

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:40 a.m. on February 19, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

John Gann, Kansas Association of Insurance Finance Advisors (written only)
Joe Molina, Asst. Attorney General for Consumer Protection/Antitrust Division, Attorney General's Office
Niki Christopher, Citizens' Utility Ratepayer Board (CURB)
Barbara Withee, AARP
Ted Walters, Kansas Association of Retired School Personnel
Robert E. Geers (written only)
Shannon Jones, Statewide Independent Living Council of Kansas (written only)
Bill Kennedy, Riley County Attorney
Marlee Carpenter, Kansas Chamber of Commerce & Industry

Others attending: see attached list

SB 126 - Exemption to no-call act for purpose of arranging a face-to-face meeting

Chairman Vratil opened the hearing on **SB 126**. Conferee Gann, Kansas Association of Insurance Finance Advisors, submitted written testimony in support of **SB 126**. (Attachment 1)

Joe Molina, representing the Attorney General's Office, testified in opposition of **SB 126** and the proposed exemptions to the No-Call Act. Mr. Molina related that Attorney General Kline believes that the Legislature approved a strong and workable No-Call Act, and that amending the Act to include numerous exemptions will only weaken the law. He stated that the Attorney General opposes this bill that would exempt unsolicited consumer telephone calls made for the sole purpose of arranging a subsequent fact-to-face meeting between a salesperson and the consumer. (Attachment 2)

Conferee Christopher spoke in opposition to **SB 126**, and stated that CURB does not think that substantive changes should be made right now to the No-Call Act. She said that this proposed bill creates an unnecessary and large loophole in the Do Not Call protections. (Attachment 3)

Conferee Withee testified in opposition to **SB 126** on behalf of AARP Kansas. She asked the Committee to oppose this bill, and maintain no-call legislation that protects the privacy and well being of Kansans. (Attachment 4)

Conferee Walters testified against **SB 126**, and said his organization believed that consumers have a right to personal privacy and should be able to reject unwanted intrusive marketing practices and communications. He stated that the Kansas No-Call law was effective, and should be left alone for a couple of years before any exceptions or modifications are made. (Attachment 5)

Robert E. Geers submitted written testimony in opposition of **SB 126**. (Attachment 6)

Shannon Jones submitted written testimony in opposition of **SB 126**. (Attachment 7)

Chairman Vratil closed the hearing on **SB 126**.

SB 188 - Amending the No-Call Act to include the FTC No-Call list

Chairman Vratil opened the hearing on **SB 188**. Conferee Molina testified in support of this bill which would allow cellular telephone numbers to be registered on the Kansas No-Call list, provide for the transfer of information of the Kansas No-Call list to the national No-Call list and specify that the

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 19, 2003 in Room 123-S of the Capitol.

consumer registration information shall not be considered a public record under the Kansas Open Records Act. He stated that the Attorney General supported the amendment that specifies the consumer registration information on the Kansas No-Call list shall not be considered a public record under the Kansas Open Records Act. (Attachment 8)

Committee questions and discussion followed concerning how residential cell phone numbers and business cell phone numbers would be distinguished. A question was asked in regard to why there is a sunset provision under the Kansas Open Records Act in 2008 for the No-Call list. The Revisor advised that the sunset provision was required by the Open Records Act. Senator O'Connor questioned the fiscal note regarding the possibility of GovConnect incurring an extra cost when adding the cellular phone numbers. (Attachment 9)

Conferee Christopher testified as neutral on behalf of CURB, and again stated that giving the program more time would be prudent before making changes to the rules of the No-Call program. She suggested a provision be added in Section 1 that defines what kind of phone numbers are eligible for Do No Call protection. Her written testimony on **SB 188** was included with her previous testimony on **SB 126**. (See Attachment 3)

There being no opponents appearing before the Committee, the Chairman closed the hearing on **SB 188**.

