the motion. Motion failed.. Representative Loyd moved to amend subsection f on page 5 to read 'It shall be a**n affirmative** defense in any action.....Such defense shall not be **available to** a telephone solicitor....' Representative Kuether seconded the motion. Representative Sloan moved to divide the question. On Part 1 (an affirmative), motion carried. On Part 2 (available to), motion failed.

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:07 a.m. on March 18, 2002.

Representative Loyd moved to amend page 5 subsection j to read 'The attorney general may promulgate rules and regulations to carry out the provisions of **the Kansas no call act**' and to add a new section 3 that reads ' This act shall be known and may be cited as the Kansas no-call act.' Representative Dillmore seconded the motion. The motion carried. Representative Goering distributed two proposed amendments (Attachment 6) and moved to adopt alternative #2. Representative Krehbiel seconded the motion. Motion failed. Representative Myers moved to report **Substitute for HB 2100**, as amended, favorable for passage. Representative McLeland seconded the motion. Motion carried. Representative McClure requested that her 'no' vote be recorded in the minutes. Representative Holmes will carry the bill.

The meeting adjourned at 10:54 a.m.

The next meeting will be March 19, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 18, 2002

NAME	REPRESENTING
David Hansen	K M U
Colleen Hatzell	KCC
Joe Dick	KCKBPU
Jim Flaherty	Greeley Gas Company
Bob Anderson	Atmos Energy Corp
Whitney Damron	KS Gas Service
Galen Biery	KS Gas Serv
J. A. Long	Aquila Inc.
Matt Bergmann	Pat Hubbell Assoc
Jim Gardner	SWBT
Andy Shaw	Kearney Law Office
Mark Schreiber	Westar Energy
Steve Johnson	Kansas Gas Service
Steve Karrick	Attorney General
Bruce Graham	KEPCo

KANSAS GAS SERVICE

A DIVISION OF ONEOK

TESTIMONY

TO: **The Honorable Carl Holmes, Chairman**
And Members Of The
House Utilities Committee

FROM: **Steve Johnson**
Manager of Community Affairs
Kansas Gas Service
7421 West 129th Street
Overland Park, Kansas 66213
(913) 319-8604 (913) 319-8606 (FAX)

RE: **SB 546** **An Act Concerning Retail Natural Gas Suppliers; Relating To Franchise Agreements**

DATE: **March 18, 2002**

Good Morning Mr. Chairman and Members of the House Utilities Committee.

I am Steve Johnson, the Manager of Community Affairs for Kansas Gas Service, a Kansas-based natural gas local distribution company headquartered in Overland Park. Kansas Gas Service (KGS) provides local natural gas service to over 640,000 customers in nearly 350 Kansas communities. KGS is a division of ONEOK, Inc., a Tulsa-based diversified energy company. With me today is Galen Biery, Assistant General Counsel for Kansas Gas Service and Whitney Damron, our Kansas lobbyist.

Mr. Biery deals with local franchise issues on a daily basis along with several KGS Community Relations Managers across the State and can discuss changes in current law vs. our proposed changes contained in SB 546 as well as answer questions on the bill following my testimony if you desire.

On behalf of Kansas Gas Service, I wish to thank you for holding hearings on SB 546 that would amend the statutes regarding compensation to a natural gas utility in the event their franchise agreement was either terminated during a period when a valid franchise is in effect or upon failure of a municipality to renew a franchise agreement at the end of a valid franchise agreement. SB 546 was modeled after current protections and authority provided to private retail electric suppliers and cities in K.S.A. 66-1,176 (b) and (c). Those statutes were enacted in 1987 and copies are included with my testimony so that you can see how this bill tracks with that section of law.

HOUSE UTILITIES

DATE: 3-18-02

ATTACHMENT 1

At the outset of my comments, I would say it is highly unlikely that either a city or a natural gas company would ever seek to use the provisions of SB 546, as in most all cases, a franchise agreement is ultimately executed between a municipality and the local natural gas distribution company. However, there have been exceptions to this rule and there have been instances where a municipality has put a local distribution company on notice of intent not to renew a franchise agreement, and then changed their position prior to the expiration of the agreement.

KGS respectfully suggests it is appropriate for the Legislature to bring natural gas utilities to the same level as electric utilities in instances of acquisition by a city.

Current law provides a means for a city to acquire the control of a utility through a resolution at the end of a valid franchise agreement. In such instances, the city, the utility and the judge with jurisdiction over the case each select a commissioner to

"*appraise and ascertain the fair cash value of said plant and the appurtenances thereto...*" (K.S.A. 12-811/Copy Attached).

