

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:33 a.m. on February 1, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)
Senator Oleen (excused)
Senator Adkins (excused)
Senator Gilstrap (excused).

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Doug Smith, Direct Marketing Association (DMA)
Mike Murray, Sprint
Mike Reece, AT&T
Jim Gartner, Southwestern Bell (SWB)
Steve Montgomery, MCI and Worldcom
Steve Rarrick, Deputy Attorney General, Consumer Affairs Division
Dr. Ernie Pogge, AARP

Others attending: see attached list

The minutes of January 29th meeting were approved on a motion by Senator Schmidt, seconded by Senator Donovan. Carried.

Bill introductions:

Senator Schmidt requested introduction of two bills. The first bill would expand the enforcement authority of the Attorney General's Medicaid Fraud Division and the second would prohibit felons from wearing body armor. (no attachment) Senator O'Connor moved to introduce the bills, Senator Schmidt seconded. Carried.

Conferee Smith requested introduction of a bill which would add certain language to current legislation regarding illegal methamphetamine production. (attachment 1) Senator Schmidt moved to introduce the bill, Senator Umbarger seconded. Carried.

SB 265—residential landlord/tenant act; notice of termination

Senator Schmidt testified in support of **SB 265**, a bill he introduced which would restrict the ability of landlords to coerce tenants into agreeing to supplemental terms of their lease. He discussed two negative experiences he encountered which gave rise to his interest in introducing this legislation, and described how the bill would remedy the problems he identified. (attachment 2) Discussion followed.

SB 296—consumer protection; unsolicited calls

Conferee Smith testified in support of **SB 296**, a bill which would require telemarketers to use the Direct Marketing Association Telephone Preference Service list (TPL) prior to making telephone solicitations. The list contains the names of telephone consumers who do not want telephone solicitations in their home. He gave a brief overview of the DMA and discussed several name-removal services available to consumers at no cost. He discussed **HB 2580** (passed in 2000) which required that the Kansas Corporation Commission work with the telecommunication industry in the development of rules and regulations governing the education of the public about their rights regarding telemarketing. He further discussed the harm created by fraudulent telemarketers. (attachment 3)

Conferee Murray testified in support of **SB 296**. Stating that this bill complements **HB 2580**, he reviewed the latter and discussed the manner in which Sprint has implemented the rules developed by the KCC and the telecommunications industry. He offered 3 amendments to the bill describing the purpose of each. (attachment 4) He discussed interest the Federal Trade Commission has in this issue and cited an article addressing this in the Topeka Capital Journal Business Section, Friday, February 1, 2002 entitled "Hate telemarketers? Tell it to the FTC".

Conferee Reecht testified in support of **SB 296**. He discussed the TPL, reiterating its purpose and added that the list is used by AT&T and other members of the DMA. He stated that **SB 296** requires that the DMA make the national list available to the AG on a quarterly basis. (attachment 5)

Conferee Gartner testified in support of **SB 296**. He assured the Committee that SWB maintains an internal do not call list whereby they refrain from making calls at a customers request. (attachment 6)

Conferee Montgomery testified in support of **SB 296**. He discussed the following: how the bill would "enhance enforcement of violations by illegitimate telemarketers," the efficiency of one central "do not call" list, and the importance of educating the public on how to avoid undesirable calls. (attachment 7)

Conferee Rarrick testified in opposition to **SB 296**. He reviewed a survey done by his office which revealed that a majority of Kansans support the enactment of a "no-call" law. He stated that the AG supports no-call legislation that does not contain numerous exemptions but opposes the concept in the bill "specifically the unstructured use of the DMA telephone preference list." He elaborated on this and addressed other concerns with the bill as well. (attachment 8)

Conferee Pogge testified in opposition to **SB 296**. He discussed the issue of telemarketing fraud and its effect on consumers and the current legislation which addresses this problem. He stated that meaningful legislation will provide oversight, protection, and privacy for the consumer and he iterated provisions which the bill should include. (attachment 9)

The meeting adjourned at 10:31 a.m. The next scheduled meeting is Monday, February 4, 2002. •

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 1, 2001

NAME	REPRESENTING
Rob Aldges	KTIA
Jim Gartner	SWBT
Whitney Damon	Kansas Information Consortium
Robert Knapp	access Kansas
Tom D. Sharp	TOP KA, KCS
Jean Barber	KADC
Steve Larrick	AG.
Jim McLibria	KCS AG
Ernest C. Pogge	AARP
Ernest Kutzley	AARP
Loth Dammann	SWBT
Katley Porter	Judicial Branch
Ami Hyten	JUDICIAL BRANCH
Jeff Gottoby	KS Peace Officers



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Bill Request
Before the Senate Judiciary Committee
Kyle G. Smith
Kansas Bureau of Investigation
February 1, 2002

Chairman Vratil and members of the Committee,

I am pleased to appear today on behalf of the KBI and request legislation dealing with our continuing problem with illegal methamphetamine production. Yesterday, Senator Adkins' subcommittee expressed interest in these ideas and requested additional information. These proposals have been collected from our agents in the field and from other states, which are also dealing with this problem. Attached are drafts of suggested language.

- A. Limit the number of packages of methamphetamine precursor drugs that can be sold at one time to 3.
 - Until we get control of the basic precursor's availability we will never stop the meth lab problem. 10 states have now passed such legislation and we've basically copied Missouri statute 195.417.
- B. Remove the specific intent requirement from the possession of anhydrous in an unapproved container statute, K.S.A. 65-4152(a)(4).
 - This additional element is unnecessary (See K.S.A. 2-1218 which criminalizes the sale in unapproved containers) and makes the prosecution more difficult.
- C. Amend K.S.A. 65-7006 to reduce the penalty to a level 2 drug felony and add other chemicals used in meth production.
 - This will address the "mere preparation" problem where some, but not all, items for manufacturing are found.
 - We also hope this will cut the lab backlog, as the extensive testing necessary for drug manufacturing won't be necessary.
- D. Amend K.S.A. 21-3608, endangering a child, to make it a level 8 felony (currently a class A misdemeanor).

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- We keep finding kids at meth labs and the agents are very frustrated that the children are promptly returned to the mother (usually) who allowed them to be exposed to the chemicals in the first place. Making this a felony would provide more protection for children.

E. Amend Arson, K.S.A. 21-3718, to include accidental damage by fire or explosive resulting from the illegal manufacture of controlled substances.

- Arson investigators are frustrated that so many cases turn out to be "accidental" as they were caused during a meth cook. Not only does this affect insurance and lien holders but the arson investigator's files become open record once it is determined to be an 'accident' – thus jeopardizing the concurrent criminal drug investigation.

I would be happy to answer any questions.

Kansas Bureau of Investigation
Proposed language - anti-methamphetamine legislation request

A

New section. 1 a. No person shall deliver in any single over-the-counter sale more than three packages of any methamphetamine precursor drug or any combination of methamphetamine precursor drugs.

b. This section shall not apply to any product labeled pursuant to federal regulation for use only in children under twelve years of age, or to any products that the state department of health and environment, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

c. Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection 1 of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

d. Any person who knowingly or recklessly violates this section is guilty of a class A nonperson misdemeanor.

e. For purposes of this section, "Methamphetamine precursor drug", means any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

B

K.S.A. 65-7006.