SB 171 - Changes the lower dollar limit of felony theft

Chairman Vratil opened the hearing on **SB 171**. Bill Kennedy testified in support of **SB 171** which increases the current \$500 felony theft threshold to \$2,000. He said that changing the threshold to \$2,000 will eventually lower the prison population by impacting criminal history, plus lower the costs of prosecution. (Attachment 10)

Conferee Carpenter submitted written testimony on behalf of the Kansas Chamber of Commerce and Industry and the Kansas Retail Council. (Attachment 11)

The Chair closed the hearing on **SB 171**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 20, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds, Feb. 19, 2003

NAME	REPRESENTING
Bill Speed	State Farm
Susan Mahoney	SBC
Debi Hatfield	KDHE
DARRELL DONAHUE	AARP
Colleen Harvell	KCC
Amy Bertrand	Judicial Branch
NIKI CHRISTOPHER	CURB
Ted Walters	KARSP/AARP
Barbara Withlee	KARSP /AARP
Chris Allen	Top. Ind. Journal
Jesse Boyon	Secretary of State
Jamie Corkhill	SRS
Monique Deane	SRS
Michael Whit	KCDAA
Kevin Davis	Am Family Ins
Lee Wright	FARMERS INS.
Carolyn Mammanna	Sen Alien Intern
Eric Sexton	WSU
Ann Peterson	K STATE

SENATE JUDICIARY COMMITTEE GUEST LIST

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DATE: Weds., Feb 19, 2003

NAME	REPRESENTING
Matthew Porchsky	Sen. Adkins
Dep AG BRYAN BROWN	Phil Kline, AG.
Sean Kline	Prothonotary AG
Robert P. Deans	SELF
Joseph Upham	Phill Kline AG
Maude J. Davis	AARP - JOHNSON COUNTY
Margaret Black	
Frieda Jakobe	AARP - Johnson County
Catherine Erber	AARP " "
Joseph Erber	AARP " "
Glenn K. Davis	AARP " "
Virginia Province	AARP " "
Trista Curzydlo	KS Bar Assn.
Doug Smith	Pinegar, Smith & Associates
Maude Carpenter	KCCI
Bill Kennedy	Atley County Atty

Testimony of John Gann
Kansas Association Insurance and Financial Advisors
(KAIFA)
In Support of SB126
February 19, 2003

Madam Chairman and Committee Members:

I appreciate the opportunity to address the Senate Judiciary Committee today on behalf of the members of Kansas Association of Insurance and Financial Advisors (KAIFA) in support of SB126. Our membership consists of 1,200 Kansans located in all counties who are actively engaged as insurance agents and brokers.

KAIFA supports SB126, which would allow calls to be made to set up a face-to-face meeting.

This proposed change to the no-call law would assist the insurance professional in their ability to provide insurance products to persons who may need the product or service.

Transacting business by phone is an important marketing tool for KAIFA members to promote products and services and increase visibility in the community.

At this time, if an insurance agent receives a referral from someone, the insurance agent or broker cannot make a call to that person to offer to sell him an insurance product if he is on the no-call list. The change to the no-call law in SB126, would allow the insurance professional to call the individual at home for the purpose of setting a meeting up with them to further understand the prospective client's needs.

An example of this is of a KAIFA member that receives referrals from an attorney who has clients that may need to purchase an insurance product. Under the present no-call law that insurance professional is not allowed to call the referral if they are on the no-call list.

The restrictions of the no-call laws make it especially difficult on the small businessperson in Kansas. The law also makes it more difficult for new agents to come into the business, as often requirements include having a prospective client list to contact and follow-up to set up meetings to discuss the available products and services.

KAIFA would ask your support for SB126 to assist the insurance professional in their efforts to continue to provide quality insurance products to the citizens of Kansas.

Thank you.

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PHILL KLINE
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

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Testimony of
Joseph N. Molina, Assistant Attorney General
Consumer Protection Division
Office of Attorney General Phill Kline
Before the Senate Judiciary Committee
RE: No-Call Legislation, SB 126
February 19, 2003

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Phill Kline today and provide our comments on Senate Bill 126 concerning exemptions to the Kansas No-Call Act. My name is Joseph N. Molina and I am an Assistant Attorney General for Consumer Protection/Antitrust Division.

There are currently five bills before the Kansas Legislature that propose amendments to the No-Call Act. Attorney General Kline strongly opposes the four amendments that propose exemptions to the No-Call Act. Attorney General Kline believes that the Legislature approved a strong workable No-Call Act and amending the Act to include numerous exemptions will only weaken the law. The effectiveness of the Kansas No-Call Act, as well as the intended protection provided by the Act are at stake. Additional amendments that include over-broad exemptions will only dilute an otherwise effective, sound and popular law supported by tens of thousands of Kansas citizens. As such, Attorney General Phill Kline opposes SB 126 that attempts to exempt unsolicited consumer telephone calls made for "the sole purpose of arranging a subsequent face-to-face meeting between a salesperson and the consumer".

