

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT
HOUSE SUBSTITUTE
FOR SUBSTITUTE FOR SENATE BILL NO. 296**

As Agreed to May 10, 2002

Brief*

House Sub. for Sub. for SB 296 establishes the Kansas No-call Act and redefines what constitutes an unsolicited telephone call in the State of Kansas. The bill authorizes the Attorney General to contract with the Direct Marketing Association (DMA) to maintain the no-call list of Kansas consumers. The list is to be part of the DMA's national do-not-call list and maintained by the DMA's Telephone Preference Service. The bill specifies the following:

No-Call Lists

- The DMA is to supply Attorney General with national no-call list free of charge and shall update the list on a quarterly basis.
- A telephone solicitor has 30 days to delete a consumer's number after publication of the list. Consumers are admonished that it may be up to 150 days from the time the consumer registered to be on the no-call list before the consumer and the Attorney General are able to enforce the provisions of the act.
- Telephone solicitors will be provided updates of the no-call lists on January 1, April 1, July 1, and October as part of the contract between the Attorney General and the DMA.
- Telephone solicitors, prior to accessing no-call list, are to submit a fee and complete a subscription agreement.
- The DMA shall comply with any lawful subpoena or court order directing disclosure of list.

*Conference committee summary reports are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree.

- Attorney General may contract with the DMA for a national no-call list establishing certain conditions. The Attorney General also may contract, under the competitive bidding process, with another vendor to establish and maintain the no-call list, provided the DMA does not agree to enter into a contract.
- The DMA is prohibited from using the list for any other purpose than as directed by the Attorney General.
- The time period prior to the date of the next quarterly update in which consumers must register in order to appear on the next quarterly update of the no-call list is not to exceed 30 days.
- The Attorney General may designate the federal trade commission no-call list as the Kansas No-Call List.

Registration

- The DMA must offer consumers one free method of registration valid for five years.
- Consumers may contact the DMA, vendor, or Attorney General to register. The Attorney General may compile a list of numbers of consumers desiring to register and shall forward to the DMA within 15 days, and no fee shall be charged to the Attorney General by DMA for submitting the list.
- The Attorney General and the DMA are to notify consumers that telephone numbers may not be added to the no-call list for up to 120 days.

Violations

- Telephone solicitors are prohibited from using the list for any other purpose than to remove consumer's telephone number.
- Telephone solicitors are liable for violations of the act if consumers who have their numbers on no-call list are contacted, unless the telephone solicitor can demonstrate non-liability due to certain conditions. The conditions for an affirmative defense to a violation are that the consumer listed to the public that the consumer's residential number was a business number; the telephone solicitor had knowledge that the consumer listed it as

a business number; and the purpose of the call was directly related to the consumer's business.

- A telephone solicitor can use an affirmative defense only once every 12 months.
- Violations are considered an unconscionable act under the Kansas Consumer Protection Act.
- The DMA shall furnish information on all alleged violations to the Attorney General at no cost.
- Penalties and fees recovered from prosecution shall be paid to the Attorney General.
- Attorney General may convene a meeting with consumers to notify, educate, and promote the availability of the no-call list and solicitors' obligations.
- The DMA will consent to subject itself to the jurisdiction of the Kansas courts. The DMA will designate a resident agent for service of process.

Reporting Requirements

- The Attorney General shall report to Legislature on the status of implementation of the act.

Effective Date

- The act will take effect and be in force from and after publication in the statute book.

Other Requirements

- The bill defines an established business relationship as it applies to unsolicited telephone calls. Such a relationship is defined as one that is formed by a voluntary two-way communication between a telemarketer and consumer with or without an exchange of consideration. The communication must be based on an application, purchase, or transaction by the consumer, within the preceding 36 months. At any time, the consumer can

object to a continuation of the relationship and can request that the telephone solicitor cease calling.

- Telephone solicitors' telephone numbers shall not be required to be displayed from a caller identification service prior to January 1, 2005.