(a) It shall be unlawful for any person to possess ephedrine, *pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia* or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to any illegal ~~to manufacture a controlled~~ substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label any drug product containing ephedrine, pseudoephedrine, *pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia* or phenylpropanolamine, or their salts, isomers or salts or isomers if the person knows or reasonably should know that the purchaser will use the product as a precursor to any illegal ~~to manufacture a controlled~~ substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent

federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(d) A violation of this section shall be a drug severity level ~~4~~ 2 felony.

C

K.S.A. 65-4152.

(a) No person shall use or possess with intent to use:

(1) Any simulated controlled substance;

(2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;

(3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act; or

(4) anhydrous ammonia *or pressurized ammonia* ~~for the illegal production of a controlled substance~~ in a container not approved for that chemical by the Kansas department of agriculture.

(b) Violation of subsections (a)(1) or (2) is a class A nonperson misdemeanor.

(c) Violation of subsection (a)(3) other than as described in paragraph (d) or subsection (a)(4) is a drug severity level 4 felony.

(d) Violation of subsection (a)(3) which involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants is a class A nonperson misdemeanor.

D

21-3608. Endangering a child. (a) Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered.

(b) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(c) Endangering a child is a *level 8 person felony* ~~class A person misdemeanor~~.

E

21-3718. Arson. (a) Arson is (a) knowingly, by means of fire or explosive:

(1) Damaging any building or property which is a dwelling in which another person has any interest without the consent of such other person;

(2) damaging any building or property which is a dwelling with intent to injure or defraud an insurer or lienholder;

(3) damaging any building or property which is not a dwelling in which another person has any interest without the consent of such other person; or

(4) damaging any building or property which is not a dwelling with intent to injure or defraud an insurer or lienholder.

(b) Accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159 and amendments thereto damaging any building or property.

(c) (1) Arson, as described in subsections (a)(1) ~~or~~ (2), ***or (b)***, is a severity level 6, person felony.

(2) Arson, as described in subsections (a)(3) or (4), is a severity level 7, nonperson felony.

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Senator Derek Schmidt
15th District

Committee Assignments
Agriculture (Chairman)
Judiciary
Reapportionment
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Elections and Local Government
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During Session

**Testimony of Senator Derek Schmidt
In Support of Senate Bill 265
Before the Senate Judiciary Committee
February 1, 2002**

Mr. Chairman and members of the committee, thank you for your consideration today of legislation I introduced to restrict the ability of landlords to, in effect, coerce tenants into agreeing to supplemental terms of their lease. Senate Bill 265 is intended to discourage landlords from inserting additional terms beyond the lease agreement into Notices of Termination that are provided by landlords to tenants for the tenant's signature. It seeks to accomplish this by requiring landlords who do insert additional terms into a Notice of Termination to also insert a disclaimer advising the tenant that he need not sign because of the additional terms. Further, it renders any additional terms unenforceable.

The basic public policy idea is simple: The terms of the bargain between a landlord and a tenant should be set by the parties up front, at the time the lease is being negotiated. This is the time when there is a level playing field and neither party is at a disadvantage. If those terms are to later be amended, that amendment should be the result of a subsequent bargained-for exchange, not the result of one party (the landlord) covertly slipping additional terms into an unrelated document (a required Notice of Termination) that is routinely signed by the other party (the tenant).

My interest in this subject arose out of two experiences:

1. Before I was elected to the Senate, my wife and I rented an apartment in Topeka from the AMLI apartment chain. Our lease required that we give at least 30 days notice before the expiration of our lease if we intended to vacate the apartment at the end of our lease. About 60 days before the end of our lease, an agent of our landlord contacted us to inquire if we intended to vacate. I said we did. The agent then said she would provide us with a form we needed to sign and return to her to give notice of our intent to vacate.

A copy of that form is attached. As you can see, although this form was described to us as a routine matter of giving notice that we intended to vacate, it in fact would have obligated us to several additional terms beyond the scope of our original lease. Among those added terms: We would agree to comply with all terms and conditions of the notice of intent to vacate and of the move out cost

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schedule, as well as the terms of our original lease. The "Move out Cost Schedule," to which we would have agreed if we had signed, set forth specific sums we agreed to pay if any damage to the property was noticed.

I refused to sign this form. Instead, I wrote a letter to our landlord and, pursuant to the terms of our lease, provided the required 30-day written notice of our intent to vacate. We left, and I thought little of this matter again until the situation below came across my desk.

2. Some months later, a client walked into my law office in Independence. The situation was this: Client's son was a student at the University of Kansas. Son and several friends had jointly rented an apartment from a large apartment chain in Lawrence. Their lease required 30-day written notice of intent to vacate before the lease term expired. When the notice period arrived, the landlord provided the son and his friends with a pre-printed Notice of Termination form. Unlike my wife and me, the boys signed the form without reading it because they believed that they had no choice and that their signature did nothing but indicate their intent to depart at the end of the lease term.

The boys moved out and, all parties agreed, they had caused damage to the apartment. But there was a substantial dispute about the cost of repairing that damage. The boys thought the cost was about \$1,000 (or \$250 per boy). The landlord thought the cost was about \$4,000 (or \$1,000 per boy). The boys obtained an independent estimate from an outside source of what it would cost to repair the damage. The estimate was closer to \$1,000 than to \$4,000.

However, the Notice of Termination form signed by the boys had expressly (in small print on the back) set forth a schedule of costs for repairing certain types of damage. As calculated by that schedule, the boys did indeed owe \$4,000. They had little recourse other than to pay the bill since they had expressly agreed, in writing, to the cost schedule. To bring litigation in an attempt to defend their interests in this case would have been more costly and troublesome than to pay the bill.

Mr. Chairman, these two cases illustrate what appears to be a systematic problem. Large apartment chains are employing pre-printed Notices of Termination forms to dupe unsuspecting tenants into agreeing, in writing, to additional terms beyond their original lease.

This sort of business practice is sneaky, unfair, and should be prohibited. That is what Senate Bill 265 is intended to do, and I would encourage the committee to support it.

Received 9-26-00

Apt. # 1116

NOTICE OF INTENT TO VACATE

Type _____

PLEASE BE ADVISED THAT THE UNDERSIGNED RESIDENT(S) INTEND TO TERMINATE RESIDENCY OF THE PREMISES LISTED BELOW.

DATE NOTICE GIVEN 9-26-00 DATE OF INTENDED MOVE OUT 11-30-00

Names of all residents on lease Derek & Jennifer Schmidt

Apt. No. 1116 Address 2745 SW Ullin West Dr Carpet Color _____

<input checked="" type="checkbox"/> 60 Day Written Notice	<input checked="" type="checkbox"/> Yes	No
Will apartment be vacant?	Yes	No
Current lease expiring	<u>11-30-00</u>	
Lease Term Fulfilled	Yes	No
Rent will be paid to	_____	
Well Wishes Card Received	Yes	No

Specific reason for moving _____

Scheduled Move Out Inspection Date _____ Time _____

ASSIGNMENT OF DEPOSIT

In roommate situations, Community Director, at its sole option, may consent to a vacating resident obtaining a replacement roommate. All terms and conditions of the lease contract remain in full force and effect, including those relating to your deposit and the refunding of said deposit. By your signature below, you hereby transfer and assign all right, title and interest, if any, of your deposit to the replacement roommate and acknowledge Community Director does not waive any rights it may have as set forth herein above or in the lease.

