

Approved: May 1, 2002
Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 12:30 p.m. on March 28, 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: Doug Smith, Direct Marketing Association
George Barbee, Kansas Association of Financial Services
Ernest Pogge, AARP
Leslie Kaufman, Kansas Farm Bureau
Steve Rarrick, Office of the Attorney General

Others attending: See Attached List

Sub SB 296 - Unsolicited consumer telephone calls; no-call list

Chairman Holmes opened the hearing on **Substitute for SB 296**. The chairman stated that due to the committee having already spent several days on no call legislation, testimony would be limited.

Doug Smith, on behalf of the Direct Marketing Association and the other industry members, spoke to the committee in support of **Sub SB 296**,

George Barbee, representing the Kansas Association of Financial Services, appeared in support of **Sub SB 296 (Attachment 1)**. Mr. Barbee stated they support no call legislation and urged the committee to amend the bill to include the language in **Sub HB 2100**.

Ernie Pogge, AARP, appeared in opposition to **Sub SB 296 (Attachment 2)**. Mr. Pogge requested the committee consider no call legislation that put the Attorney General's office in charge of oversight and enforcement.

Leslie Kaufman, Associate Director of Public Policy Division for Kansas Farm Bureau, testified in opposition to **Sub SB 296 (Attachment 3)**. Ms. Kaufman stated they had concerns regarding the impact the bill would have on their affiliates' ability to pursue memberships.

Steve Rarrick, Deputy Attorney General for the Consumer Protection Division of the Office of the Attorney General, testified against **Sub SB 296 (Attachment 4)**, however, he stated they are in support of no call legislation that is effective and enforceable. In response to a request from the Chairman, Mr. Rarrick provided amendments for the proposal to replace the language in the bill with that of **Sub HB 2100**.

Written testimony in opposition to **Sub SB 296** was submitted by Terry Humphrey, Kansas Trial Lawyers Association (**Attachment 5**).

Chairman Holmes closed the hearing on **Sub SB 296** and opened debate on the bill.

Representative Sloan moved to do a 'gut and go' and substitute the language from Sub HB 2100 into the bill. Representative McLeland seconded the motion. Motion carried. Representative Sloan moved to adopt the language contained in the proposed balloon distributed by the Attorney General's Office (Attachment 4) on pages 1, 3, 4 (except the first two sentences) and 5. Representative Myers seconded the motion. Representative Krehbiel moved to divide the motion by pages. On motion for page one, motion carried. On motion for page two, motion carried. On motion for page 4, request to divide, part 1, motion carried, part 2, motion carried; part 3, motion carried and part 4, motion carried. On motion for page 5, motion carried. Representative Loyd moved to add the first sentence on page 4 from the Attorney General's balloon. Representative Kuether seconded the motion. The motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 12:30 p.m. on March 28, 2002.

Representative Sloan moved to recommend **House Substitute for Substitute SB 296**, as amended, favorable for passage. Representative Lightner seconded the motion. Motion carried. Representative Loyd will carry the bill.

SB 547 - Rural Kansas self-help gas act

Chairman Holmes opened the debate on **SB 547**. Representative Sloan distributed a proposed balloon amendment (Attachment 6) and moved to adopt. Representative Lightner seconded the motion. Motion failed. Representative Loyd moved to recommend **SB 547** favorable for passage. Representative Krehbiel seconded the motion. Motion carried. Representative Loyd will carry the bill.

Meeting adjourned at 1:28 p.m.

The next meeting will be March 29, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 28, 2002

NAME	REPRESENTING
Tom Day	KCC
Leo Haynos	KCC
Joe Muck	KCBPU
J.C. Gray	AQUILA
Walker Hendrix	CURB
Steve Johnson	Kansas Gas Service
Jim Gortner	SWRT
Todd Johnson	KLA
Doug Smith	Dehart & Darr
George Barber	KAFS
Greg Krissick	KCGA/KGSPA
Bruce Graham	ICEPC
Justin Haul	SWKIA
Ernie Rogge	AARP
Janet McPherson	Ks. Farm Bureau
Leslie Kaufman	" "
MARK SCHREIBER	Westar Energy
Andy Shaw	SWKIA
Steve KEARNEY	SW KS IRRIGATION ASSN
Ken Peterson	KS Petroleum Council

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 28, 2002

NAME	REPRESENTING
Jack Graves	Duke-PZH-KM
Ernie Kutzley	AARP
Whitney Dameron	FS Gas Service
Steve Moutgomery	MCI Worldcom
Leslie Kaufman	KFB
Mike Murray	Sprint
Barb Coxant	KTVA

STATEMENT

House Committee on Utilities

SUB SB-296

Mr. Chairman and members of the committee, my name is George Barbee, and appear today representing the Kansas Association of Financial Services. The members are generally finance companies that make consumer loans either directly or through retail outlets, such as furniture, auto, or appliance stores, to name a few.

Telemarketing is one of the means to promote services and financial products to prior and existing customers. We agree that those customers should be able to participate in a no-call list.