Attorney General Kline opposes Senate Bill 126 because the amendment would allow a host of companies, domestic and foreign, to circumvent the Kansas No-Call Act by simply altering their marketing schemes. This circumvention by exemption has already plagued another state government. Kentucky's No-Call law was initially implemented with 22 exemptions, one of which was an exemption for calls made to arrange a face-to-face meeting. These exemptions allowed for 95% of all telephone solicitation complaints to be classified as non-violations. Obviously, the Kentucky law provided little protection for Kentucky citizens. In response, the Kentucky General Assembly unanimously approved amendments to their law in its 2002 session. These amendments repealed 17 of the 22 exemptions and added a Class D felony for any telemarketer who knowingly and willfully violates their law by calling more than three times within a calendar year.

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Furthermore, the Office of the Attorney General has received response after response from telephone solicitors claiming they are not in the business of contacting people on No-Call lists. These companies state that it is a waste of time, money and resources to make calls to individuals who do not want to speak to a telemarketer. If these companies are truly uninterested in wasting valuable resources calling consumers on No-Call lists, then why would they want to be exempt from an effective, reliable law that accurately pin-points individuals that need not be called. The reason that telemarketers wish to be exempt, even with the opportunity to become more cost-effective, is that the Kansas No-Call Act reduces the amount of potential customers available to them. Thus, given the option, a telemarketer would rather spend resources attempting to make sales than become more cost-effective.

Finally, it is important to remember that the Kansas No-Call Act touches many lives and if too many exemptions or an over-broad exemption is implemented it may result in the worst case scenario - the appearance to consumers that something has actually been done to help them when, in fact, very little has been done and staff and funding have been committed to implement an ineffective program.

On behalf of Attorney General Kline, I recommend that SB 126, that proposes to exempt unsolicited consumer telephone calls made for "the sole purpose of arranging a subsequent face-to-face meeting between a salesperson and the consumer" not be added to the Kansas No-Call Act. I would be happy to answer questions of the Chair or any member of the Committee.

Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
A.W. Dirks, Vice-Chair
Frank Weimer, Member
Francis X. Thome, Member
Nancy Wilkens, Member
David Springe, Consumer Counsel



State of Kansas

Kathleen Sebelius, Governor

1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
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SENATE JUDICIARY COMMITTEE

S.B. 126 and S.B. 188

"Do Not Call" legislation amending K.S.A. 2002 Supp. 50-670 and 50-670a

Testimony on Behalf of the Citizens' Utility Ratepayer Board

By Niki Christopher, Attorney for CURB

Chairman Vratil and members of the committee:

Thank you for permitting CURB to offer its comments today on SB 126 and SB 188. Although you may characterize CURB's positions on these bills as generally supportive of SB 188 and generally opposed to SB 126, CURB has mixed feelings about any legislation that would alter the Do Not Call rules at this stage.

1. Give the Do Not Call Rules a chance to work before amending them.

As you all are well aware, the legislature labored long and hard last session to develop a satisfactory version of the Do Not Call rules. Several of you were sponsors of one or more versions. In fact, the bill's final name, House Substitute for Substitute for Senate Bill 296, bears witness to how hard everyone worked last year to come up with a version that was protective of consumers without creating undue hardships on business. You did a pretty good job of making everyone happy with the final version of the bill, because it passed 117 - 4 in the House, and 39 - 0 in the Senate.

The nearly half a million Kansans who have signed up for the Do Not Call list so far are happy, too. Their enthusiasm is sending a clear message to you as lawmakers: they *like* this law, and *like* the fact that this law protects them from being bothered with unsolicited telephone calls. They signed up because they don't want to talk to salespeople -- or their appointment setters or the telemarketers who call on their behalf. Our constituents do not want you to water down the protections they've just gained.

Which comes to my major point: it wasn't until late this fall that the Do Not Call program was really up and running effectively. We're not sure that it's appropriate to be tinkering with the rule before we've had it in place a while longer, so that its effectiveness can be fairly judged. We certainly don't think that substantive changes should be made right now.

However, with that thought in mind, I would like to offer some specific comments and a few suggestions about these two bills.

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2. SB 126 creates an unnecessarily large loophole in the Do Not Call protections.

Given the substantive change created by SB 126, CURB cannot support it. SB 126 would create a substantial loophole in the current No Call rules to allow companies to call Kansans on the Do Not Call List for the purpose of arranging a face-to-face meeting between a consumer and a salesperson. I don't think making such an exception for appointment setting is consistent with the intent and purpose behind creating the Do Not Call List.

