Approved: March 3, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 1, 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
Doug Smith, Direct Marketing Association
Mike Murrary, Sprint
Mike Reecht, AT&T

Others attending: See attached list

HB 2891 - Telemarketer no-call list
SB 539 - Telemarketers required to honor no call list

Steve Rarrick, Deputy Attorney General, testified that the basic difference between **HB 2891** and the proposed substitute for **SB 539** based on the Oregon do-not-call law includes whether to allow registration of only residential telephone numbers on the do-not-call list, or whether non-residential numbers, including business numbers, should be allowed to register; and whether funding of the do-not-call database should be paid by telemarketers and trade associations only, or whether consumers who register their numbers on the list should share the cost of maintaining the list. (Attachment 1)

Mr. Rarrick stated that **HB 2891** broadens the telephone solicitations act to include non-residential telephone solicitations, which gives consumer protections to entities, such as corporations, that are not covered by the "consumer" definition under the Kansas Consumer Protection Act. **HB 2891** deletes any charge to consumers to register on the list. The Attorney General does not advocate for the cost of maintaining the database to be borne by the general fund. Most states require financing be borne by the consumer with a registration fee from $5 - $10, together with a telemarketer fee of between $120 - $500 per year to access the list.

Mr. Rarrick itemized the similarities and differences between **HB 2891** and the Attorney General's proposed amendments to **SB 539**. 1) Both contain an exemption for existing business relationship, defined as "being within the preceding 36 months". 2) The definitions of "qualified trade association" are similar. 3) The Attorney General strongly opposes the provision in **HB 2891** at page 3, lines 31-33 which would allow an affirmative defense and cause the law to be impossible to enforce. 4) **SB 539** provides for a 15 day grace period for telemarketers to integrate the list into their system while **HB 2891** leaves this to rules and regulations. 5) **HB 2891** at page 2, lines 7-9, removes the exemption for newspaper publishers. 6) **HB 2891** at page 2, lines 18 and 21, changes the definition of "automatic dialing-announcing device" making the provision unfriendly to the consumer. 7) **HB 2891** creates a new definition of "consumer"at page 3, lines 36-37 rather than complying with the present definition as set out in the Kansas Consumer Protection Act in KSA 50-524. 8) **HB 2891** provides the Attorney General with the option of entering into a contract for maintenance of the do-not-call database and the proposed amendments to **SB 539** directs the Attorney General to advertise and contract with an administrator to maintain the database. 9) **HB 2891** requires the Attorney General to implement rules and regulations requiring notice by

telecommunications providers to inform consumers of the do-not-call law and how a consumer can register, while the proposed substitute for **SB 539** requires the Kansas Corporation Commission to implement the rules and regulations. 10) **HB 2891** mandates a detailed list of rules and regulations be adopted by the Attorney General, whereas the proposed amendments to **SB 539** propose that rules and regulations may be adopted.

Mr. Rarrick testified the Attorney General's office disagrees with the telemarket industry that do-not-call legislation may be preempted by the federal Telephone Consumer Protection Act (TCPA). The 8th Circuit held in *Van Bergen v State of Minnesota,* 59 F.3d 1541, 1548 (1995) that "The TCPA carries no implication that Congress intended to preempt state law".

Mr. Rarrick emphasized opposition to adding exemptions to the proposed legislation stating that if a do-not-call law is passed, it should be made effective.

Bud Grant, Kansas Chamber of Commerce and Industry (KCCI), reported conferring with members of KCCI who have operations in Oregon and found that with the exemption for "existing business relationships", the statute has not impacted their operations. Mr. Grant stated he has some concerns as to whether business to business communications are exempt; whether firms operating through referrals from existing customers would be in violation of the do-not-call legislation; and whether the 36 month existing business relationship is a long enough time, particularly in cases of equipment and appliance warranties. Mr. Grant questioned the wisdom of enacting another bureaucracy and the need for additional dollars to implement the proposed legislation. (Attachment 2)