After several days of hearings on this issue, you arrived at a proper approach to allow businesses to market their services and products while allowing consumers a means to control intrusion into their homes. That compromise was Sub HB-2100.

You are urged to amend HB-2100 provisions into this bill and report it favorably for passage.

HOUSE UTILITIES

DATE: 3-28-02

ATTACHMENT 1



555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

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

March 28, 2002
Ernest Kutzley
Associate State Director/Advocacy

Good afternoon Chairman Holmes and Members of the House Utilities Committee. AARP represents the views of our more than 350,000 members in the state of Kansas. AARP is the nation's leading organization for people age 50 and older. AARP serves members needs and interests through information and education, advocacy and community services provided by a network of local chapters and experienced volunteers throughout the state and country. Thank you for this opportunity to express our *opposition to Substitute for Senate bill 296*.

The number of unsolicited telemarketing calls that older residents in Kansas receive is staggering. These calls present a significant privacy concern for individuals who are tired of multiple, daily intrusions into their privacy and help avoid potentially fraudulent telemarketing calls – many of which are targeted toward seniors.

In today's information technology age, your constituents in Kansas value their privacy more than ever. AARP believes that, as consumers, they have the right to be free from unsolicited calls into their homes, and that they shouldn't have to be forced to screen calls by purchasing a caller ID systems or answering machines. The vast majority of Americans – up to 97 percent according to some surveys – agree with our position.

To insure consumer privacy it is crucial to have a state agency manage the no call list, whose charge is to protect the citizens of the state and bring enforcement actions for violation of the law. State agencies are needed to make sure the process for getting on the list is widely publicized and easily accessible to all consumers, that the list is complete, that all telemarketers operating in the state subject to the law buy the list and have proper procedures for complying with it, and have inspection and investigation authority to make sure the law is being properly followed.

In no case should the state's oversight, investigatory, or enforcement ability be compromised. If the DMA manages the list, the ability of the state to properly carry out these functions will be diminished. The purpose of a statewide do not call list is to have an effective means to prevent unwanted telemarketing calls; to have the major opponent of do not call laws then maintain the do not call list defeats the point of the legislation.

We believe that this bill, as written, will not provide Kansas consumers with the privacy that they have asked for, that the enforcement ability has been greatly diminished and the future fiscal notes for this legislation will be much greater than ever estimated. AARP will educate

601 E Street, NW Washington, DC 20049 (202) 434-227
Esther "Tess" Canja, President William D. "Bill" Novak

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ATTACHMENT 2

members and consumers about this type of legislation and will continue to advocate for strong legislation that will provide them with the privacy and safety that they have requested.

Do Not Call laws do not regulate the industry per se. Instead, they give consumers more control over unsolicited intrusions into their homes. Legislation supported by AARP would 1) keep exemptions to a minimum; 2) include the oversight and enforcement authority of the state Attorney General; 3) be available at little or no cost or effort; 4) include significant penalties for violations; and, 5) be updated frequently.

Therefore on behalf of our 350,000 state members we thank you for this opportunity to express our ***opposition to Substitute for Senate Bill 296 and ask you not support this bill.***

Ernest Kutzley
Associate State Director/Advocacy
AARP Kansas

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Kansas Farm Bureau

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org
800 S.W. Jackson, Suite 817, Topeka, Kansas 66612 • 785.234.4535 • Fax 785.234.0278

March 28, 2002

TO: Chairman Holmes and House Utilities Committee

FROM: Leslie Kaufman, Associate Director
KFB Public Policy Division

RE: Sub. SB 296/Sub. HB2100 – “No Call” Legislation.

Kansas Farm Bureau legal counsel has reviewed Sub. SB 296 and Sub. HB 2100 and we have significant concerns regarding the impacts the bill would have on our affiliates, particularly our County Farm Bureau Associations and our educational foundations.

In our opinion, the bill could be a serious impediment to county farm bureau activities, especially membership drives. A large number of county association offices do not have full time staff. The burden of ensuring the county association had the updated no call database would be a real challenge for many of the associations. Even if the statewide association, Kansas Farm Bureau, obtained the lists, the local counties would still be the entity that had to check and verify each and every number when contacting non-members for recruitment.

Farm Bureau achieved statewide total membership gain last year for the first time in many years. This was due mainly to the hard work of the volunteer farmer and rancher members in the 105 counties across Kansas. Increasing our membership base allows Farm Bureau to provide increased services for our members. We believe provisions of Sub. SB 296/Sub. HB 2100 could stifle membership recruitment on the local level. Although we do not believe communications with current Farm Bureau members would be impacted, we do believe the language would negatively impact our ability to contact potential new members and those whom were members at one time but not currently.

Kansas Farm Bureau has formed two foundations to provide educational opportunities related to agriculture and to provide legal assistance to farmers and ranchers. Staff counsel has also indicated the “no call” bill could adversely impact the foundations from soliciting funds over the telephone, unless a relationship had already been established.