CURB understands the concerns of small businesses that have historically depended on telemarketing to market their services and products. However, as more and more Kansans elect to be protected from these calls, we are sure that those with useful products and services to offer will find other, less intrusive ways to take their messages to consumers.

For example, many of us in this room can remember back when the Avon Lady or the Fuller Brush Man came to our homes. They don't do that anymore, primarily because people became wary of opening their doors to strangers. But Avon and Fuller Brush didn't go out of business. Avon is still a thriving company, and Fuller Brush, a Kansas company that's nearly 100 years old, is going strong. These companies creatively changed their marketing tactics and strategies with the times, and survived.

Likewise, businesses that now rely on making intrusive telemarketing calls will develop creative ways to market their products and services to Kansans who, by signing up on the Do Not Call list, have chosen not to open their homes to unwanted calls. Please don't undermine the effectiveness of the Do Not Call program by creating loopholes for businesses that do not want to respect the choice that a consumer makes when he or she signs up on the Do Not Call List.

3. Provide that businesses must respect the consumer's Do Not Call requests.

If you must make exceptions to allow such calls, CURB suggests that you strengthen the rules to make it clear that any business caller seeking to arrange a face-to-face meeting who is informed by the consumer that his or her number is enrolled on the Do Not Call List shall regard this as a "negative response" under Section 1(a)(5), and must offer to terminate the call. If the consumer does not wish to continue, the business must terminate the call immediately. This won't alleviate the problem of unwanted interruptions, but it would at least preserve some measure of respect for the choice the customer has made by signing up on the Do Not Call List.

But CURB would prefer that you not enact SB 126 at all. I can confidently tell you that the Do Not Call bill may have been the most univervally popular legislation that CURB has ever supported on behalf of its constituents. We believe that they like the protection that it provides, and that they do not want loopholes undermining that protection.

4. SB 188 adds consumer protections that Kansas consumers will support.

Given the short amount of time that the Do Not Call program has actually been in operation, CURB views SB 188 with mixed feelings. As I said a few moments ago, we think it might be more prudent to give the current program more time to work before making changes to the rules.

However, SB 188 makes some minor changes that CURB views as positive changes that are consistent with the intent and purpose of the legislation passed last session. It would bring personal cell phones under the No Call Rules, and permits the attorney general to add the Kansas Do Not Call List to a national list if it becomes available. It protects the privacy of Kansans by limiting the uses that can be made of the information on the Do Not Call List. CURB doesn't object to these relative minor changes. They do not undermine any of the protections that Kansans enjoy under the current rules. They appear to be changes that our constituents would support.

5. We suggest a provision that defines what kind of phone numbers are protected.

It has occurred to us that SB 188's inclusion of personal cell phones within the protections of the rule might be more efficiently accomplished by providing a definition in Section 1 that would establish what kind of phone numbers are eligible for Do Not Call protection.

For example, it might be better to refer to "protected numbers" throughout the statute, and provide a definition that says, for example, "Any telephone number registered on the Do Not Call List that is private and not used for commercial purposes, regardless of the type of telecommunication device or technology that supports it, is a protected number under these rules." The references throughout the statute to calling the "residences of consumers" or "telephone numbers" could be changed to the simple defined phrase "protected numbers."

This would bring new devices under the rule as they become available, without having to continually amend the rules to account for emerging technologies. Customers can now make phone calls with telephones, cell phones, car phones, wireless phones, and even their computers. Who knows what will come down the pike next? You probably don't want to go through this process every year as new devices come along. I strongly suggest that, if you are determined to include personal cell phones under the current rules, that you might as well craft this bill to cover all telecommunications devices that may come along.

Summary of CURB's positions:

- 1. Give the Do Not Call Rules a chance to work before amending them.**
- 2. SB 126 creates an unnecessarily large loophole in the Do Not Call protections.**
- 3. Provide that businesses must respect the consumers' Do Not Call requests.**
- 4. SB 188 adds consumer protections that Kansas consumers will support.**
- 5. We suggest a provision that defines what kind of phone numbers are protected.**



February 19, 2003

Senator Vratil
Chairman Senate Judiciary Committee

Good morning Senator Vratil and Members of the Senate Judiciary Committee. My name is Barbara Withee and I am the State Leader for AARP Kansas. AARP Kansas represents the views of our more than 348,000 members in the state of Kansas. Thank you for this opportunity to express our opposition to SB 126.