The parties may employ experts in the field for valuation purposes and cross-examination of experts is provided for under this procedure. However, the process is highly subjective and, in the opinion of KGS, provides little guidance to the parties as to what is appropriate to be valued, particularly in regards to current and future contracts with customers, future revenues, transition costs, tax consequences, depreciation schedules and other such considerations. These issues will necessarily impact those customers who remain on the natural gas utilities system and should be considered when determining compensation rates to the natural gas utility. These items are specifically delineated in the event of a termination of service rights for a retail electric supplier as noted earlier in my comments and are similarly outlined in SB 546.

Cities may also acquire natural gas service assets through eminent domain and condemnation procedures during the time a valid franchise agreement is in place. In addition, most franchise agreements would provide a city with the ability to terminate a franchise agreement in case of failure to perform under the agreement by the franchisee. These situations are addressed in Section 1 and Section 2 in SB 546.

We believe natural gas and electric distribution companies are similarly situated to such an extent they should be similarly treated in rare instances of the failure to renew or the termination of a valid franchise agreement by a city. Significant investments are made by natural gas utilities in order to provide safe and reliable service to the citizens of Kansas and this investment made on behalf of the utility's customers should be fairly and accurately compensated for in the event a city seeks to acquire the infrastructure and facilities of its current natural gas supplier.

We do not stand before you seeking changes to these statutes for the benefit of only Kansas Gas Service, but for our customers as well. In the event a city does terminate an agreement or fails to renew a franchise agreement, the amount of consideration in question will not simply be the value of hard assets transferred to the city, but may include a broad spectrum of additional costs that will then be born by ratepayers that are still on a gas company's system, but perhaps not by those that remain with the city that takes over a gas property. Accordingly, we propose this change in order to protect all customers of natural gas utilities and not just those who are removed from the system by a city in the event a city refuses to renew a franchise agreement or seeks to terminate an existing agreement.

We would note that the Kansas Corporation Commission would have oversight authority and take an active role in any change in service area for a certificated natural gas public utility. The passage of SB 546 will not produce a windfall for a natural gas utility, but rather provide protections for the customers of a natural gas utility in the rare instance of a municipal acquisition of a natural gas system.

In closing, I would point to the fact that, to our knowledge, no one has argued the acquisition costs and considerations for a city to acquire the operations of a local electric service provider are unfair, as this issue has been in the news in recent years. Accordingly, we believe comparable considerations should be provided to natural gas utilities and their customers.

And finally, for the Committee's information, hearings were held on SB 546 before the Senate Committee on Utilities and the Senate passed this bill in its current form on a vote of 40-0 on February 28, 2002. KGS was the lone proponent and no opponents appeared in opposition to the bill.

On behalf of Kansas Gas Service, I thank you for your consideration of this legislation. Both Galen Biery and I would be pleased to stand for questions at the appropriate time.

66-1,176b. Termination of service rights during period when a valid franchise is in effect; facilities to be acquired; compensation; formula. (a) When the service rights of a retail electric supplier are terminated by a city during the period in which a valid franchise is in effect and the service rights are assumed by the terminating city, the governing body of the city shall acquire from the terminated supplier the parts of the local electric distribution system necessary to serve all customers within the previously franchised area and the terminated supplier shall sell the system to the governing body of such city for which it shall be fairly compensated. Such compensation shall be an amount mutually agreed upon by the affected parties or an amount determined by the following formula:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated. As used in this paragraph, "depreciated replacement cost" means the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility, as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) the depreciated replacement costs of the remaining proportion of any take or pay power contracts or participation power agreements;

(3) the depreciated replacement cost for the electric utility facilities outside the affected territory used in providing service to the formerly franchised area. Such facilities shall include all generation facilities and all transmission facilities throughout the terminated utility's integrated system, the value of which shall be determined by the depreciated replacement cost formula in paragraph (1) multiplied by the percentage of the terminated utility's total retail kilowatt-hour sales to customers in the affected area during the 12 months next preceding the effective date of the sale;

(4) all reasonable and prudent costs of detaching the electric system facilities to be sold, including the reasonable costs of studies and inventories made to determine the facility's value and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated;

(5) an amount equal to the net revenues received during the 12 months next preceding the date of termination of the service rights from the customers within the affected area of the retail electric supplier whose service rights are terminated. As used in this paragraph, "net revenues" means the total revenues received by the terminated utility for electric service within the affected area less franchise and sales taxes collected; the cost of fuel or purchased power recovered in the revenues; and labor, maintenance, administration and insurance. This number shall be multiplied by the number of years remaining in any franchise contract; and

(6) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2), (3), (4) and (5) by the retail electric supplier whose service rights are terminated, calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(b) If the parties are unable to agree upon the amount of compensation to be paid pursuant to this act after 60 days following the date of termination of service rights, either party may apply to the district court having jurisdiction where any portion of the facilities is located for determination of compensation. Such determination shall be made by the court sitting without a jury.