Kansas Farm Bureau prides itself in providing quality programs and services to enhance the business and profession of farming, increase member net income, provide superior value in the marketplace and improve the quality of life in Kansas. Our organization would not exist if it were not for our farmer and rancher members. Membership drives are an integral part of our association activities. We understand the sensitivities many have to receiving phone calls from businesses, charities, telemarketers and numerous other

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ATTACHMENT 3

entities. However, we do not believe that stifling the ability of associations to increase membership, offer services or increase participation in activities is the appropriate means to counter unwanted phone calls. We would respectfully request the Senate ensure that organizations like Farm Bureau are excluded from "no call" legislation. We have attached a balloon with a suggested amendment.

Thank you for your consideration of this matter. Please contact us if you have questions regarding our position on Sub. SB 296.

KFB Public Policy Division – Topeka Office 234-4535

Leslie Kaufman

Janet McPherson

KFB Headquarters – Manhattan 785-587-6000

Patty Clark, ext. 6106

Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

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Session of 2012

Substitute for HOUSE BILL No. 2100

By Committee on Utilities

3-20

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 natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

Such definition shall not include any not-for-profit organization or charitable organization exempt from federal income taxation pursuant to section 501(c)(3) or 501 (c)(5) of the internal revenue code, which is agriculturally related and incorporated in the State of Kansas.

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CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHONE: (785) 296-3751 FAX: (785) 291-3699

CONSUMER HOTLINE
1-800-432-2310

Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Utility Committee
Re: Substitute for Senate Bill 296
March 28, 2002

Chairperson Holmes and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in opposition Substitute for Senate Bill 296 as currently drafted. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General supports the enactment of no-call legislation that is effective and enforceable. Substitute for Senate Bill 296 is not effective or enforceable, as it is an unconstitutional delegation of legislative authority to a non-governmental entity. I would refer the Committee to the legal memorandum provided during the previous hearings on House Bills 2100 and 2903 in support of this conclusion, rather than include this information in my testimony today.

The Chair has advised that it is his desire to replace the provisions of this bill with the provisions of Substitute for House Bill 2100. He asked me yesterday morning to put together amendments we believe are necessary to make those provisions enforceable and effective, and to meet with the industry lobbyists to try to reach agreement on proposed amendments. I met with representatives of the DMA, Sprint, MCI, and Southwestern Bell at 1:00 p.m. yesterday, presented them with the proposed amendments, and faxed those documents to their clients during our meeting to help facilitate the process. I received a call from Doug Smith at 11:30 a.m. today, who advised me that industry has no objections to the amendments at page 1, page 3, and page 5. There remain some issues on some of the amendments on pages 2 and 4 which I will detail below.

Before summarizing the proposed amendments, it must be noted that passage of any no-call law, including the provisions of Substitute for HB 2100, without funding the additional staff necessary to investigate and prosecute violations, will not provide the intended protections of this legislation, and will negatively impact our ability to handle our current caseload. Our office has provided to this Committee, the Division of Budget, and the Governor's Office our estimates of the additional staff and funding required to enforce no-call legislation proposed this year based on the DMA list with an effective date of July 1, 2002. The current estimates were made with information that was not available when estimates regarding earlier no-call bills were submitted, since Missouri's law was not effective until July 1, 2001. This session we had information gained by talking with the Missouri Attorney

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ATTACHMENT 4

General about their actual experience investigating and enforcing their no-call legislation. That office had also underestimated the public response to no-call, and we believe it is only prudent to learn from that experience.

A minimum of four new staff members will be required to handle the anticipated telephone calls about registration, complaints about violations, investigation, and prosecution. As I have told this Committee previously, Missouri received 11,000 complaints in the first two months following the July 1, 2001, effective date of their law. Using the Missouri experience as a guide, and even adjusted for our population, this could result in over 5,000 no-call complaints to our office in July and August alone. To put that in perspective, we received a total of just under 8,000 complaints in 2001. We simply cannot absorb this additional workload with existing staff. As a result, funding will need to be provided to enforce this law, whether through existing fee funds as we originally proposed, or otherwise. Passing this law without providing the office funding will result not only in our inability to enforce this law, but our ability to devote our already limited time and resources to the cases we would otherwise still be handling.

The balloon amendments attached to my testimony do the following:

- At page 1, lines 36-39, delete the language requiring telephone solicitors to maintain records of existing customers requesting not to receive future consumer telephone calls for 10 years. This change will simply allow consumers to opt out of the existing business relationship exemption and prohibit telemarketers from calling them if they are on the no-call list. There appears to be no objection to this amendment.
- Page 2, line 16, delete the word “inquiry” from the definition of established business relationship. This is consistent with a change in this same definition in the spam law by the House Judiciary Committee, which found the term too broad to justify being considered an established business relationship. Anyone who has made an inquiry by asking to be called will still be exempted under the express request exemption at page 1, line 26. Industry opposes this amendment.
- Replace the term “do-not call” at page 3, lines 16, 36, 39-40, 42, and 43 and page 4, lines 14-15, with the term “no-call” to keep the use of the term consistent throughout the legislation. There are no objections to these amendments.
- Add new language at page 4, line 3, to specify the maximum access fee to be charged for the no-call list, the specific quarterly dates the list must be published, and require the entity maintaining the list to include telephone numbers on the next quarterly list if submitted 30 days prior to the quarterly publication date. This will resolve the last of our unlawful delegation issues. This language was originally submitted by Rep. Myers and it is my understanding that the industry had approved it at that time. I understand from my conversation with Mr. Smith that the DMA opposes the first two sentences of this proposal. We believe the maximum fee must be set by statute, not the Attorney General by contract. We believe the second sentence could be deleted, but the first sentence is necessary. The DMA would then be free to charge any