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.

Do Not Call laws do not regulate the telemarketing industry per se. Instead, they give consumers more control over unsolicited intrusions into their homes, and help avoid potentially fraudulent telemarketing calls – many of which are targeted toward seniors in your districts.

These laws also won't stop every unsolicited call from coming to consumers who sign up for the list. Virtually all state laws have some exemptions, the most common being charities, political organizations, calls made in relation to ongoing business relationships, and calls made to existing customers.

During the 2002 session members of this committee worked hard to pass the current no-call law that provides governmental oversight and consumer protection against telemarketing fraud and protects the privacy of Kansans. We applaud your efforts.

AARP Kansas supported the no-call law and placed ads in newspapers across the state to inform Kansans about the new law and the privacy and security that it would bring to them. As of January 21, 2003 approximately 475,000 residential telephone numbers had been registered on the Kansas No-Call List.

One of AARP's 2003 priorities is working to insure exemptions to the no-call law remain as narrow as possible. Therefore, AARP strongly opposes exemptions like those in Senate Bill 126 that might sound like they would benefit small business but would actually:

- Allow telemarketers to circumvent the no-call list to ask for a face-to-face meeting.
- Allow telemarketers the opportunity to invade consumer's privacy for potentially fraudulent telemarketing practices.
- Provide opportunities for anyone to enter consumers' homes for possible unscrupulous or high-pressure sales practices.
- Put consumers' safety at risk in their own home.

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Jim Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org Senate Judiciary

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We believe that if this bill were to pass it would weaken the no-call law making it impossible to enforce. States like Kentucky had exemptions similar to this one in their no call law. They were not enforceable. Kentucky worked hard to eliminate this type of exemption to create one of the strongest no-call laws in the nation.

Today over 350 AARP volunteers, members and guests are here in the Capitol to oppose SB 126 and to support the minimum exemptions of the current no-call law.

Therefore, we respectfully ask that you oppose this bill and maintain no-call legislation that protects the privacy and well being of Kansans.

Thank you for this opportunity to express our opposition to SB 126. I will stand for questions.

Barbara Withee
AARP State Leader

Testimony before Senate Judiciary Committee
February 19, 2003
J. Ted Walters, Liaison
Kansas Association of Retired School Personnel

Good morning Senator Vatril and members of the Senate Judiciary Committee. My name is Ted Walters and I represent the Kansas Association of Retired School Personnel with more than 4,000 members in the state of Kansas. (Most of whom quickly signed up for No Call Protection.) Thank you for this opportunity to express our views on Senate Bill ~~188~~ ¹²⁶ and on any other bill that would grant an exception to the No Call Law that is in effect.

While we recognize that we can't protect every person from every thing, we believe that consumers have a right to personal privacy and should be able to reject unwanted intrusive marketing practices and communications. Our Kansas No Call Law is effective and extremely popular. Over 455,000 telephones are signed up for the service. It is working quite well and we believe it should be left alone for a couple of years before any exceptions or modifications are made.

I am amazed at the subterfuges being proposed to exempt groups from No Call law. SB ~~188~~ ¹²⁶, which exempts calls for the purpose of setting up face to face conferences, would destroy the No Call Bill. Automatic dialers could be set to call and ask for an appointment to explain the benefits of what ever product or service was being offered. This Bill goes beyond the nuisance factor and creates potentially unsafe and threatening house calls. It would be unenforceable and it could lead to uncontrolled door to door solicitation as the unscrupulous could claim to have called and made appointments and then force themselves on the frail and elderly. SB ~~188~~ ¹²⁶ definitely would weaken and destroy, our effective NO CALL Legislation. Please reject it.

People do not give up their privacy when they purchase telephone service! Why should telemarketers be given the right to invade anyone's privacy just because they own a telephone? Over 400,000 Kansans seek to protect their privacy by ASKING to be put on a "No Call" list. Don't weaken their protection by passing Bills like SB ~~188~~ ¹²⁶. All of us are "Pro business" but not at the cost of becoming "Anti Privacy" and "Anti Consumer" Keep No Call as it is for now and evaluate how it works over the next two years. Reject SB ~~188~~ ¹²⁶. Please.

Again, thank you for this opportunity to provide testimony on this legislation. I will be happy to address any questions or concerns that you or the committee members may have.

