

MINUTES OF THE SENATE COMMERCE COMMITTEE.

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

All members were present except:

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

Conferees appearing before the committee:

Representative Douglas Johnston
C. H. "Sonny" Freeman, AARP
Steve Rarrick, Deputy Attorney General
Doug Smith, Direct Marketing Association
Mike Murray, Sprint

Others attending: See attached list

HB 2580 - Telephone Solicitations; automated dialing machines

Representative Douglas Johnston testified **HB 2580** was introduced to address the fear among citizens of south-central Kansas who receive phone calls where the phone rings, but when answered, no one replies. People have become concerned. Some have feared the calls were from stalkers or ex-spouses, or that someone was casing their home for a potential burglary. The calls, in actuality, are the result of telemarketers who use automatic dialing phone systems. Telemarketers use computerized phone systems, dialing dozens or perhaps hundreds of lines at one time, but have live operators available to handle only a portion of the calls. A large number of calls are made into homes with no live operators, there is no one on the line when the phone is answered. (Attachment 1)

HB 2580 attempts to rectify and to calm the concerns of the public by requiring companies doing telemarketing in Kansas to have a live operator or a recorded voice answer each line they call. The original language required the live operator or recorded voice to answer within 15 seconds. The 15 seconds was reduced to 5 seconds in the House Committee at the request of the telephone industry and a consensus that 15 seconds was an exceedingly long time. Representative Johnston stated he has been informed by the Attorney General's Office that there is a federal law that prohibits calls made by automated voice or recorded voice devices. He believes there is a need for this legislation and recommends that the language "or recorded voice" be stricken.

Senator Ranson asked whether federal presently prohibits computer dialing. Representative Johnston responded the federal law does not address the specific issue contained in **HB 2580** which limits the time an automatic dialing announcing device must be answered by a live voice.

C. H. "Sonny" Freeman, AARP, testified in support of telemarketing legislation. Mr. Freeman related an incident in which he was charged for a privacy guard on his credit card even though he had told the telephone solicitor he was not interested in the service. He is in favor of legislation that protects individuals from unsolicited and harassing telephone calls.

Steve Rarrick, Deputy Attorney General, Consumer Protection Division, testified that **HB 2580** addresses a telemarketing industry practice called "predictive dialing", which occurs when telemarketing companies use computers to continually dial numbers of prospective customers beyond the capability of available representatives to handle each call connected. When a consumer's telephone line rings but the line is dead when answered, it means there is no telemarketing representative available to handle the call. The Attorney General supports the concept of this legislation as the Consumer Protection Division receives numerous complaints and inquiries as to how the calls can be stopped. **HB 2580 as amended by**

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House Committee will not eliminate the practice of “predictive dialing”. The “ability” language used in the amendment makes the law apply to a telemarketer only “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.” The “ability” language renders the requirement unenforceable, and will allow telemarketers to continue this practice unabated. **HB 2580** as drafted will have no effect on the predictive dialing practice. (Attachment 2)

Mr. Rarrick testified the federal Telephone Consumer Protection Act (TCPA) prohibits residential telephone calls using an artificial or prerecorded voice to solicit the sale of property or services. The TCPA does not preempt state laws that are more restrictive than the TCPA; however, specifically requiring a recorded message is in direct conflict with the TCPA prohibition against recorded messages, and would, therefore, be preempted. Mr. Rarrick proposed an amendment to **HB 2580**, at Page 2, on Line 22, to strike the words “~~or an automatic dialing announcing device~~”, on Lines 24-27 to strike the following: ~~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.~~”, and to delete the “ability” language.

Mike Murray, Sprint, testified that the amendment to **HB 2580** submitted by Sprint and other industry representatives was a compromise based on the contention of telemarketers that when an automated dialing announcing device simply identifies the solicitor within 5 seconds and does not deliver a message, the telemarketer is not in violation of the federal law.

Doug Smith, Direct Market Association, submitted written testimony in support of **HB 2580 as Amended by House Committee**. (Attachment 3)

Senator Barone submitted a proposed amendment to **HB 2580** which would incorporate portions of **SB 539** and 1) require a telephone solicitor 90 days from receipt of updated Direct Marketing Association (DMA) Telephone Preference Service (TPS) List to cease telemarketing to a phone number placed on that list during the preceding quarter, after which time the solicitor is in violation; 2) require the telephone solicitor to implement procedures to use the DMA TPS list to remove consumers in the state from calling lists consistent with approved methods and FCC requirements for an internal company-specific do not call list; 3) provide the Attorney General with the ability to request the telephone solicitor to certify its compliance with the procedures and training required in this legislation; 4) authorize the Attorney General to investigate any telephone solicitor for which it receives multiple complaints from consumers. Multiple complaints against one telephone solicitor would be more than one per quarter and justify an investigation by the Attorney General. 5) Exempt businesses with 50 employees or less; 6) direct the Kansas Corporation Commission to establish a task force to study and develop recommendations regarding unsolicited consumer telephone calls, establish guidelines to educate consumers on existing remedies to curb unwanted telephone solicitations, and to make its report to the House Utilities Committee and Senate Commerce Committee during the first week of the 2001 legislative session. (Attachment 4)

The Committee discussed whether proposed legislation is duplicating federal law or whether it is more prudent to direct the Kansas Corporation Commission to establish a task force to make recommendations regarding unsolicited consumer calls and to direct the telephone industry to make a greater effort to educate the public as to remedies that presently are in place.

Senator Ranson moved, seconded by Senator Brownlee that HB 2580 be amended by directing the Kansas Corporation Commission to adopt rules and regulations reflected in (Attachment 5).

Senator Barone made a substitute motion, seconded by Senator Feleciano to amend HB 2580 with the provisions contained in (Attachment 4).

Time expired for additional committee discussion or action. The Chair informed the Committee the motion would be scheduled for further deliberations the first of next week and requested that any proposed amendments and comments be turned in to the Senate Commerce Committee office prior to that date.

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The Committee adjourned at 9:00 a.m.

The next meeting is scheduled for March 9, 2000.