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fee for reports or other services rendered, other than the four quarterly reports which the law requires to be used by telemarketers.

- Replace the word “receipt” with the word “publication” at page 4, line 14. It would be an unnecessary expense for our office to prove the date the list was received by a telemarketer. Additionally, this sets the time for compliance with the law at a common date so that the law is applied equally to all who must comply with its provisions. There appear to be no objection to this amendment.
- Add the phrase “and (e)” at page 4, line 23. As written, it would make a telemarketer liable only for failing to remove a consumer’s telephone number from the telemarketer’s calling list, but wouldn’t make it a violation to call a consumer whose telephone number is on the no-call list. The DMA has concerns with this amendment, but I believe this issue is over how paragraphs (d) and (e) were drafted, and both parties believe telemarketers should be liable for calling a number on a quarterly list 60 days after the list is published. I would hope the amendment would be made and the parties could redraft (d) and (e) to express this intent.
- At page 4, lines 28-33, replace the current affirmative defense language with affirmative defense language similar to language passed by the Senate in Substitute for Senate Bill 296. The last sentence of this amendment will avoid the considerable expense and unnecessary litigation which would be required under the existing language for our office to utilize the 12 month limitation on this defense passed by this Committee. Without this language, prosecutors will need to file suit against each telemarketer that violates the no-call law in order utilize the 12 month “one strike” limitation. Even if the Committee chooses not to use the entire language proposed for paragraph (g), this last sentence needs to be added to the affirmative defense provision or we will be required to file needless litigation to utilize the 12 month limitation. I believe the language is acceptable to all parties, with the exception of the 12 month limitation passed by the Senate and this Committee, which the DMA opposes.
- Finally, at page 5, line 7, the proposed language would have penalties recovered from prosecutions of violations of the no-call law paid to the Attorney General to investigate and prosecute violations. This would provide some funding to our office for the additional staff required to enforce this law. I believe this proposal is acceptable to all parties.

On behalf of Attorney General Stovall, I urge you to decline to recommend passage of Substitute for Senate Bill 296. If the Committee replaces the provisions in this bill with the provisions of Substitute for House Bill 2100, we would urge your favorable consideration of the balloon amendments we have submitted to make the law effective and enforceable. I would be happy to answer questions of the Chair or any member of the Committee.

**BALLOON
AMENDMENTS**

Session of 2002

Substitute for HOUSE BILL No. 2100

By Committee on Utilities

3-20

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.

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(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]~~ — [delete]

(3) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

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

3 (A) When connected to a telephone line can dial, with or without
4 manual assistance, telephone numbers which have been stored or pro-
5 grammed in the device or are produced or selected by a random or se-
6 quential number generator; or

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

10 (5) "Negative response" means a statement from a consumer indi-
11 cating the consumer does not wish to listen to the sales presentation or
12 participate in the solicitation presented in the consumer telephone call.

13 (6) *"Established business relationship" means a prior or existing re-*
14 *lationship formed by a voluntary two-way communication between a per-*
15 *son or entity and consumer with or without an exchange of consideration,*
16 *on a basis of an ~~inquiry~~ application, purchase or transaction by the con-* [delete]
17 *sumer, within the preceding 36 months, regarding products or services*
18 *offered by such person or entity, which relationship has not been previ-*
19 *ously terminated by either party.*

20 (b) Any telephone solicitor who makes an unsolicited consumer tel-
21 ephone call to a residential telephone number shall:

22 (1) Identify themselves;

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

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

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

29 (5) hang up the phone, or in the case of an automatic dialing-an-
30 nouncing device operator, disconnect the automatic dialing-announcing
31 device from the telephone line within 25 seconds of the termination of
32 the call by the person being called; and

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

38 (c) A telephone solicitor shall not withhold the display of the tele-
39 phone solicitor's telephone number from a caller identification service
40 when that number is being used for telemarketing purposes ~~and~~, *except*
41 *that before January 1, 2004, a telephone solicitor's telephone number shall*
42 *not be required to be displayed* when the telephone solicitor's service or
43 equipment is not capable of allowing the display of such number.

45

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

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

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

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

12 (h) This section shall be part of and supplemental to the Kansas con-
13 sumer protection act.