Ted Walters

NRTA State Retired Educators Association Liaison for Kansas.
1924 SW Arrowhead Rd., Topeka, KS 66604 (785) 272-1788

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Robert E. Geers
2926 SW Foxcroft Ct. #3
Topeka, KS 66601-0023
(785) 272-4645

February 19, 2003

RE: SB 126

Honorable Senate Committee Members:

A year ago I provided testimony in favor of the "no call" bill and was very please that it was passed by both chambers. I, of course, immediatly signed with the AG's office as stipulated by the bill to receive no calls. Needless to say, the intent of the bill has not provided my residence with true "no call" but it has been more than moderately successful.

I am testifying today on behalf of my family and family members. Some of my family members are mentally challenged. Providing additional "loop holes" in the existing bill will only expand the potential for exploitation of the general public and especially the mentally challenged. It is my firm belief that truly legitimate professional business organizations (I was once a part of such a business) have many outlets other than telephone solicitation to explain the merits of their service and products.

I further feel that having any organization other than the AG's office monitoring and/or controlling the "no call" list would be a very big mistake.

I sincerely appreciation the opportunity to appear before you today. Thank you.

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*Was not on
our list*

**Testimony to
Senate Judiciary Committee
in Opposition to SB 126
February 19, 2003**

Mr. Chairman, members of the committee, thank you for the opportunity to submit written testimony in opposition to SB 126. My name is Shannon Jones and I am the executive director of the Statewide Independent Living Council of Kansas (SILCK). The SILCK is mandated by the federal Rehabilitation Act as amended in 1993. We are governor appointed, consumer controlled and comprised of statewide and cross-disability representation. Our Council seeks input from Kansans with disabilities in order to develop the State Plan for Independent Living. The SILCK's primary purpose is to facilitate and promote freedom of choice and equal access to all facets of community life for people with disabilities of any age.

The SILCK is strongly opposed to SB 126. Over 475,000 Kansans have made it clear they do not want to be at the mercy of telephone solicitors. If we open up the law to exemptions, this will be another intrusion of their privacy. Not only would this exemption allow telemarketers of small businesses to call, even if you are on the no call list, but they can also ask for a meeting in your home. This is not a good situation. This could lead to the possibility of consumers being taken advantage of, in their own homes. Telephone solicitation is out of control.

In addition, if the Direct Marketers Association manages the list, the ability of the state to properly carry out its duties will be diminished. In no way should the state's oversight, investigatory, or enforcement ability be compromised.

The no call legislation that was passed last year was a welcome relief to all Kansans who were frustrated and inconvenienced by unwanted telephone solicitation. This law gives Kansans the right to control the calls they receive.

The SILCK urges this committee to respect the wishes of Kansas citizens to protect their privacy and preserve the intent of the law and oppose SB 126.

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PHILL KLINE
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
Joseph N. Molina, Assistant Attorney General
Consumer Protection Division
Office of Attorney General Phill Kline
Before the Senate Judiciary Committee
RE: No-Call Legislation, SB 188
February 19, 2003

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Phill Kline today and provide our comments on Senate Bill 188 concerning amendments to the Kansas No-Call Act. My name is Joseph N. Molina and I am an Assistant Attorney General for Consumer Protection/Antitrust Division.

There are currently five bills before the Kansas Legislature that propose amendments to the No-Call Act. Although, Attorney General Kline strongly opposes the four amendments that propose exemptions to the No-Call Act he supports SB 188 which would allow cellular telephone numbers to be registered on the Kansas No-Call list, provide for the transfer of information of the Kansas No-Call list to the national No-Call list and specify that the consumer registration information shall not be considered a public record under the Kansas Open Records Act.

Attorney General Kline's support for the addition of cellular telephone numbers to the Kansas No-Call Act is justified for the following three reasons.

First, receiving an unsolicited consumer call on a cellular phone may have a fiscal impact on consumers. Cellular telephone users will be burdened with the cost of telemarketing calls because they pay for the use of their cellular phones on a per minute basis. By amending the No-Call Act to cover cellular phone numbers consumers would not be burdened by the additional cost.

Second, receiving an unsolicited consumer call on a cellular phone may have a privacy impact on Kansans. The inherent mobility of cellular phones means that a telemarketer can reach a consumer anywhere, and especially at home, the very place the No Call law sought to place off limits. By amending the No-Call Act to cover cellular phone numbers Kansans could be assured that the

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telemarketers were not welcome in their "castles."