History: L. 1987, ch. 255, § 1; April 23.

66-1,176c. Compensation of private retail electric supplier for certain electric system facilities acquired by city. In addition to the fair cash value of any plant and appurtenance thereto determined pursuant to K.S.A. 12-811, a retail electric supplier whose service rights have expired by reason of failure of the renewal of a valid franchise shall be entitled to compensation for all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of such retail electric supplier less the value of all electric system facilities replaced by new facilities required for the reintegration of the remaining electric system facilities.

History: L. 1987, ch. 255, § 2; April 23.

14

12-811. Purchase by city of corporate utility plants upon expiration of franchise; petition to court; notice; appraisers; election; bonds. In any city wherein the franchise of a corporation supplying water, natural or artificial gas, electric light or power, heat, or operating a street railway, has expired or will expire before the completion of the proceedings contemplated by this section, unless an earlier date is fixed by the franchise, the governing body may by resolution declare it necessary and for the interest of such city to acquire control and operate any such plant. Upon the passage of such resolution an application may be presented in writing to the district court of the county in which such city is located, which shall set forth the action of the said city relative thereto, and a copy of the resolution so passed by the city, and praying for the appointment of commissioners to ascertain and determine the value of such plant.

Thereupon a time shall be fixed for the hearing thereof, of which either at least ten days' notice shall be given in writing, or at least thirty days' notice shall be given by publication once in the official city paper, to the person, company or corporation owning said plant and to all persons having or claiming liens on such property: *Provided,* That publication in the city paper shall not be made until an affidavit has been filed showing that actual service of notice cannot be made and that a diligent effort has been made to obtain such service, and said court shall make an order granting such application, and provide for the appointment and selection of three commissioners, one of whom shall be selected by the city, and one by the person, company, or corporation owning such plant, and the third shall be designated by the judge of the court, who shall be an expert engineer; and the said commissioners shall take an oath to faithfully, honestly and to the best of their skill and ability, appraise and ascertain the fair cash value of said plant and the appurtenances thereunto belonging or in any way appertaining to same; but in the determination of such value said commissioners shall not take into account the value of the franchise or contract given or granted by said city to such person, company or corporation.

The said commissioners shall carefully examine said plant and may examine experts and persons familiar with the cost, construction and reproduction cost of such plant, and resort to any other means by which they may arrive at the value thereof, and the city or the person, company or corporation owning such plant may produce such testimony before said commissioners as in their judgment seems necessary and desirable. Said commissioners shall make their report in writing under oath and file the same with the clerk of the district court. Each party shall have ten days from the filing of said report to file exceptions thereto. Thereupon at a time to be fixed by the court, of which each party shall have ten days' notice in writing, a hearing shall be had upon the said report and the exceptions thereto, and the court thereupon shall confirm, reject or modify said report, and its decision therein shall be a final order from which an appeal may be taken to the supreme court. If any city by a majority vote of the electors voting upon the proposition at an election called and held according to law shall elect to take the property at the amount so ascertained, the governing body is hereby authorized to enact a proper ordinance providing for the issue of bonds according to law to be sold and the proceeds thereof used for the purchase of such plant.

If the city elects to pay the award of said commissioners as approved by the district court it may do so at any time within six months from the date of final order of the district court on the report of the commissioners if no appeal to the supreme court be taken, or from the final judgment in case thereafter an appeal is determined, by paying the amount of the award to the clerk of the district court, and thereupon the title, right and possession of such plant and appurtenances shall vest absolutely in the city and the city shall have the right to enter into and take possession thereof. The court shall make all orders necessary to protect such city in the possession of the property and plant. When the purchase money is paid into court for such plant, it shall be paid out only upon the order of the court. If there are any liens or encumbrances upon such plant, the nature and extent thereof shall be ascertained by the court after fixing a time for the hearing, of which all parties in interest shall have sufficient notice. The ascertained liens and encumbrances shall first be paid out of the said fund and the balance to the person, company or corporation owning such plant.