14 New Sec. 2. (a) The attorney general shall contract with the direct
15 marketing association for the no-call list provided for by this act to be the
16 national ~~do-not-call~~ list maintained by the telephone preference service no-call
17 of such association. The contract shall establish:

18 (1) The maximum fees that telephone solicitors may be charged for
19 access to the no-call list;

20 (2) the maximum fees that consumers may be charge to register for
21 inclusion on the no-call list;

22 (3) the schedule of dates by which consumers must register in order
23 to appear on updates of the no-call list;

24 (4) the schedule of dates by which telephone solicitors will be pro-
25 vided updates of the no-call list; and

26 (5) what information shall be furnished, without charge, upon request
27 of a consumer, registered in accordance with this section, concerning a
28 telephone solicitor or other person who the consumer believes has en-
29 gaged in an unsolicited consumer telephone call prohibited by this
30 section.

31 If the direct marketing association does not agree to enter into the
32 contract provided for by this subsection, the attorney general may con-
33 tract, upon bids, with another vendor to establish and maintain the no-
34 call list provided for by this section.

35 (b) Prior to making unsolicited consumer telephone calls in this state
36 and quarterly thereafter, a telephone solicitor shall consult the ~~do-not-call~~ no-call
37 list provided for by this act, and shall delete from such telephone solici-
38 tor's calling list all state residents who have registered to be on such list.

39 The direct marketing association, or other vendor maintaining the ~~do-not~~ no-call
40 ~~call~~ list, shall offer to consumers at least one method of registration at no
41 cost and such registration shall be for a period of five years. Consumers
42 desiring to register to be on the ~~do-not-call~~ no-call list may contact the direct
43 marketing association, or other vendor maintaining the ~~do-not-call~~ no-call list.

46

The cost for access to the no-call list shall not exceed five hundred dollars (\$500) per year for the four quarterly updates. The direct marketing association, or other vendor, 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, or other vendor, shall update the no-call list on a quarterly basis and shall publish and make the updated list available to telephone solicitors on or before the first day of the following months: January, April, July and October. A telephone solicitor prior to accessing the no-call list shall submit the appropriate fee and complete a subscription agreement that: (1) restricts use of the no-call list exclusively for purposes authorized by this act; and (2) provides the telephone solicitor's contact and mailing information; and (3) selects the method of updates required (monthly or quarterly). Consumers who have submitted their information no less than thirty days prior to the date of the next quarterly update shall be included in the next quarterly update. A consumer desiring to register shall submit to the direct marketing association, or other vendor, their name, address, city, state, zip code, and the telephone numbers to be registered.

publication

no-call

and (e)

(g) It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate, by clear and convincing evidence, that the telephone solicitor at the time of the alleged violation: (1) had obtained a copy of the updated no-call list; (2) had established and implemented, with due care, reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls in violation of this section; (3) had trained the telephone solicitor's personnel in the requirements of this section; (4) had maintained records demonstrating compliance with this section; and (5) the unsolicited consumer telephone call was the result of an error. Such defense shall not be exercised by a telephone solicitor more than once within the state of Kansas in any 12-month period. A telephone solicitor shall be deemed to have exercised such defense if asserted in response to any consumer complaint about a violation of this section, regardless of whether litigation has been initiated.

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1 Membership in the direct marketing association shall not be a require-
 2 ment for telephone solicitors to obtain the telephone preference service
 3 list and telephone solicitors shall have access to the list. The direct mar-
 4 keting association, or other vendor, shall make available to the attorney
 5 general, in an electronic format, the no-call list and all quarterly updates
 6 of such list at no cost.

7 (c) The attorney general and the direct marketing association, or
 8 other vendor, shall ensure that consumers are given clear notice that
 9 telephone numbers are not immediately added to the no-call database
 10 upon submission of a consumer's registration and that it may be as long
 11 as 90 days before telephone solicitors receive a new no-call database
 12 which includes the consumer's telephone number.

13 (d) Telephone solicitors shall have a period of not more than 60 days
 14 from the time of receipt of the current quarterly update of the do not
 15 call list to remove a consumer's telephone number from the telephone
 16 solicitor's calling lists.

17 (e) No telephone solicitor may make or cause to be made any unso-
 18 licited consumer telephone calls to any consumer if the consumer's tel-
 19 ephone number or numbers appear in the current quarterly list of con-
 20 sumers registered on the no-call list. A telephone solicitor shall not use
 21 the no-call list for any other purpose than to remove consumers' tele-
 22 phone numbers from calling lists.

23 (f) A telephone solicitor shall be liable for violations of subsection (d)
 24 if such telephone solicitor makes or causes to be made an unsolicited
 25 telephone call to a state resident whose telephone number appears on
 26 the current quarterly no-call list or uses the list for any unauthorized
 27 purpose.