Third, a call on a cell phone can represent a clear and present danger. As the national press has reported, answering a cell phone and talking on a cell phone while driving adversely impacts the driver's attention to detail. Thus a call from a telemarketer to a cell phone can place Kansans in harm's way. By amending the No-Call Act to cover cellular phone numbers, the driving public would be best served and much safer.

The Attorney General also supports the amendment to allow the transfer of consumer registration information to the Federal No-Call list. By amending the No-Call Act to allow consumer information to be transferable, Kansans who have already registered their home phone numbers will not be forced to register again for the Federal list. Kansans have registered over 480,000 telephone numbers with the Kansas No-Call list however, the Federal Trade Commissions will begin to compile residential phone numbers for the Federal No-Call list registry in Spring of 2003. This enrollment will use methods similar to those currently used to register Kansas phone numbers on the Kansas No-Call list. By allowing the transfer of consumer information the Kansas No-Call list will be harmonized with the Federal No-Call list and citizens will avoid the registering process.

Finally, Attorney General Kline supports the amendment that specifies the consumer registration information on the Kansas No-Call list shall not be considered a public record under the Kansas Open Records Act. The Kansas No-Call Act was intended to protect the privacy of Kansas citizens. By allowing anyone access to consumer registration information would run counter to that intent. Citizens registering their residential phone number on Kansas No-Call list did so only to avoid telephone solicitors, not to have their information made public and reviewed by the entire world. As such, an amendment designating the Kansas No-Call list as a closed record is consistent with the intent of the law.

On behalf of Attorney General Kline, I ask that you recommend passage of the amendments in SB 188. I would be happy to answer questions of the Chair or any member of the Committee.

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

February 19, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 188 by Senate Committee on Judiciary

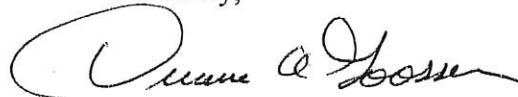
In accordance with KSA 75-3715a, the following fiscal note concerning SB 188 is respectfully submitted to your committee.

SB 188 would revise the Kansas No-Call Act. It would expand the definition of consumer telephone call to include a phone call made to a cellular phone number. If the Federal Trade Commission establishes a national no-call list, the Attorney General could have the Kansas no-call list transferred to a national no-call list. The bill would also exclude consumer registration information from the Kansas Open Records Act until July 1, 2008.

The Office of the Attorney General indicates there could be additional costs to the agency associated with the transfer of information to a federal no-call list. The cost of transferring the information would depend on the complexity of the federal system used for the national no-call list, time allocated to convert the state's data, and reformatting the state's data to match the federal data. Although the agency does not provide an estimated cost, the agency indicates that its existing resources could absorb the costs associated with transferring the data.

SB 188 would also have an effect on GovConnect, the vendor that provides free consumer registration by phone and the Internet. GovConnect would incur costs associated with the additional registration of cellular phone numbers.

Sincerely,



Duane A. Goossen
Director of the Budget

Senate Judiciary

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cc: Derrick Sontag, Attorney General's Office



COUNTY ATTORNEY'S OFFICE

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TESTIMONY OF WILLIAM E. KENNEDY III CONCERNING SENATE BILL 171

I suggest that the threshold cost of felonies in various nonperson statutes be increased from the current threshold of \$500.00 to a threshold of \$2,000.00. In the last twenty (20) years, this figure has moved from \$50.00 to \$100.00 to \$150.00 to \$500.00. It has been at the \$500.00 level since 1988.

Prosecutors should prosecute with an eye toward the best interest of the State of Kansas, the victim, and the Defendant in that order. In many cases, there is nothing to be gained for the State of Kansas by convicting someone as a felon. It simply does the rest of us no good.

Changing the threshold to \$2,000.00 will eventually lower the prison population by changing criminal history.

Changing the threshold to \$2,000.00 will enormously lower the costs of prosecution. Currently a person charged with Theft over \$500.00 is entitled to a jury trial with twelve (12) jurors, requiring a panel of thirty-four (34) potential jurors in order to pick twelve. Experience shows you have to summons approximately forty-five (45) in order to get thirty-four (34) actual jurors. On the other hand, a misdemeanor jury of six (6) requires only eighteen (18) potential jurors to report. Further, a person charged with a felony has a right to a preliminary examination. These require the presence of the victim, testimony, court time, preparation time and most often police officers on overtime. It is expensive and time consuming. Victims don't like to come to court.