I hereby transfer and assign my deposit to _____

CHANGES IN MOVE OUT DATE

No retraction or change of the intended move out date may be made without approval in writing by Community Director. Resident may not hold over beyond the move out date. **If the apartment is pre-leased after Owner's Representative receives this notice, it will not be possible to approve any request for a move out date extension.** Community Director and any new resident must rely on this move out notice for preleasing purposes.

CLEANING

As provided in the lease contract the apartment must be left in a thoroughly clean condition. This includes the stove, refrigerator/freezer, counters, cabinets, floors, tubs, shower walls, toilets, windows, etc. All carpeted areas must be vacuumed. You will be charged for those areas not cleaned. The cleaning charges are listed on the back of this notice of intent to vacate.

DEFAULT NOTICE

Your lease is a binding contract and the Community Director expects you to honor your obligations. If you will be vacating the apartment before the lease term expires or if you are not giving 30 days' written notice of intent to vacate, Community Director will enforce its rights including but not limited to the following:

- 1) ADMINISTRATIVE CHARGES to re-let the apartment
- 2) BREACH OF LEASE FEE
- 3) CLEANING CHARGES guidelines set forth on the move out cost schedule on the back
- 4) LOSS TO VACANCY (i.e. rent on the apartment until the lease expires or until the apartment is re-let)
- 5) PHYSICAL DAMAGE CHARGES
- 6) UNPAID MISCELLANEOUS CHARGES, (i.e. late charges, NSF charges, etc.)
- 7) OTHER CHARGES

MOVE OUT INSPECTION

You should meet with our representative for a move out inspection. Our representative has no authority to bind or limit us regarding deductions for repairs, damages, or charges. Any statements or estimates by our representative are subject to our correction, modification, or disapproval before final refunding.

VACATING APARTMENT

I understand Community Director will NOT refund my deposit, if any, until I return all keys and provide my forwarding address after release of the apartment and inspection by Owner's representative. I also understand that my lease contract provides that my apartment might be shown with prior notice to prospective residents before I vacate.

By signing this notice of intent to vacate I give permission to Community Director to release my rental history to prospective Managers or Landlords. Also, I understand and agree to comply with the terms and conditions of the lease contract, notice of intent to vacate and move out cost schedule. This notice of intent to vacate is not valid until all residents moving out have signed and Community Director has approved. I UNDERSTAND I AM RESPONSIBLE FOR RENT UNTIL ALL THE KEYS TO MY APARTMENT ARE RETURNED AND MY FORWARDING ADDRESS IS PROVIDED.

Resident(s) Signature _____ Date _____ Forwarding Address _____

Street Address Apt# City State Zip

Street Address Apt# City State Zip

Receipt of this notice is _____
acknowledged and approved by: Patricia Wilson 9-26-00
Street Address Apt# City State Zip

Community Director

Date

Taken By 23

DATE OF INTENDED MOVE OUT

ENTERED INTO COMPUTER

MOVE-OUT COST SCHEDULE

Cleaning and Repair Charges:

If prior to moving out, you do not clean the items listed below and leave them in satisfactory working order, the following charges will be deducted from your deposit or owed if deposit is not sufficient to cover the charges. You will be charged for each instance in which an item must be cleaned or repaired. The prices listed below are average prices only.

If Manager incurs a higher cost for cleaning or repairing an item, you will be responsible for paying the increased amount. Please note that this is not an all inclusive schedule; you could also be charged for cleaning or repairing items that are not included on the following list.

Kitchen Cleaning		Bathroom Cleaning		Miscellaneous	
Cabinets & Countertops	\$30.00	Shower Door	\$15.00	Carpet Cleaning	\$100.00
Dishwasher	\$10.00	Sink/Countertops/ Cabinets	\$35.00	Carpet Repairs	\$100.00
Drip Pan	\$ 2.00	Toilet	\$10.00	Holes in Wall	\$ 75.00
Oven	\$30.00	Tub/Shower	\$20.00	Painting	\$200.00
Refrigerator/Freezer	\$40.00			Trash Removal	\$ 60.00
Stove/Vent-a-Hood	\$10.00			Vinyl Floors	\$ 25.00
				Wallpaper Removal	\$150.00
				Window Coverings	\$ 50.00
				(miniblinds & verticals)	

Replacement Charges:

If any items are missing or damaged to the point that they must be replaced upon move out, you will be charged for the current cost of the item, plus labor and service charges. A representative list of replacement charges is provided below. These are average prices.

If Manager incurs a higher cost for replacement, you will be responsible for paying the increased amount. Please note that this is not an all-inclusive schedule; you could also be charged for the replacement of items that are not included on the following list.

Carpet Replacement	\$900.00	Light Bulb	\$ 1.00
Countertops	\$300.00	Light Fixture	\$ 50.00
Crisper Cover	\$ 15.00	Mailbox Key	\$ 25.00
Disposal	\$ 65.00	(lost or unreturned)	
Door	\$100.00	Mirror (Bath)	\$ 60.00
Door Key	\$ 35.00	Patio Glass Doors	\$ 150.00
(lost or unreturned)		Patio Screen	\$ 100.00
Fire Extinguisher	\$ 35.00	Window Coverings	\$ 200.00
(1 1/2 lb. size)		Window Glass	\$ 150.00
Ice Trays	\$ 5.00	Window Screen	\$ 35.00

Direct Marketing Association

TESTIMONY
SENATE JUDICIARY COMMITTEE
SENATE BILL NO. 296
February 1, 2002

Dear Chairman Vratil and Honorable Members of the Senate Judiciary Committee:

Thank you for the opportunity to appear before you this morning. My name is Doug Smith. I appear on behalf of the Direct Marketing Association (DMA), which serves as a professional trade association with over 4,700 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917. DMA members operate in the United States and in over 53 nations on six continents. Our representative membership includes such businesses as IBM, AOL Time Warner, Prudential Insurance, Proctor & Gamble, Microsoft and many others.

We have 20 member companies headquartered in Kansas and 27 member companies with operations in Kansas. The employment opportunities and financial impact generated by this industry is important to the Kansas economy.

We support the "do not call" list as outlined by Senate Bill No. 296.

The Direct Marketing Association sponsors, at no cost to consumers, three national name-removal services - the Mail Preference Service for direct mail marketers, a newly created Email Preference Service and the Telephone Preference Service (TPS). The TPS is a compilation of telephone numbers from consumers, nationwide, who desire to receive fewer telephone-marketing calls at home. The DMA's Telephone Preference Service is a private service, free to consumers, paid for by the industry and provided to subscribing members for the past 20 years.

This TPS list is just one of two free options available to consumers wanting to reduce the number of telemarketing calls they receive. The other option is the in-house suppression list, which is maintained by telephone solicitors as required by FCC rules.

We know that there are consumers in Kansas who need and require the goods and services marketed by our members. Yet, we are aware of consumers who do not want to have telephone solicitations in their home. If they tell us not to call we won't call - it's the law.

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Consumers must be able to protect themselves, but they can only do so when they know their rights and they have to know when to exercise their rights. An educated consumer is the best tool to eliminate the bad actors.

The Direct Marketing Association feels very strongly that all states should increase their consumer education programs - informing consumers of federal law and the no cost options available. These increased educational services are of much greater benefit to the public, then creating a new process. In 2000, the Legislature passed House Bill No. 2580 which required the Kansas Corporation Commission to assemble the telecommunications industry and other interested parties to develop rules and regulations to provide consumers with important information on their current rights under federal and state law in regard to telemarketing. Those regulations have been adopted and consumers will be receiving this needed educational information in their 2002 telephone directories.