~~28 (g) It shall be an affirmative defense in any action or proceeding
 29 brought under this section that the defendant has established and imple-
 30 mented, with due care, reasonable practices and procedures to effectively
 31 prevent unsolicited consumer telephone calls in violation of this act. Such
 32 defense shall not be exercised by a telephone solicitor more than once
 33 within the state of Kansas in any 12-month period.~~

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

36 (i) (1) Upon request of the attorney general for the purpose of en-
 37 forcing the provisions of this section, the direct marketing association, or
 38 other vendor, shall furnish the attorney general with all information re-
 39 quested by the attorney general concerning a telephone solicitor or any
 40 person the attorney general believes has engaged in an unsolicited con-
 41 sumer telephone call prohibited by this section. The direct marketing
 42 association, or other vendor, shall not charge a fee for furnishing the
 43 information to the attorney general.

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

(j) The direct marketing association, or other vendor, shall promptly forward any complaints concerning alleged violations of this section to the attorney general.

~~(k)~~ The attorney general 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 no-call list, and of a telephone solicitor's obligations under this act.

(k) Penalties and fees recovered from prosecutions of violations of this section shall be paid to the attorney general to investigate and prosecute violations of this section.

~~(l)~~ 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 section, 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 section, the number of complaints received alleging violations of this section and actions taken to enforce the provisions of this section.

(l)

(m)

~~(n)~~ If the federal trade commission establishes a single national no-call list the attorney general may designate the list established by the federal trade commission as the Kansas no-call list.

(n)

~~(o)~~ The attorney general may promulgate rules and regulations to carry out the provisions of the Kansas no-call act.

(o)

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

(p)

New Sec. 3. This act shall be known and may be cited as the Kansas no-call act.

Sec. 4. K.S.A. 2001 Supp. 50-670 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: House Utilities Committee

FROM: Terry Humphrey, executive director
Kansas Trial Lawyers Association

RE: Sub. SB 296

DATE: March 28, 2002

Chairman Holmes and members of the House Utilities Committee: thank you for the opportunity to offer our opposition to Sub. SB 296. KTLA supports legislation to create a "do-not call" list to protect the privacy of Kansas consumers and to provide an effective means to prevent unwanted telemarketing calls. However, KTLA agrees with the American Association of Retired Persons that this legislation will only be effective if the list is managed by the State, not the Direct Marketing Association.

Also, Sub. SB 296 provides a powerful mechanism that will allow telemarketers to circumvent the consumer protections created by the do-not call list. Specifically, Sec. 1(f) states:

[(f) It is [No more than once each 12-month period of time, it shall be] an affirmative defense that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the law. A telephone solicitor shall not be held liable for violating this act if the telephone solicitor can demonstrate, by clear and convincing evidence, that the telephone solicitor: (1) Has obtained a copy of the updated do-not call list and established and implemented written policies and procedures related to the requirements of these regulations; (2) has trained the telephone solicitor's personnel in the requirements of these regulations; (3) maintains records demonstrating compliance with the regulations; and (4) if the telephone solicitor has made a subsequent unsolicited telemarketing sales call, made such call as the result of an error.

The reality is that this affirmative defense will often create an insurmountable burden on consumers to pursue a telemarketing company for unsolicited consumer telephone calls. The only way to overcome the defense is to depose the employees or former employees

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of the company to determine what the persons making the calls were instructed or how the company enforced its policy. This substantially increases the cost of the litigation and thereby the risk undertaken by the consumer.

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

With regard to the provision to allow use of the affirmative defense once during each 12-month period, we are aware of no other provision in the law that allows a wrongdoer "one free bite at the apple" during a 12-month period. This creates several other problems as well because "12-month period" is not defined and could be interpreted to mean annually or could be interpreted to mean 12 calendar months.

If it is interpreted to mean 12 months, it would force parties to file lawsuits before the 12 months run to avoid the defense rather than attempt to negotiate a settlement with the wrongdoer. Similarly, would the 12 months begin to run only if a consumer filed a lawsuit or would the 12 months begin to run if the consumer filed a complaint with the Attorney General's office? Such a provision does not exist in current law and the use of the provision in these circumstances creates numerous problems that will have to be faced by Kansas consumers, courts, and Attorney General's Office.

For these reasons, KTLA respectfully requests that the first sentence of the affirmative defense be stricken from Sub. SB 296.

Thank you again for the opportunity to express our support and concerns with Sub. SB 296.

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Sub SB 296 Fur. Am. by SCW 2

1 *the direct marketing association.*

2 *[(b) Telephone solicitors shall have a period of not more than*
3 *60 days from the time of receipt of the current quarterly update to*
4 *remove a consumer's telephone number from the telephone solici-*
5 *tors' calling lists.*

6 *[(c) No telephone solicitor may make or cause to be made any*
7 *unsolicited consumer telephone calls to any consumer if the con-*
8 *sumer's telephone number or numbers appear in the current quar-*
9 *terly list of consumers registered with the telephone preference*
10 *service maintained by the direct marketing association. A telephone*
11 *solicitor shall not use the telephone preference service list for any*
12 *other purpose than to remove consumers' telephone numbers from*
13 *calling lists.*

14 *[(d) A telephone solicitor shall be liable for violations of sub-section*
15 *(b) if such telephone solicitor makes or causes to be made*
16 *an unsolicited telephone call to a state resident whose telephone*
17 *number appears on the telephone preference service current quar-*
18 *terly list or uses the list for any unauthorized purpose.*