As the felony grid K.S.A. 21-4704a, and the misdemeanor sentencing statute K.S.A. 21-4502 interrelate, a Court can sentence a first time misdemeanor theft Defendant to a year in jail, while if a person is convicted of theft between \$500.00 and \$25,000.00, that is a Severity Level IX crime and even a person with three or more nonperson felonies in their background can only be sentenced to eleven (11) months on a new conviction for Felony Theft. Conversely a first time Defendant convicted of Felony Theft will generally receive the recommended sentence of six (6) months.

Car windows are currently valued between \$125.00 and \$2,500.00. Newer vans with shaded glass and antennas and heaters in the glass represent the higher end. Recently we had an intoxicated soldier break a car window, and broken glass got down and around the air bag. One stupid act by a drunken soldier caused \$2,000.00 worth of damage. Almost any damage to a car is valued at over \$500.00.

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Assistant County Attorney

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Assistant County Attorney

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Assistant County Attorney

Kathryn S. Gonzales
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LEGISLATIVE TESTIMONY



The Unified Voice of Business

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SB 171

February 19, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the *Senate Judiciary* House Corrections and Juvenile Justice Committee
By Marlee Carpenter, Executive Director, Kansas Retail Council

Chairman Vratil and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry and the Kansas Retail Council representing more than 700 retailers in the state of Kansas. We are here testifying in opposition to SB 171. The Kansas Retail Council Board of Directors reviewed their theft policy last year and reaffirmed their support for additional retail theft penalties. SB 171 would be in direct opposition to our policy and we believe would weaken retail theft penalties in Kansas.

SB 171 would increase the threshold for a felony theft from \$500 to \$1,000. Nebraska, Colorado, Oklahoma, Iowa, Missouri and Arkansas all have a felony theft level of \$500, the same as is presently on the books in Kansas. Retailers know that thieves are very smart. This increase would attract thieves and professional boosters from our neighboring states that have lower theft limits. I have attached a list of states and their felony theft levels. If Kansas was to pass SB 171, there would be only three states with a higher theft penalty limit.

Increasing the level of a felony theft is of great concern to retailers across the state. KCCI and the KRC

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oppose SB 171 and urge the committee to not take action on the bill. Thank you for your time and I will be happy to answer any questions.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

FELONY THEFT LEVELS

11/05/2002

STATES	AMT PER STATE		
Alabama	\$ 250.00		
Alaska	\$ 500.00		
Arizona	\$ 250.00		
Arkansas	\$ 500.00		
California	\$ 400.00		
Colorado	\$ 500.00		
Connecticut	\$ 1,000.00		
Delaware	\$ 1,000.00		
Florida	\$ 300.00		
Georgia	\$ 300.00		
Hawaii	\$ 300.00		
Idaho	\$ 1,000.00		
Illinois	\$ 150.00		
Indiana	theft is a Class D felony, regardless of amt		
Iowa	\$ 500.00		
Kansas	\$ 500.00		
Kentucky	\$ 400.00		
Louisiana	\$ 300.00		
Maine	\$ 1,000.00		
Maryland	\$ 500.00		
Massachusetts	\$ 250.00		
Michigan	\$ 1,000.00		
Minnesota	\$ 250.00		
Mississippi	\$ 250.00		
Missouri	\$ 500.00		
Montana	\$ 1,000.00		
Nebraska	\$ 500.00		
Nevada	\$ 250.00		
New Hampshire	\$ 500.00		
New Jersey	\$ 250.00		
New Mexico	\$ 250.00		
New York	\$ 1,000.00		
North Carolina	\$ 1,000.00		
North Dakota	\$ 500.00		
Ohio	\$ 500.00		
Oklahoma	\$ 500.00		
Oregon	\$ 750.00		
Pennsylvania	\$ 2,000.00		
Rhode Island	\$ 500.00		
South Carolina	\$ 1,000.00	Washington	\$ 250.00
South Dakota	\$ 500.00	Washington, DC	\$ 250.00
Tennessee	\$ 500.00	West Virginia	\$ 1,000.00
Texas	\$ 1,500.00	Wisconsin	\$ 2,500.00
Utah	\$ 1,000.00	Wyoming	\$ 500.00
Vermont	\$ 100.00		
Virginia	\$ 200.00		
Washington	\$ 250.00	average	\$ 614.00