The simple fact is - that right now fraudulent telemarketers don't play by the rules, or follow the law. Will they later? Because of this fact, whatever legislative direction you take, the impact is felt by those businesses operating in an ethical manner and in compliance with the law. Not those who discredit the industry and in the end you and I will pay higher consumer prices as the cost of doing business in Kansas goes up to offset the harm created by fraudulent telemarketers.

There are other parties interested in having state government create more regulation to protect consumers from the unscrupulous telemarketer. These groups would like to see Kansas create a state specific "do not call" list and charge either the consumers, who want fewer calls, or the businesses that utilize the telephone to promote their business, to participate. We would oppose such a state specific list and encourage you to support Senate Bill No 296 in its present form.

It is our desire to continue working with the staff of the Consumer Protection Division of the Attorney General's Office to ensure that there will be protection for consumers without impeding fair trade practices or restricting the consumers right to choose.

Thank you for your time and consideration of this matter.



Before the Senate Judiciary Committee
Friday, February 1, 2002
Michael R. Murray, Director of Governmental Affairs
SB 296

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you in support of SB 296 which would require that telemarketers use the Direct Marketing Association Telephone Preference Service list. Sprint already complies with this requirement, and in addition maintains a separate Federal Communications Commission-required do not call list of consumers who have told Sprint they do not wish to receive further unsolicited telephone calls from our company.

This legislation complements HB 2580 which was passed by the 2000 Legislature. The bill required the Kansas Corporation Commission in cooperation with the telecommunications industry to develop rules and procedures to inform consumers of their rights and remedies under state and federal consumer protection laws as it pertains to unsolicited telephone calls; and to inform consumers of how they can register with the Direct Marketing Association's Telephone Preference List to reduce unwanted telemarketing phone calls. The Commission finalized its rules in October, 2001, and we have just begun implementation.

On January 2 of this year, I sent each member of the Legislature a letter explaining the new rules and how Sprint and others are implementing them. I've included that packet with this testimony. Briefly, the KCC rules require that telephone companies publish consumer notification information in their next round of telephone directories. In Sprint's case, that is being done and several directories are already in circulation with the new information on rights and remedies and on the Direct Marketing Association's Telephone Preference List.

Over and above the KCC requirements, Sprint included a bill insert in its residential local telephone bills during the month of November with the Direct Marketing Association information, and next year will print two bill messages on its residential local telephone bills referring customers to the pages in the phone book dealing with unwanted telemarketing calls.

Also, as directories are distributed to various local exchanges, Sprint is sending press releases to the local media explaining how consumers can avail themselves of the DMA list and reduce unwanted phone calls. I've included a copy of a front page story on do not call from the Holton Recorder.

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FTC No Call List On The Horizon

You may have seen today's Topeka Capital Journal story saying that the Federal Trade Commission is considering creating a single, national no call registry. I wanted to call that to your attention since such a national registry would provide consumers a one-stop means to reduce unwanted telemarketing calls, similar to that provided by the Direct Marketing Association.

Technology Is Responding

On or about May 1, Sprint will introduce in Kansas a product known as "Privacy ID". When a caller's identity comes up as "unknown, unavailable or private" on a Caller ID unit, the service requires the caller to announce his or her name before the call is connected.

Amendments

While Sprint supports the proposed legislation, we would like to suggest what we believe are three important amendments.

First, Lines 33, 38 and 41 refer to a consumer's "name". Those references should be only to the consumer's telephone number since unwanted telephone calls are suppressed based upon telephone numbers, not names of consumers.

Second, the bill does not allow telemarketers sufficient time to remove from their calling lists the telephone numbers of consumers who do not wish to receive such calls. After receiving the telephone numbers of those who do not wish to be called, telemarketers require at least 60 days to make sure that these telephone numbers have been scrubbed from their calling lists. We respectfully ask that you include such a 60-day grace period in the bill.

Third, the bill contains no safe harbor protection for telemarketers who have exercised all due caution and care in preparing lists to be called. Sprint suggests the following language be added which is taken from the Telephone Consumer Protection Act of 1991:

"It is 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 telemarketing company shall not be held liable for violating these regulations if they can demonstrate, by clear and convincing evidence, that

- 1) they have obtained a copy of the updated do not call list and have established and implemented written policies and procedures related to the requirements of these regulations;
 - 2) they have trained their personnel in the requirements of these regulations;
 - 3) they maintain records demonstrating compliance with the regulations;
- and
- 4) any subsequent unsolicited telemarketing sales call is the result of an error.”

This bill complements the actions taken the Legislature in 2000; it costs the taxpayers virtually nothing; and it reinforces and promotes awareness and utilization of a means which is already available to consumers to protect themselves from unwanted telemarketing phone calls.

Thank you, and I'd be happy to respond to questions.



Michael R. Murray
Director - Governmental
and Public Affairs

Midwest Operations
800 SW Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

January 2, 2002

Senator John Vratil
9534 Lee Blvd.
Leawood, KS 66206

RE: Do Not Call Legislation

Dear Senator Vratil:

With respect to the issue of "do not call" as it pertains to telemarketing phone calls, we understand that legislation may be introduced in the 2002 Session to establish a state-specific do not call list. Any such legislation is premature, and I wanted to call your attention to the current law and how its provisions are just beginning to be implemented.

The History

Two years ago, in the 2000 Legislative Session, **HB 2580** (copy enclosed) was passed which required the Kansas Corporation Commission to work with the telecommunications providers to promulgate rules and regulations to inform consumers of their rights under state and federal consumer protection laws. Second, consumers are to be informed as to how they might utilize the Direct Marketing Association's Telephone Preference Service list to reduce the number of unwanted telemarketing calls the consumer might receive. Included is a **copy of the KCC rules**.

In September, 2001, the KCC and the telecommunications providers met and agreed that pages in the telephone directories would be the required means by which to make the above notifications to consumers, and the KCC issued rules to that effect.

Sprint's "Do Not Call" Initiative

I have included **copies of the pages that will appear in Sprint's local telephone directories** beginning with the Northeast Kansas Regional and Burlington/Osage City directories which were published in December, 2001. All Sprint directories will contain these pages once the 2002 printing cycle is completed.

In addition, **Sprint is going beyond what was required by the KCC to inform consumers of their rights and remedies.**

First, in November, 2001, every Sprint residential local telephone customer received the enclosed **bill insert** explaining the procedure for registering with the Direct Marketing Association including a registration form. **The information contained in this**

Page 2.

bill insert might be of use in your communications with constituents advising them how to reduce unwanted telemarketing phone calls.

Second, in April and October of 2002, Sprint will include a **bill message**, printed on each residential local telephone customer's bill, directing the consumer to the pages in the telephone book which inform them of their rights and remedies, and how to sign up with the Direct Marketing Association's Telephone Preference Service list. A copy of that bill message is also enclosed.

Third, as our new telephone directories are distributed to the various Sprint local telephone exchanges, the enclosed **news release** will be sent to the local media outlets for those exchanges further explaining the procedure for registering with the Direct Marketing Association's Telephone Preference Service list.

As you can see, Sprint is making a concerted effort to give its customers the necessary information they need to help reduce unwanted telemarketing phone calls.

Conclusion

It is our hope that the Legislature will refrain from passage of any additional "do not call" legislation establishing a state-specific do not call list. The provisions of HB 2580 and the recently issued KCC rules should be given a chance to work.