19 *[(e) As used in this section, "telephone solicitor" and "unsoli-*
20 *cited consumer telephone calls" shall mean the same as provided in*
21 *K.S.A. 50-670, and amendments thereto.*

22 *[(f) It is ~~no more than once each 12-month period of time, it~~*
23 *~~shall be] an affirmative defense that the defendant has established~~*
24 *~~and implemented, with due care, reasonable practices and proce-~~*
25 *~~dures to effectively prevent telephone solicitations in violation of~~*
26 *~~the law. A telephone solicitor shall not be held liable for violating~~*
27 *this act if the telephone solicitor can demonstrate, by clear and*
28 *convincing evidence, that the telephone solicitor: (1) Has obtained*
29 *a copy of the updated do-not call list and established and imple-*
30 *mented written policies and procedures related to the requirements*
31 *of these regulations; (2) has trained the telephone solicitor's per-*
32 *sonnel in the requirements of these regulations; (3) maintains re-*
33 *records demonstrating compliance with the regulations; and (4) if the*
34 *telephone solicitor has made a subsequent unsolicited telemarket-*
35 *ing sales call, made such call as the result of an error.*

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

38 *[(h) The attorney general may promulgate rules and regulations*
39 *to carry out the provisions of this section.*

40 *[(i) The provisions of this section shall be a part of and supple-*
41 *mental to the Kansas consumer protection act.*

42 *[Sec. 2. No later than December 31, 2002, the attorney general*
43 *shall convene a meeting or meetings with consumer groups to col-*

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SENATE BILL No. 547

By Committee on Utilities

2-8

12 AN ACT establishing the rural Kansas self-help gas act[; *amending*
13 *K.S.A. 66-1,150 and repealing the existing section*].

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. As used in sections 1 through 5 [6], and amendments
17 thereto, the following words and phrases shall have the following
18 meanings:

19 (a) "Certificate" means authority granted to a *natural gas* public
20 utility to transact business pursuant to chapter 66 of the Kansas Statutes
21 Annotated, and amendments thereto, to include any certificated area,
22 territory or exclusive service rights;

23 (b) "city limits" means the area within the defined corporate limits
24 of an incorporated city;

25 (c) "existing gas service utility" means a *natural gas* public utility
26 that presently owns, operates, maintains and is responsible for an existing
27 gas service line that the public utility, or its predecessor in interest, con-
28 structed from its distribution system to the point of service physically
29 located on the property being served and which is currently being used
30 to provide the property with firm gas service. ~~In no event will it include~~
31 ~~a *natural gas* public utility that merely owns, operates, maintains or is~~
32 ~~responsible for a meter or meter station and incidental pipeline~~
33 ~~connections;~~

34 (d) "firm gas service" means the level of gas service which obligates
35 the *natural gas* public utility, *unless otherwise agreed between the*
36 *natural gas public utility and the customer*, to provide their customer
37 with an unlimited supply of gas, available at all times and delivered to the
38 customer's property without interruption for any reason other than force
39 majeure;

40 (e) "gas" means natural gas as the term is commonly understood in
41 the natural gas industry to include the meanings ascribed to the terms
42 "gas" and "natural gas" in chapter 66 of the Kansas Statutes Annotated,
and amendments thereto;

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(f) “gas provider” means any person that provides gas, gas transportation, gas supply management or other gas services and any related facilities associated with delivering gas to a rural gas user;

(g) “gas supply system” means any well, pipeline, plant tailgate, meter or other facility which is a source of gas or which is associated with the transportation, treatment, processing or delivery of gas;

(h) “person” means an individual, association or other legal entity;

(i) “public utility” means a *natural gas* public utility or common carrier as defined in chapter 66 of the Kansas Statutes Annotated, and amendments thereto;

(j) “rural gas service” means all activities necessary or convenient to procure, manage, transport and deliver gas to a rural gas user; and

(k) “rural gas user” means any person ~~desiring to use gas currently using natural gas from a wellhead or gathering facility for agricultural purposes~~ on property they own, lease or operate that is located outside city limits ~~and not presently receiving gas service from an existing gas service utility.~~

~~Sec. 2. Any rural gas user who *desires to* constructs its own pipeline connection to a gas supply system, and any gas provider assisting the rural gas user, shall not be considered a public utility. If the rural gas service is provided within an area where a public utility holds a certificate, the existence of such public utility and its certificate will not in any way limit the rural gas user, or their gas provider, in establishing and maintaining the rural gas service provided for by this act *the rural gas user or the rural gas user’s gas provider shall first notify the existing gas service utility of their intent to provide rural gas service. [If the public utility holding the certificated area is not an existing gas service utility, then the existence of such public utility and its certificate will not in any way limit the rural gas user or the rural gas user’s provider in establishing and maintaining the rural gas service provided for by this act.]*~~