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TO: The Honorable Chairman Holmes and Members of the Committee

FROM: James G. Flaherty
Anderson, Byrd, Richeson, Flaherty & Henrichs
Attorneys for Greeley Gas Company

RE: SB 546 An Act Concerning Retail Natural Gas Suppliers; Relating to Franchise Agreements

Good Morning Mr. Chairman and Members of the Committee:

I am Jim Flaherty. I am testifying on behalf of Greeley Gas Company (Greeley) in support of Senate Bill 546.

Greeley is a local distribution company that serves over 117,000 customers spread throughout Kansas. Greeley provides natural gas utility service in 114 communities within 37 counties in the State of Kansas. In the majority of those communities, Greeley has a franchise agreement which allows it the right to use the streets, alleys and rights-of-way within the city to locate its pipeline distribution system and other facilities which are necessary to provide utility service to customers in those communities.

Greeley supports Senate Bill 546 because it will provide better guidance to all parties involved in those limited situations where a municipality elects to acquire the distribution system and other facilities from the natural gas public utility either during the period in which a valid franchise is in effect or at the time a franchise expires, and the municipality and natural gas public utility are unable to agree on what compensation should be paid to the utility. Because Senate Bill 546 will provide better guidance to the utility and municipality regarding the compensation issue, the process should become more stream-lined. Both parties will have a much clearer idea of what the acquisition cost or compensation will be at the beginning of the process instead of towards the end of the process.

Senate Bill 546 establishes a statutory formula to be used by the parties to determine compensation when the parties are unable to mutually agree on that issue. The proposed formula in Senate Bill 546 is nearly identical to the formula established by this legislature in 1987 to address the situation where a municipality elects to acquire an electric utility system. The proposed statutory

HOUSE UTILITIES
DATE: 3-18-02
ATTACHMENT 2

formula would replace the current and highly subjective standard which merely provides that compensation be based on the "fair cash value" of the natural gas plant and facilities being acquired. By setting forth a predetermined statutory formula to be used in calculating the amount of compensation to be paid by the municipality to the utility, all parties will have a better understanding as to what that compensation will be at the beginning of the process. This should lead to more informed decision making on the part of both parties, and should lend itself to a process which will encourage the parties to reach agreement on the amount of compensation to be paid to the utility.

Greeley has reviewed the statements made by Kansas Gas Service in its testimony in support of Senate Bill 546 and concurs with those statements.

kansasmunicipalutilities

Testimony Before the

House Utilities Committee

March 18, 2002

Colin Hansen
Executive Director
Kansas Municipal Utilities

Senate Bill 546 – Natural Gas Annexation Compensation

In Kansas, 67 cities provide natural gas distribution services to their citizens. The vast majority of these municipal gas systems operate in small rural towns. With the exception of Winfield, Chanute and Iola, all of the municipal gas systems operate in communities less than 5,000 in population. These systems primarily serve towns of less than 1,000 in population and are typically surrounded by rural land in which no gas utility provides service.

Since last summer, KMU has worked with stakeholders in the electric industry to address several reasonable and valid annexation concerns voiced by the rural electric cooperatives. The result was SB 480 which, while requiring a significant sacrifice on the part of municipal electric utilities, continues to be supported by KMU as just and fair compromise legislation.

KMU remains unconvinced that the same annexation concerns are reasonable and valid for natural gas service territory. While it is hard to argue that the annexation provisions adopted for electric utilities should not also hold for gas utilities, we don't believe that a fundamental necessity for this legislation has been yet demonstrated. In fact, KMU municipal gas members have reported that they believe the negotiations for disputed gas customers with private gas utilities have thus far been fair and equitable on both sides. Both sides typically walk away unhappy, indicating to me that perhaps a reasonable compromise was struck.

Cities with municipal gas systems rarely take over customers in the service territory of another gas utility. However, in the rare instances in which this has happened the city and utility have generally negotiated to secure transfer of the gas customers.

For example, the city of Iola worked with Kansas Gas Service in 1999 to "purchase" 126 KGS gas customers that were located within the city limits. The city of Winfield, conversely, attempted to negotiate the transfer of eight Peoples Natural Gas customers (again located within the city boundaries) to the municipal gas system in 1993. At the $1,100 per meter cost the company demanded, the city was forced to abandon the prospect of serving those citizens. In both situations, the private utility had ample ability to recoup reasonable value for their investment in these customers.