The provisions of HB 2580 cost the consumers nothing. There is no cost to the consumer to register with the DMA, and no cost to the taxpayer for administration. On the other hand, a state-specific do not call list would have to be paid for with taxpayer funds or registration fees. That is an especially important consideration during these difficult financial times for the State.

Finally, HB 2580 strikes an appropriate balance by requiring the telecommunications companies to notify and inform consumers of their rights and remedies, and by giving the responsibility to the individual consumer to take action.

I hope yours was a joyous holiday season, and that the New Year holds much promise and opportunity for all Kansans.

Yours very truly,

Michael R. Murray

HOUSE BILL No. 2580

By Representative Johnston

8-5

12 AN ACT concerning consumer protection; relating to ~~automated an-~~
13 ~~nouncing devices~~ **unsolicited consumer telephone calls**; amending
14 K.S.A. 1999 Supp. 50-670 and repealing the existing section.
15

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

17 *New Section 1. No later than July 1, 2001, the state corporation*
18 *commission shall adopt rules and regulations that:*

19 (a) *Require all local exchange carriers and telecommunications*
20 *carriers to collectively develop a method or methods for annually*
21 *notifying residential subscribers of their rights and remedies avail-*
22 *able to them under the Kansas consumer protection act, the tele-*
23 *phone consumer protection act and the telemarketing and consumer*
24 *fraud and abuse prevention act and the availability of the direct*
25 *marketing association's telephone preference service.*

26 (b) *Require the information provided to residential subscribers*
27 *in subsection (a) to specify, at a minimum, the following: The*
28 *method of registering with the telephone preference service at no*
29 *cost to the subscribers; the frequency with which the data base*
30 *maintained by the telephone preference service is updated; the*
31 *types of calls registered subscribers should still expect to receive;*
32 *the measures subscribers must take to register if they move or re-*
33 *ceive a new telephone number; the duration for registration and the*
34 *procedures for registration renewals; and the remedies available to*
35 *registered subscribers if they receive unsolicited consumer tele-*
36 *phone calls pursuant to K.S.A. 1999 Supp. 50-670, and amendments*
37 *thereto.*

38 (c) *Establish guidelines for acceptable methods to inform all tel-*
39 *ephone solicitors in Kansas of: The requirements for membership in*
40 *the direct marketing association; charges for members and nonmem-*
41 *bers of the direct marketing association to access the data base of*
42 *the telephone preference service; and options available to telephone*
43 *solicitors for accessing Kansas-specific portions of the data base.*

~~Section 1.~~ **Sec. 2.** K.S.A. 1999 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section:

(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;

(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

(D) by a newspaper publisher or such publisher's agent or employee in connection with such publisher's business;

(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;

(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.

(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;

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; ~~and~~

(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 15 seconds of the beginning of the call. **five seconds of the beginning of the call when the telephone solicitor's service or equipment is able to provide a live operator or an automated dialing-announcing device 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.

(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.

Sec. ~~2~~ **3.** K.S.A. 1999 Supp. 50-670 is hereby repealed.

Sec. ~~3~~ **4.** This act shall take effect and be in force from and after its publication in the statute book.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of a General Investigation to)
Comply with Legislation Requiring the) Docket No. 01-GIMT-049-LEG
Commission to Adopt Rules and Regulations)
Regarding Unsolicited Telephone Calls.)

ORDER APPROVING TELEPHONE DIRECTORY MESSAGES

NOW, the above-captioned matter comes on before the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On August 21, 2001, the parties to this docket held an industry forum at the offices of Southwestern Bell Telephone Company in Topeka to discuss implementing K.S.A. 2000 Supp. 50-675a as required by K.A.R. 82-1-250, adopted by the Commission on May 28, 2001.

2. On September 5, 2001, the Commission's Staff filed a report on the industry forum and proposed two "messages" to disseminate information required by K.S.A. 2000 Supp. 50-675a and K.A.R. 82-1-250. One message is designed to inform consumers of their rights and responsibilities as they relate to telemarketing, or unsolicited telephone calls, under the Kansas Consumer Protection Act, the Federal Telephone Consumer Protection Act of 1991, and the Federal Telemarketing and Consumer Fraud and Abuse Prevention Act. The other message is designed to inform consumers of the Direct Marketing Association's Telephone Preference Service and other information required by K.S.A. 2000 Supp. 50-675a(b) and K.A.R. 82-1-250(b). The report indicates that the parties to the forum have agreed that the information should be disseminated by

means of publishing the information in the telephone directory.

3. Staff's report indicates that Sprint, Staff, CURB and the Attorney General's office had reached agreement on the language contained in the messages. Staff's report further indicates that MCI had some concerns about two pieces of information contained in the messages: including legal citations to state and federal acts pertaining to telemarketing may be confusing to consumers, and; concerns about including language that registering for the Direct Marketing Association's Telephone Preference Service would give consumers no additional legal rights.

4. On September 18, 2001, Sprint filed comments on Staff's report. Sprint indicates that, although it "fully supports the comments" in Staff's report and recommends approval by the Commission, Sprint also indicates that directory publishers should be allowed discretion to modify the messages, either as to typesetting or as to "word changes, as necessary to fit the directory format without altering the meaning and purpose of the message and making the type of sufficient size to be legible and readable."

5. The Commission commends the participants to the industry forum and appreciates the work put in by all attendees to reach the conclusions presented in Staff's report. The Commission believes the method chosen by the forum will reach the most consumers, however, the Commission reminds the industry that the method chosen by the forum is not an exclusive method of informing consumers of their rights and remedies with regards to telemarketing. The Commission urges the industry to be proactive and use any additional means, such as a bill message or a bill insert, a company may deem necessary in order to assist its customers in avoiding unwanted telemarketing calls.

6. Although the Commission acknowledges MCI's concerns, the Commission agrees

with Staff that the statutory cites should be left in the messages to be readily available to consumers who wish to view the text of the legislation. The Commission does not wish to place an additional burden on the Attorney General's office by using the language suggested by MCI. Further, the Commission believes that it is important to stress to consumers that registering with the DMA's Telephone Preference Service will not give a consumer any additional legal rights under the Kansas Consumer Protection Act over that of a non-DMA-registered subscriber. The Commission is concerned with the publicity from the state of Missouri regarding Missouri's state-sponsored "do not call" list and does not wish to lead consumers in Kansas into believing that the DMA's telephone preference service list is similar to the Missouri "do not call" list. The Commission finds that the language currently in the messages is necessary and shall be left in the messages.

7. The Commission further accepts Staff's recommendation in Staff's report that companies should be allowed to modify the typesetting of the messages as necessary to fit the directory format. This may mean utilizing a different type style, a different type size, or lower case letters instead of all caps. However, the Commission believes that the language should be consistent and that directory publishers should not have discretion to change the language. The Commission is concerned that allowing such textual changes could alter the meaning of the messages such that erroneous information is unintentionally disseminated. Thus, telephone directories shall be published using, verbatim, the language contained in the attached messages.

8. The Commission instructs local exchange carriers publishing directories to publish this information in the next printing cycle of directories. The Commission is aware that some rural companies just issued directories and will not have another directory printing for a full year. For those companies, in the meantime, the Commission urges that information be disseminated to

consumers via other means.