Doug Smith, Direct Marketing Association (DMA) testified in opposition to **HB 2891** that state specific do-not-call legislation is an unnecessary duplication of federal law. The 1991 Telephone Consumer Protection Act (TCPA) and the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act provide consumers with the ability to have their names removed from a company's prospect list. Upon a consumer's request, a company must place a consumer's name on an in-house do-not-call list and must keep the name on the list for 10 years. Companies who do not follow the provisions of federal law or the consumer's request are subject to fines and civil penalties. (Attachment 3)

Mr. Smith testified state specific do-not-call lists: 1) cost consumers money to place their name on the list and for any renewals, 2) cost businesses money to purchase equipment and integrate a state specific list on a regular bases, and 3) cost Kansas money for personnel and office space or additional costs to develop bid documents, contracts, implementation policies, maintenance policies and promotional materials.

The State of Vermont rejected the state specific type of legislation, and chose to educate consumers regarding their rights under the federal law and to promote the Telephone Preference Service. Kansas should concentrate on educating consumers on existing protections prior to developing new requirements as specified in the legislation under consideration.

Mr. Smith stated Kansas has spent valuable resources on attracting telemarketing operations to Kansas. The provisions contained in **HB 2891** are counterproductive to the economic development money spent through the Department of Commerce and Housing.

Mr. Smith suggested as an alternative a resolution directing the Kansas Corporation Commission to provide a mechanism for an educational and promotional campaign similar to the one in Vermont. (Attachment 4)

Mike Murray, Sprint, testified in opposition to **HB 2891**, stating the legislation reflects a real "disconnect" between the official policy of the State to recruit telemarketing firms and legislative attempts to pass laws designed to severely restrict the telemarketing business.

Mr. Murray stated it takes about 90 days from the receipt of the most recent state do-not-call list to stop calling a specific consumer. In order for the state to monitor compliance and investigate complaints by consumers who have received calls after a specific time period, it is necessary to record the following three dates on the file: 1) the date the consumer requested to be added to the list, 2) the date the consumer's complete record was made available to the telemarketing companies for suppression, and 3)

the required compliance date beyond which no calls should be made to the consumer. The 15 day grace period advocated by Mr. Rarrick in his testimony is not adequate . (Attachment 5)

Mr. Murray stated Sprint is willing to work with the Attorney General, the KCC, and other groups in a cooperative effort to educate consumers as to how they can stop unwanted telephone solicitations by placing their names and numbers on the Direct Marketing Association Telephone Preference Service List. Sprint supports **SB 539** with Sprint's proposed amendments and endorses adding a consumer education component as contained in the proposed resolution submitted by Mr. Smith.

Mike Reecht, AT&T, testified in opposition to state specific legislation as contained in **HB 2891**. AT&T supports the original version of **SB 539** requiring telemarketers doing business in the state to consult the Telephone Preference Service list maintained by DMA. Mr. Reecht submitted an amendment which would exempt from state specific do-not-call legislation those telemarketers who utilize the DMA list and comply with the FCC rules and regulations regarding internal company lists. This amendment would allow the attorney general to prosecute those telemarketers who do not comply with the Federal Trade Commission laws.

Telemarketing is a legitimate form of commerce and to restrict this form of sales practice fails to discourage unscrupulous telemarketers from operating in our state. The telephone preference list can provide privacy as effectively as any state specific do-not-call list at less cost to both the consumer and the telemarketer.

Mr. Reecht stated AT&T is opposed to the language proposed by the Attorney General in **SB 539** and **HB 2891** and favors a proposal that encourages a better knowledge and use of existing law. (Attachment 6)

A copy of a letter addressed to the Senate Commerce Committee from John W. Hess, II, Senior Attorney of Direct Selling Association, stating opposition to **HB 2891** was distributed to the committee. (Attachment 7)

In response to questions from the Committee, Mr. Rarrick stated the proposed do-not-call laws would not apply to non-profit charitable, educational or political solicitations.

The hearing was concluded.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 2, 2000.