For these reasons – while the association does not strongly oppose SB 546 – KMU continues to question the necessity of the legislation.

HOUSE UTILITIES

DATE: 3-18-02

ATTACHMENT 3

421 N. Main, Suite 3 • McPherson, KS 67460-3434 • 620.241.1423 ph
email - kmu@kmunet.org • www.kmunet.org

Proposed Amendments to Proposed Sub. for H.B. 2100

1. Require DMA to enter into a contract with the attorney general that establishes
   - - The maximum fees that DMA can charge telemarketers for access to the no-call list
   - - The maximum fees that DMA can charge consumers to register for the no-call list
   - - A schedule of dates by which a consumer must register in order to appear on up-dates of the no-call list
   - - A schedule of dates by which DMA will provide telemarketers up-dates of the no-call list

   If DMA does not agree to enter into such contract, the attorney general may put the contract out for bid and contract with another vendor to establish and maintain the no-call list.

2. Add following subsection (g) on page 5 and reletter the remaining subsections:

   (h)(1) Upon request of the attorney general for the purpose of enforcing the provisions of this section, the direct marketing association shall furnish the attorney general with all information requested by the attorney general concerning a telephone solicitor or any person the attorney general believes has engaged in an unsolicited consumer telephone call prohibited by this section. The direct marketing association shall not charge a fee for furnishing the information to the attorney general.

   (2) Upon request of any consumer who has registered in accordance with this section, the direct marketing association shall furnish the consumer with all information requested by the consumer concerning a telephone solicitor or any person who the consumer believes has engaged in an unsolicited consumer telephone call prohibited by this section. The direct marketing association shall not charge a fee for furnishing the information to the consumer.

   (3) The direct marketing association shall comply with any lawful subpoena or court order directing disclosure of the list or any other information.

2. Add following subsection (g) on page 5 and reletter the remaining subsections:

   (h) The direct marketing association shall promptly forward any complaints concerning alleged violations of this section to the attorney general.

HOUSE UTILITIES

DATE: 3-18-02

ATTACHMENT 4

2002

PROPOSED Substitute for _____ BILL NO. ___

By Committee on Utilities

AN ACT concerning certain unsolicited telephone calls; prohibiting certain acts and providing penalties for violations; amending K.S.A. 2001 Supp. 50-670 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section and section 2, and amendments thereto:

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes.

(2) "Unsolicited consumer telephone call" means a consumer telephone call other than a call made:

(A) In response to an express request of the person called;

(B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call; or

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest ~~had an existing business relationship if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services, or~~ has an established business relationship, unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls, in which case the telephone solicitor must maintain a record of the consumer's request not to receive future consumer telephone calls and shall honor the consumer's request for 10 years from the time the request is made.

(3) "Telephone solicitor" means any organization, partnership, association

HOUSE UTILITIES
DATE: 3-18-02
ATTACHMENT 5

or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device~~;~~.

(4) "Automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance~~;~~.

(5) "Negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

within the preceding ~~60~~ 36 months

(6) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and consumer with or without an exchange of consideration, on a basis of an inquiry, application, purchase or transaction by the consumer regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

(1) Identify themselves;

(2) identify the business on whose behalf such person is soliciting;

(3) identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

(4) promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call;

(5) hang up the phone, or in the case of an automatic

dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called; and

(6) a live operator or an automated dialing-announcing device shall answer the line within five seconds of the beginning of the call. If answered by automated dialing-announcing device, the message provided shall include only the information required in subsection (b)(1) and (2), but shall not contain any unsolicited advertisement.

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes, ~~and when the telephone solicitor's service or equipment is capable of allowing the display of such number.~~ Shall be required as of Jan 1, 2004

(d) A telephone solicitor shall not transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease.

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before any payment is collected.

(f) Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section.

(g) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(h) This section shall be part of and supplemental to the Kansas consumer protection act.

