

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 15, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:

Steve Rarrick, Deputy Attorney General
Bud Grant, Kansas Chamber of Commerce and Industry
Mike Murray, Sprint
Mike Reece, AT&T
Doug Smith, Direct Marketing Association
Dick Laverentz, AARP
Erik Sartorius, Johnson County Board of Realtors

Others attending:

Upon motion by Senator Donovan, seconded by Senator Jordan, the Minutes of the February 9 and 10th meetings were unanimously approved.

SB 539 - Telemarketers required to honor no call lists

Steve Rarrick, Deputy Attorney General, testified in support of "do-not-call" legislation; however, the Attorney General has been advised that Direct Marketing Association (DMA) only allows telemarketers access to its list. The Attorney General would have access only through using its subpoena powers, rendering **SB 539** unenforceable. The Deputy Attorney General stated **SB 539** raises a question as to whether the Legislature has the constitutional authority to delegate unlimited authority to a private entity without providing any limitations or guidelines. **SB 539** provides a civil penalty on telemarketers for noncompliance based on a privately maintained list, with no statutory or regulator parameters. (Attachment 1)

Mr. Rarrick stated he has reviewed the Oregon law and that it provides for the Oregon Attorney General to advertise for bids and to contract with an outside administrator to maintain the do-not-call list, and believes this is a more feasible way to help consumers lessen unsolicited telephone calls without the use of taxpayer funds. A representative from Oregon advised Mr. Rarrick that there is no start up cost associated with the program. The registration fee for consumers to participate in the program is a \$6.50 initial fee and \$3.00 for each annual renewal. Telemarketers are charged \$10 a month to access the list on a monthly basis.

The Kansas Attorney General's office has the following questions about the Oregon law: 1) who should pay the annual fee - the consumer or the telemarketer; and, 2) should the exemption for pre-existing business relationship be limited to a time certain (12 months, 2 or 3 years).

Mr. Rarrick stated the Attorney General does not support **SB 539** as presently drafted, but does support the bill if amended to include the Oregon model with several modifications.

Bud Grant, Kansas Chamber of Commerce and Industry (KCCI), requested an exemption be included in **SB 539** relating to previous business relationships. Mr. Grant testified manufacturers, doctors, retailers, etc. would be impacted and unable to carry on their businesses if **SB 539** passes in its present form. (Attachment 2)

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Mike Murrery, Director of Governmental Affairs, Sprint, testified in support of **SB 539**, stating DMA provides a free service to all consumers by maintaining a national “do not call” list known as the Telephone Preference Service (TPS). Consumers can request to be added to this list free of charge. Sprint has an efficient process in place for using DMA’s files by utilizing DMA’s TPS list in its telemarketing division and maintaining its own internal list of consumers who have told Sprint directly that they do not wish to receive calls. Sprint believes that the required use of the DMA TPS list along with the FCC required internal list is all that is necessary to stop unwanted telemarketing phone calls. (Attachment 3)

Mr. Murray submitted two amendments to **SB 539**. A new subsection (d) which provides for a specific time in which a telemarketer has to comply with a consumer request; new subsection (e) which sets out exceptions for violations of the act, and new subsection (f) which requires the Attorney General to investigate any telephone solicitor against whom there are multiple complaints in one quarter. Mr. Murray stated Sprint does not support the creation of an additional bureaucracy having the consumer bear the cost of maintaining a do-not-call list as provided in the Oregon law.

Mike Reece, AT&T, testified in support of **SB 539**, stating the bill requires telemarketers to consult the TPS list maintained by DMA and to refrain from making unsolicited consumer telephone calls to any number appearing on the list. The use of a centrally controlled nationwide list provides the most cost-effective way for telemarketers and consumers to prevent unwanted calls. National telemarketers oppose state specific “do not call” lists because the patchwork of rules and regulations make compliance an impossibility. Mr. Reece submitted a proposed amendment to **SB 539, on Page 1, line 43, following the word “thereto” to insert: “, provided that it shall be an affirmative defense in any proceeding brought under this section that the telemarketer has established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations established in this section.”**. This amendment would establish an affirmative defense for companies who have rules and regulations in effect that insure compliance with state laws. (Attachment 4)

Doug Smith, Direct Marketing Association, testified DMA is the oldest and largest national trade association, and has served the direct marketing industry since 1917. DMA’s TPS is a private service, without cost to consumers, and provides subscribers a list of names and telephone numbers for an average annual cost of \$400. The TPS list contains over 2.5 million names, 36,000 of which are Kansans. (Attachment 5)

DMA submitted an amendment to **SB 539, on Page 1, line 13, to strike the words “doing business” and to insert the words “making unsolicited consumer telephone calls”; to strike the word “annually” and insert the word “quarterly”; on Line 18, to strike the words “of consumers”; to strike lines 29 through 39 in their entirety and insert the following: “a telephone solicitor will not be liable for violating subsection (b) if it has established and implemented procedures to comply with subsections (a) and (b) and any subsequent call is the result of error.”**. This amendment establishes an affirmative defense for companies that make every effort to comply with the laws governing telemarketing.

Dick Laverentz, AARP, testified in opposition to **SB 539**, stating the proposed legislation provides no mechanism for determining whether or not DMA is adding a consumer’s name to the list in a timely manner, and does not indicate with whom a complaint is to be filed. Mr. Laverentz stated the AARP is opposed to the consumer paying for the service. (Attachment 6)

Erik Sartorius, Johnson County Board of Realtors, Inc., testified in opposition to **SB 539** as drafted, stating the bill requires that anyone who conducts telephone solicitations must contact DMA for their TPS list, which will cost the business approximately \$400 per year. Johnson County realtors request an exemption from this legislation. (Attachment 7)

Senator Barone requested the Revisor submit a list of businesses exempted under current law.

Written testimony from Steve Phillips in support of **SB 539** was submitted to the Committee. (Attachment 8)

The hearing on **SB 539** was concluded

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The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 16, 2000.