9. The Commission is also aware that the companies attending the forum were concerned about sharing the costs of printing the directories and that there was discussion on that issue but no resolution. Southwestern Bell Telephone Company had indicated in its previous comments that an additional page in its directories would cost about \$9,000. The Commission instructs LECs publishing telephone directories to move ahead with printing the information in directories. Once actual costs are known, the Commission urges the LECs to attempt to work out cost-sharing with interexchange carriers such as MCI or AT&T among the companies without involving the Commission or Commission Staff. If, however, an agreement for cost sharing cannot be reached, then the Commission urges any parties attempting such an agreement to contact Staff for assistance in reaching an agreement.

10. The Commission finds that all local exchange carriers in Kansas publishing telephone directories shall, in the next cycle of directories, publish the two messages attached to this order concerning consumer rights and responsibilities as to telemarketing, and the existence and method for registering with the Direct Marketing Association's Telephone Preference Service.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. All local exchange carriers in Kansas publishing telephone directories shall, in the next cycle of directories, publish the two messages attached to this order concerning consumer rights and responsibilities as to telemarketing, and the existence and method for registering with the Direct Marketing Association's Telephone Preference Service. The messages may be altered as to typesetting, but the wording of the messages are to remain unchanged.

B. Any party may file a petition for reconsideration of this Order within fifteen (15) days

of the date this Order is served. If service is by mail, service is complete upon mailing and three 93) days may be added to the above time frame.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.


BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: OCT 01 2001

ORDER MAILED

OCT 01 2001

 Executive Director

Jeffrey S. Wagaman
Executive Director

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TELEMARKETERS MUST OBEY STATE AND FEDERAL LAWS WHEN CALLING KANSAS RESIDENTS. Violations can be enforced by the state Attorney General or through a private cause of action. Telemarketers, who make unsolicited calls to residential phone numbers MUST:

- ✓ Identify themselves, the business for whom they are calling and the purpose of the call immediately upon making contact with the person being called;
- ✓ Promptly discontinue the call if the person being called indicates a negative response or desire to not listen at any time during the call (i.e., "just say no");
- ✓ Have a live or recorded voice respond within 5 seconds of answering the call;
- ✓ Make their phone number accessible to caller i.d. services if technically possible;
- ✓ Maintain internal "do not call" lists and, if requested, place the person called on their internal "do not call" list and honor that request;
- ✓ Disclose whether the seller has a policy of not making refunds, cancellations, exchanges, or repurchases;

TELEMARKETERS MUST NOT:

- ✓ Use automatic telephone dialing systems or pre-recorded voice messages to call pagers, wireless phones or any service for which the party called is charged for the call.
- ✓ Send unsolicited advertisements to fax machines.
- ✓ Use threats, intimidation, profane or obscene language;
- ✓ Cause any phone to ring repeatedly or continuously for the purpose of annoying or harassing any person at the called number;
- ✓ Call before 8:00 a.m. or after 9:00 p.m. local time.

Exceptions are calls placed for non-commercial purposes, calls made for commercial purpose which do not include any unsolicited advertisements, calls to any person with whom the caller has an established business relationship, and calls from tax-exempt non-profit organizations.

For more information, or to file a complaint if you receive a call from a telemarketer that violates any of these rules, please contact the Kansas Attorney General's Office, Consumer Protection Hotline at 1-800-432-2310.

For further research on the laws summarized above, refer to **K.S.A. 50-670(b)**(part of the KANSAS CONSUMER PROTECTION ACT), **47 USC Section 227 and 47 CFR Part 64.1200** (FEDERAL TELEPHONE CONSUMER PROTECTION ACT and REGULATIONS) and **15 USC 6101-6108 and 16 CFR Part 310** (FEDERAL TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT and REGULATIONS).

Reducing Unwanted Telemarketing Calls

Register for the Direct Marketing Association's Telephone Preference Service

You may register your residential telephone number(s) with the Direct Marketing Association's (DMA) Telephone Preference Service to be placed on this private organization's "Do Not Call" list. The Do Not Call list will be used by DMA member telemarketing companies to remove your telephone number from their calling lists. Telemarketers who participate in this private, voluntary program do not want to waste their time, or yours, by contacting you if you do not want to receive telemarketing calls.

Registration is good for up to five years. If you move or change your phone number during the five-year period, you will need to reregister. Registrations must be made with the Telephone Preference Service directly; third party requests cannot be processed.

How to register your telephone number(s)

You may register for free by sending your full name, full address, signature and up to two telephone numbers to the following address:

DMA Telephone Preference Service

P.O. Box 9014

Farmingdale, NY 11735-9014

Alternatively, you may register with the Telephone Preference Service on-line for \$5. The web address is www.the-dma.org/cgi/offtelephonedave.

Registering with the Telephone Preference Service will not eliminate all telemarketing calls. Nonprofit/charitable organizations, political groups, nonDMA telemarketers or any groups that have established relationships with you may still contact you. Because the DMA's list is updated quarterly, it may take a few months before unwanted calls are noticeably reduced.

There are no penalties for telemarketers calling telephone numbers on the Do Not Call list. Also, registering for the list gives you no additional rights beyond those specified by the law.

For information about your legal rights regarding telemarketing, please see the section entitled "Telemarketing – Consumers' Rights and Remedies Under State and Federal Law."

Kansas "Do Not Call" biannual bill message - April and October

Reduce unwanted telemarketing calls

To limit calls from telemarketers, residential consumers may register with the Direct Marketing Associations (DMA) Telephone Preference Service. Information about how to register your telephone number(s) and your rights as a consumer is published in the General Information section of your Sprint telephone directory under "Rights and Responsibilities".

SMOOT & ASSOCIATES
800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)

MIKE REECHT
GOVERNMENT AFFAIRS CONSULTANT

12756 GRANADA LANE
LEAWOOD, KANSAS 66206
(913) 897-3232

Testimony of Mike Reecht before
The Senate Judiciary Committee
Regarding Senate Bill 296

February 1, 2002

Good Morning Mr. Chairman and members of the committee:

My name is Mike Reecht and I appear before you today on behalf of AT&T in support of SB 296.

The Legislature passed legislation in 2000 requiring the Kansas Corporation Commission (KCC) to issue rules that would require telecommunications providers to provide notice to consumers alerting them to the availability of the Telephone Preference List published by the Direct Marketing Association. The TPL is designed as a tool for consumers to use to remove their names from telephone call lists used by members of the DMA. AT&T is a member of the DMA and abides by its rules by removing the telephone numbers of customers who request it from our calling list.

The KCC issued its rules calling for publication of pertinent information required by the 2000 legislation in customers' telephone directories. Local telephone companies are currently implementing these rules. SB 296 complements the 2000 legislation. It requires the DMA to make the national list available to the Attorney General on a quarterly basis in a form prescribed by the Attorney General at no cost. The AG may inform consumers if they are on the telephone preference list and the AG may register Kansans on the list and forward the registrations on to the DMA.

It is also my understanding that the Federal Trade Commission is looking at rules that will cover unsolicited telephone calls on a national basis.

AT&T understands the frustration of consumers regarding unwanted telephone calls. AT&T is not interested in generating calls to consumers who do not want to be called and are likely to hang up. As I mentioned before, AT&T supports the DMA and honors those customers who have indicated to the DMA to take their names off our calling list. In addition, AT&T maintains its own list of customers who have indicated to us directly that they do not want to be called in compliance with the Telephone Consumer Protection Act of 1991.

SB 296 complements existing Kansas law. It provides Kansans a cost effective way to help eliminate those unwanted calls. AT&T supports the passage of SB 296.