New Sec. 2. (a) Prior to making unsolicited consumer telephone calls in this state and quarterly thereafter, a telephone solicitor shall consult the national do-not call list maintained by the telephone preference service of the direct marketing association, and delete from such telephone solicitor's

calling list all state residents who have registered with such service. The direct marketing association shall offer to consumers at least one method of registration at no cost and such registration shall be for a period of five years. Consumers desiring to register for such service may contact the direct marketing association ~~or the attorney general~~. Membership to the direct marketing association shall not be a requirement for telephone solicitors to obtain the telephone preference service list and telephone solicitors shall have access to the list. The direct marketing association shall make available to the attorney general, in an electronic format, the telephone preference service list and all quarterly updates of the telephone preference service list at no cost. ~~The attorney general may inform a Kansas consumer whether the consumer's telephone number appears on the current list. The attorney general may compile a list of telephone numbers from consumers desiring to register for such service. The attorney general shall forward the list to the direct marketing association in an electronic format no less than 15 days prior to the date of the next quarterly update. No registration fee shall be imposed on the attorney general for submission of such list to the direct marketing association~~.

The cost for access to the direct marketing association's telephone preference service list shall not exceed five hundred dollars ($500) per year for the four quarterly updates. The direct marketing association may charge an additional fee for a telephone solicitor who requires monthly updates, not to exceed four hundred dollars ($400) per year. The direct marketing association shall update the telephone preference service list on a quarterly basis and shall make the updated list available to telephone solicitors on the first day of the following months January, April, July and October. A telephone solicitor prior to accessing such list shall complete a subscription agreement that; (a) restricts use of the list exclusively for authorized purpose contained in this act; and (b) provides the telephone solicitor's contact and mailing information; and (c) selects the method of updates required (monthly or quarterly); and (d) submit the appropriate fee. Consumers desiring to register a telephone number shall submit their information no less than thirty days prior to the date of the next quarterly update. A consumer desiring to register shall submit to the direct marketing association, their name, address, city, state, zip code and up to two telephone numbers to be registered.

(b) Telephone solicitors shall have a period of not more than 60 days from the time of receipt of the current quarterly update to remove a consumer's telephone number from the telephone solicitor's calling lists.

(c) No telephone solicitor may make or cause to be made any unsolicited consumer telephone calls to any consumer if the consumer's telephone number or numbers appear in the current quarterly list of consumers registered with the telephone preference service maintained by the direct marketing association. A telephone solicitor shall not use the telephone preference service list for any other purpose than to remove consumers' telephone numbers from calling lists.

(d) A telephone solicitor shall be liable for violations of subsection (b) if such telephone solicitor makes or causes to be

5-4

made an unsolicited telephone call to a state resident whose telephone number appears on the telephone preference service current quarterly list or uses the list for any unauthorized purpose.

(e) 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 act.

(f) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(g) ~~No later than December 31, 2002,~~ the attorney general ~~shall~~ may convene a meeting or meetings with consumer advocacy groups to collectively develop a method or methods to notify the consumer advocacy group's membership and educate and promote to Kansas consumers generally the availability of the direct marketing association's telephone preference service, and of a telephone solicitor's obligations under this act.

(h) If the federal trade commission establishes a single national do-not call list the attorney general may designate the list established by the federal trade commission as the Kansas do-not call list.

(k) ~~(i)~~ The attorney general may promulgate rules and regulations to carry out the provisions of this section.

(l) ~~(j)~~ The provisions of this section shall be a part of and supplemental to the Kansas consumer protection act.

Sec. 3. K.S.A. 2001 Supp. 50-670 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

(i) On or before the first day of each regular legislative session, the attorney general shall report to the standing committees of the house and senate which hear and act on legislation relating to telecommunications issues on the status of implementation of the provisions of this Act, including, but not limited to, the number of consumers who have given notice of objection, the number of requests for the data base, state revenues received from the respective sources of revenue under this Act, the number of complaints received alleging violations of this Act and actions taken to enforce the provisions of this Act.

(j) The attorney general shall ensure that consumers are given clear notice that telephone numbers are not immediately added to the no call data base upon submission of a consumer's notice of objection and that it may be as long as 90 days before telephone solicitors receive a new no call data base which includes the consumer's telephone number.

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Joan ?
3/18/02

Proposed Amendments to Proposed Sub. for H.B. 2100

Alternative #1

On page 1, add a new subsection (2)(D) to read:

(2) "Unsolicited consumer telephone call" means a consumer telephone call other that a call made . . .

(D) by a telephone solicitor who, incidental to the solicitor's regular business, engages in making consumer telephone calls.

Alternative #2

On page 1, add a new subsection (2)(D) to read:

(2) "Unsolicited consumer telephone call" means a consumer telephone call other that a call made . . .

(D) by a telephone solicitor to schedule a meeting, in person, with the consumer.

HOUSE UTILITIES

DATE: 3-18-02

ATTACHMENT 6