~~Sec. 3. (a) When notified pursuant to section 2, and amendments thereto, an existing gas service utility shall have 30 days to develop plans and propose an offer to the potential rural gas user for providing rural gas service. The proposed plan shall include plans for installing facilities, price of natural gas and projected completion date.~~

~~(b) Failure of the existing gas service utility to propose an offer or complete the project by the projected completion date pursuant to subsection (a), unless otherwise agreed to by the rural gas user and the existing gas service utility, shall cause the existing gas service utility to waive such utility’s exclusive right to serve the rural user.~~

Sec. 2. If a certificated existing gas service utility serves a rural gas user who seeks firm gas service and such utility notifies such user in writing that such utility does not guarantee a commitment to provide such service during the subsequent 12 months, the rural gas user may seek and receive gas service from another gas provider, subject to the following:

(a) The rural gas user shall provide at least 30-days’ notice of intent to leave the certificated existing gas service utility’s customer base and shall compensate such utility in an amount equal to 24 months of such utility’s monthly service or connection fee.

(b) Rural gas users who have sought firm gas service from such certificated existing gas service utility during calendar year 2000, 2001 or 2002, or any subsequent year, and have received written notice that such utility does not guarantee a commitment to provide such service may seek and receive gas service from another gas provider in the manner provided by subsection (a).

(c) A request for resolution of a dispute between the certificated existing gas service utility and the rural gas user or identified alternate gas provider may be filed with the state corporation commission. The commission shall make a determination on the application within 30 days after the filing of such request. Within 10 days after the commission’s decision on the application, any party aggrieved by the decision of the commission may file with the commission a motion for reconsideration of the commission’s decision. The commission shall make a final determination on the motion for reconsideration within 10 days after the filing of the motion.

3 ~~(c) If the potential rural gas user does not accept the offer pre-~~
4 ~~sented by the existing gas service utility, the existing gas service~~
5 ~~utility shall release the rural gas user from the certificated area or~~
6 ~~may request from the state corporation commission a determination~~
7 ~~to approve the utility's plan or allow the rural gas user to use a~~
8 ~~different public utility or gas provider to provide rural gas service.~~

9 ~~(d) Upon request for determination described in subsection (c)~~
10 ~~and upon receipt of the proposed plans from the existing gas service~~
11 ~~utility and from the rural gas user or their provider, the state cor-~~
12 ~~poration shall have 30 days to complete such determination. The~~
13 ~~state corporation commission may suspend the commission's deter-~~
14 ~~mination for an additional 60 days for sufficient cause.~~

15 Sec. 3: 4. When two or more rural gas users combine pursuant to
16 K.S.A. 66-104c, and amendments thereto, to operate as a nonprofit public
17 utility (NPU), if the rural gas service is provided within an area where a
18 public utility holds a certificate, the existence of such public utility and
19 its certificate will not in any way limit the rural gas users, the NPU, or
20 their gas provider, in establishing and maintaining the rural gas service
21 provided for by this act.

22 Sec. 4: 5. All facilities provided for in [~~providers of rural gas serv-~~
23 ~~ice under the provisions of]~~ sections 1 through 5 6, and amendments
24 thereto, will comply with all applicable pipeline safety laws [~~including~~
25 ~~rules and regulations adopted by the state corporation commission~~
26 ~~pursuant to K.S.A. 66-1,150, and amendments thereto].~~

27 Sec. 5: 6. The provisions of sections 1 through 5 6, and amendments
28 thereto, shall be known as the rural Kansas self-help gas act.

29 [Sec. 7. K.S.A. 66-1,150 is hereby amended to read as follows:
30 66-1,150. (a) The state corporation commission is hereby author-
31 ized to adopt such rules and regulations as may be necessary to be
32 in conformance with the natural gas pipeline safety act of 1968 (49
33 USCA 1671 et seq.), as amended. Notwithstanding the exemption
34 provisions of K.S.A. 66-104 and 66-131, and amendments thereto,
35 and related statutes, for the purpose of gas pipeline safety such rules
36 and regulations shall be applicable to: (1) All public utilities and
37 all municipal corporations or quasi-municipal corporations trans-
38 porting natural gas or rendering gas utility service; (2) all operators
39 of master meter systems, as defined by 49 C.F.R. 191.3; and (3) all
40 operators of privately or publicly owned pipelines providing natu-
41 ral gas service or transportation directly to the ultimate consumer
for the purpose of manufacturing goods or generating power; and
(4) providers of rural gas service under the provisions of sections 1
through 6, and amendments thereto.

[(b) As used in subsection (a)(3), "manufacturing goods" does

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1 *not include farming or activities associated with production of oil*
2 *or gas.*

3 *[(c) Nothing in this section shall be construed as invalidating*
4 *any present rules or regulations of the state corporation commis-*
5 *sion, concerning the regulation of pipelines and pipeline companies.*

6 *[Sec. 8. K.S.A. 66-1,150 is hereby repealed.]*

7 *Sec. 6-7. [9.] This act shall take effect and be in force from and*
8 *after its publication in the ~~statute book~~ Kansas register.*