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Senate Judiciary Committee
Re: SB 296
February 1, 2002

Testimony of Jim Gartner
Representing SBC Southwestern Bell

Thank you, Chairman Vratil and members of the Committee. I am here today to express support for Senate Bill 296 on behalf of SBC Southwestern Bell.

We believe good laws and regulations have been enacted in Kansas to protect consumers from telemarketing abuses. SB 296 would strengthen and complement existing law.

We also want to assure the Committee that Southwestern Bell protects our customers from unwanted telemarketing calls from our company by maintaining an internal do not call list. If a customer asks that we refrain from future calls, we note their account and honor their request.

The national do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association is one resource utilized by Southwestern Bell to ensure we do not make unwanted calls to consumers.

SB 296 would give even greater emphasis to the Direct Marketing Association's process, and does not require the expenditure of state financial or human resources to create, implement and maintain another program.

Kansas further strengthened telemarketing rules during the 2000 Session with the passage of HB 2580. The new provisions of SB 296, when added to HB 2580, provide good protection for Kansas consumers.

Southwestern Bell places the highest value on our relationships with our customers, and we honor their wishes regarding that relationship.

I encourage you to support SB 296.

Thank you.

*Jim Gartner
2-1-02
att 6*

STEVEN C. MONTGOMERY, Chartered

Attorney at Law

US Bank Tower, Suite 808
800 SW Jackson Avenue
Topeka, Kansas 66612-2220

Telephone 785.235.2422
Facsimile 785.234.3687
Email smont@nomb.com

TO: Senate Judiciary Committee

FROM: Steve Montgomery, MCIWorldcom

RE: Senate Bill No. 296

DATE: February 1, 2002

On behalf of MCIWorldcom, thank you for the opportunity to appear in support of SB 296, which would continue to recognize the one existing Do Not Call list for the state of Kansas and enhance enforcement of violations by illegitimate telemarketers.

MCIW Supports One Central Do Not Call List, Not Multiple Lists

MCIW supports the proposal in SB 296 for one central Do Not Call list of national scope, rather than multiple piecemeal lists which are confusing and overly burdensome for customers and telemarketers. Like other legitimate telemarketers, MCIW conducts business in many states and does not want to call prospective customers who do not want us to call them. Such contacts alienate business prospects. However, when conducting business operations across the country, the creation of different Do Not Call lists in different states is unduly burdensome for legitimate telemarketers, which initiate such calls from central "calling centers", such as we operate within the state of Kansas.

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MCIW is a member of the Direct Marketing Association (DMA) and our policies include strict compliance with the nationally recognized DMA Do Not Call list. SB 296 would continue to rely upon the national DMA list as the sole Kansas list, rather than creating additional lists and creating confusion for the telemarketers which attempt to operate with respect for the customer.

Kansas Presently Has a Do Not Call List

At the present time, there is a Do Not Call list in Kansas administered by the DMA. However, too few Kansans know how to use it or to enforce its provisions. Pursuant to 2000 HB 2580, the KCC adopted regulations last October, commencing an educational effort in Kansas to instruct people how to enroll and how to file complaints against violators. SB 296 would enhance the 2000 legislation without adopting a new approach before present efforts are given an opportunity to be successful.

The Federal Trade Commission Is Proceeding with a National Do Not Call List

Earlier this month, the Federal Trade Commission announced its intention to pursue a national "one-stop-do-not-call list." While the DMA may oppose such a proposal as government competition with its business, MCIW supports the concept of one central list. We respectfully suggest that any state action to create yet another list beyond the current DMA list, would be premature given the ongoing FTC action. SB 296 endorses the consistency and clarity of the "one list approach."

Focus on Education and Enforcement, Rather than Creating a New Bureaucracy

Regardless of how many lists exist or who administers them, there will be telephone solicitors which will conduct their activities without regard to Do Not Call lists. For those who cannot simply say "NO" or hang up the telephone upon receiving an

undesirable call, education efforts are recently underway on how to avoid such calls in the first place. SB 296 would promote enforcement by sharing the DMA list with the Attorney General's Office, thereby allowing the Attorney General additional tools to protect Kansas consumers without overly confusing consumers with multiple Do Not Call lists and unduly burdening legitimate telemarketers.



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 Senate Judiciary Committee
RE: Senate Bill 296
February 1, 2002

Chairperson Vratil 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 to SB 296. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

We believe Kansans support the enactment of a "no-call" or "do-not-call" law. The Consumer Protection Division conducted a survey at the 2000 Kansas State Fair about support or opposition to no-call legislation. Of the 801 Kansans who participated in our survey, 800 supported a no-call law. The one person who opposed no-call was a manager at a telemarketing company. We have been bombarded with calls and questions about no-call, especially after no-call was passed in Missouri.

Senate Bill 296 would require a telemarketer to consult the telephone preference list maintained by the Direct Marketing Association (DMA), a private trade association, before making unsolicited consumer telephone calls to Kansas consumers. While Attorney General Stovall supports no-call legislation that does not contain numerous exemptions, the Attorney General opposes the concept contained in SB 296, specifically the unstructured use of the DMA telephone preference list.

Senate Bill 296 is very similar to SB 539 proposed by the DMA during the 2000 legislature. At that time, our office was advised by the DMA lobbyist that the current position of DMA allowed access only to telemarketers for the "...use of removing consumer names from calling lists" and that no change in policy was planned. Unless the DMA has changed this position, the Attorney General would not be allowed access to the list. As you can imagine, this fact would make this law virtually unenforceable. If the DMA has changed its position on this issue and will now grant the Attorney General access to the list, what assurances does the State of Kansas have that it will not reverse this position if the Attorney General prosecutes a member or members of the DMA for violations of the no-call law? The bill does not refer to a contract or bid process, and the Attorney General is unaware of any authority of the legislature or the Attorney General to mandate policy or procedures upon a

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private association in this type of situation. As a result, we believe our ability to enforce the no-call law proposed in Senate Bill 296 would be limited.

The bill states at page 1, lines 18-19 that the DMA “shall” offer to consumers at least one method of registration at no cost to consumers and such registration shall be for a period of five years. Ignoring whether the State has the power to require the DMA to offer the one free registration method, as we understand the DMA’s current practice this would mean only written registration would be free. Online registration, if available, would be for a fee presumably set by the DMA, not by the legislature or the Attorney General. Phone registration is not even offered. Phone registration was the most popular method of registration in Missouri, where nearly 900,000 Missouri residents have registered on their no-call list. Denying this easy method of registration would limit the effectiveness and availability of no-call in Kansas.

Other concerns about this bill include whether the Legislature can or should delegate the authority to a private trade association to maintain a list without providing any limitations or guidelines regarding:

- charges to consumers to register by means other than the one unspecified free method that is left to the complete discretion of the DMA;
- charges for access and methods of access to the list for DMA members and non-members are not specified by statute. Instead, the bill states at page one, lines 23-25, that telephone solicitors shall have access to the list on terms “approved” by the Attorney General. However, it does not say how the Attorney General is authorized to mandate that the DMA, a private association, follow such terms approved by the Attorney General, nor does it give the Attorney General authority to set such terms, only to “approve” the terms, which implies that the DMA may set the terms subject only to approval by the Attorney General. The bill provides no guidance on methods of access to the list by telemarketers, whether provided in downloadable format online, by CD, or other means.
- subjecting telemarketers to civil penalties for noncompliance based on this privately maintained list with limited or unenforceable statutory parameters. The bill calls for no contract between the DMA and the Attorney General, so again we are unaware of any authority which would enable our office to mandate how the list is maintained, what charges are made for access, the methods of access to the list, etc.