Background

House Sub. for Sub. for SB 296 as it passed the House Committee amended the Kansas Consumer Protection Act. The bill went through many versions. The main issue the Committee dealt with was whether to use the DMA or the Information Network of Kansas (INK) to maintain the no-call list. The House Committee on Utilities deleted the provisions of Sub. for SB 296 and inserted the provisions of Sub. for HB 2100.

The Senate Committee on Judiciary amended the original SB 296 by deleting the provisions of the original bill and inserting provisions of SB 538 requiring the establishment of a no-call list by INK. The Senate Committee of the Whole amended Sub. for SB 296 by deleting the provisions of the original bill and inserting provisions requiring the establishment of a no-call list by the DMA.

The Conference Committee resolved the following disputed issues:

- The definition of an established business relationship between the telephone solicitor and the consumer. The relationship must be based on an application, purchase, or transaction by the consumer during the preceding 36 months.
- The amount of time before consumers actually can expect results from having registered. It may be up to 150 days from the time the consumer registered to be on the no-call list before the consumer and the Attorney General are able to enforce the provisions of the act.
- The time period in which consumers must register in order to appear on the next quarterly update of the no-call list. That time period is limited to the 30 days prior to the date of the next quarterly update of the no-call list.

- The methods by which consumers may register. Consumers may contact the DMA, vendor, or Attorney General to register. The Attorney General may compile the list and shall forward to DMA within 15 days and no fee shall be charged to the Attorney General by DMA for submitting the list.
- The conditions for an affirmative defense to a violation. The conditions were expanded to include: the consumer's residential number listed in the phone book also was used as a business number; the telephone solicitor had knowledge that the consumer listed it as a business number; and the purpose of the call was directly related to the consumer's business.
- The time frame in which telephone solicitors' numbers are required to be displayed from a caller identification service. The date was changed from January 1, 2004 to January 1, 2005.
- The manner in which the DMA will consent to subject itself to the jurisdiction of the Kansas courts. The DMA will designate a resident agent for service of process.

The Conference Committee also added provisions of SB 382 relating to profiteering from disasters. SB 382 makes it an unconscionable act within the meaning of the Kansas Consumer Protection Act for any supplier to profiteer from a disaster.

"Profiteer from a disaster" means unjustifiably increasing during a time of disaster the price of any necessary property or service offered for sale to consumers. In determining whether the price increase is unjustified, the court is required to consider all relevant circumstances including, but not limited to, the following:

- Whether the price charged by the supplier grossly exceeded the price charged by the supplier for similar property or services immediately prior to the disaster, and an increase of more than 25 percent shall be prima facie evidence of gross excess;
- Whether the amount charged by the supplier grossly exceeded the price at which the same or similar property or services were readily obtainable by other consumers in the trade area, and a price difference of more than 25 percent shall be prima facie evidence of gross excess; and

- Whether the increase in the amount charged by the supplier was attributable to additional costs incurred by the supplier in connection with the sale of the product or service, and proof the supplier incurred such additional costs shall be prima facie evidence that the price increase was justified.

"Time of disaster" means a state of emergency declared by the President of the United States, the Governor, or any local official authorized to declare a state of local emergency.

"Necessary property or service" means any property or service for which consumer demand does, or is likely to, increase as a consequence of the disaster and includes consumer food items or property, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, freight, storage services, housing, lodging, transportation, and motor fuels.

The Attorney General's office estimates that the fiscal impact of implementing House Sub. for Sub. for SB 296 would be \$240,125 in FY 2003, and \$194,250 in FY 2004, and would be funded from the Court Cost Fund. Four FTE positions, at a cost of \$153,900 in FY 2003, would be needed: 1.0 Office Assistant, 1.0 Assistant Attorney General, 1.0 Legal Assistant, and 1.0 Special Agent. The estimated amount in FY 2003 for other operating expenditures would be \$86,225. These amounts would be in addition to those included in *The FY 2003 Governor's Budget Report*.