It is my understanding that other no-call legislation will be offered this session based in part on the Missouri no-call law, with Information Network of Kansas designated to maintain the no-call database. In addition, House Bill 2100 from last session offers another alternative to this proposal, based on an Oregon law which allows the Attorney General to advertise for bids and contract with an outside administrator to maintain the do-not-call list. The Attorney General supports either of these alternatives, which we believe provide a feasible way to help consumers lessen unsolicited telephone calls without providing the use of taxpayer funding.

The Attorney General supports no-call legislation if it is enforceable by our office and does not contain numerous exemptions. If the legislature passes no-call legislation with numerous exemptions, Kansans will be more upset with legislators and our office than they are with telemarketers. Kentucky's no-call law has so many (22) separate exemptions that the Kentucky Attorney General website advises consumers, "*Unfortunately, it is estimated that over 95% of the businesses or non-profit organizations which conduct telemarketing sales are exempt under the act and will not be required to honor the no-call list.*"

On behalf of Attorney General Stovall, I urge you not to recommend passage of SB 296 as currently drafted based on the DMA list. We will support other bills on no-call this session, but this isn't a bill designed to protect Kansans from unwanted telemarketing calls. I would be happy to answer questions of the Chair or any member of the Committee.



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Senator John Vratil
Chairman Senate Judiciary Committee

Good morning Senator Vratil and members of the Senate Judiciary Committee. My name is Dr. Ernest Pogge and I am the coordinator of the AARP Kansas Legislative Task Force. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our views in *opposition* of Senate Bill 296.

The National Consumers League estimates that consumers lose \$40 to \$60 billion a year to fraudulent telemarketers. Unscrupulous telemarketers sell inferior merchandise, misrepresent and fail to deliver goods, and levy fraudulent charges to people of all ages, ethnic groups, educational backgrounds and income levels. In a 2000 survey of AARP members in Kansas, the telemarketing industry was listed as the one most in need of improved consumer protection laws.

It is essential that Kansas laws should include criminal penalties to help protect consumers against such abuses. The Federal Telemarketing Sales Rule enacted by the Federal Trade Commission (FTC) is a good start toward reducing telemarketing fraud. However, the FTC rule does not address many abusive telemarketing practices.

Although the FTC rule only provides for civil penalties for violations, the rule specifically provides that state officials may bring civil and criminal proceedings in state court for violations of state telemarketing laws. Many state Attorneys General believe that criminal penalties are the best deterrent against telemarketing fraud.

Several states have enacted do-not-call legislation that permits consumers to place their name on state managed lists. Telemarketers are usually required to obtain the list, and are prohibited from calling anyone whose name appears on the list. These laws in Florida, Georgia, Oregon, Missouri, Colorado and efforts in twenty other states have successfully started a trend in the development of such laws. In most of these states, that have passed successful no-call legislation, the Attorney General or their designee manages the no-call list.

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AARP believes that consumers should be insured the right to personal privacy and should be able to reject intrusive marketing practices and communications. Kansas should enact meaningful legislation that will provide state oversight and ensure consumer protection against telemarketing fraud and protect the privacy of its citizens from unsolicited telephone calls including but not limited to:

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

Therefore on behalf of our 350,000 state members we thank you for this opportunity to express our *opposition* to SB 296.

Dr. Ernie Pogge
Kansas Legislative Task Force
AARP Kansas

STATE	WHO MAINTAINS LIST?	NOTICE TO CONSUMERS:/ HOW DO CONSUMERS GET ON??	WHAT IS THE FEE FOR CONSUMERS?	HOW OFTEN IS IT UPDATED?	EXEMPTIONS	PENALTIES
CT	Dept. of Consumer Protection*	¹ None specified ² Toll-free number, writing, fax, e-mail	None	Quarterly	Non-profits, telephone companies to maintain directory, debt collection, prior permission from consumer	\$5,000-\$25,000 per violation
FL	FL Dept. of AG & Consumer Services	¹ None specified ² Online, toll-free number	\$10/\$5 annual renewal	Quarterly	Charities, previous business relationship, political calls, debt collection, newspaper sales	\$10,000 per violation
GA	Public Service Commission	¹ None specified ² Online/mail-in	\$5/two years	Quarterly	Prior business relationship charities, political calls	\$2,000 per violation (Enforced by Governor's office)
ID**	AG	Notify AG in writing	\$10/3 years \$5/additional 3 years	Quarterly	Previous business relationship, charities	\$500-\$5,000 (third violation)

*Can contract with private vendor.

** AG will provide self-help measures to those on list.

STATE	WHO MAINTAINS LIST?	NOTICE TO CONSUMERS/ HOW DO CONSUMERS GET ON??	WHAT IS THE FEE FOR CONSUMERS?	HOW OFTEN IS IT UPDATED?	EXEMPTIONS	PENALTIES
AL	AG	¹ Telephone co's provide notice on annual basis (media, bill inserts, etc.) ² Online, in writing, toll-free number	None/on list for two years	Continually	All exemptions under the telemarketing sales rule, and existing business relationships	\$2,000 per violation Allows private right of action
AK	Local telephone carriers	¹ Billing statements, notice in telephone book ² Written notice	None	N/A (Black dot placed next to name in phone book.	Prior customers, political calls, opinion surveys business-business, sale during last 24 months	
AR	AG	¹ Not specified ² Online/ toll-free number	\$10/\$5 annual renewal	Quarterly	Car dealers, mortgage agents, brokers, investment advisors, charities, newspapers, banks, funeral homes, business relationships in last 3 years	Penalties under UDAP law

STATE	WHO MAINTAINS LIST?	NOTICE/HOW DO CONSUMERS GET ON?	WHAT IS THE FEE FOR CONSUMERS?	HOW OFTEN IS IT UPDATED?	EXEMPTIONS	PENALTIES/PUT ON RIGHT OF ACTION
OR	Administrator hired by AG	¹ None specified ² Online, toll-free number	\$6.50/\$3.00 annual renewal	Monthly	Charities, past business relationship, political or opinion survey, calling on consumer request	AG's discretion
TN	Tennessee Regulatory Authority	¹ Semi-annual notice by telephone co., ² Online, toll-free number	None. On list for five years	Monthly	Non-profits, business transaction within last 12 months, companies that make under three calls per week	\$2,000 per violation

STATE	WHO MAINTAINS LIST?	NOTICE TO CONSUMERS:/ HOW DO CONSUMERS GET ON ² ?	WHAT IS THE FEE FOR CONSUMERS?	HOW OFTEN IS IT UPDATED?	EXEMPTIONS	PENALTIES
ME ***	DMA	Notify DMA to get on Telephone Preference list	None	Semi-annually	Established business relationship	Penalties under UDAP law
MO	AG	¹ None specified ² Toll-free number, online (have right to say, "do not send" to e-mail)	None	Quarterly	Telephone co's, current business relationship, consumer's request, certain non-profits persons calling from their homes, telemarketers calling for appointment	\$5,000 per violation. Allows a private right of action.
NY	Consumer* Protection Board	¹ Local telephone books, bill inserts ² toll-free number, online	None	Quarterly	Pending regulation	\$2,000 per violation

*** All telemarketers, not just DMA members, must buy the DMA list.