

SESSION OF 2002

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR HOUSE BILL NO. 2100**

As Amended by House Committee on  
Utilities

**Brief\***

Sub. for HB 2100 establishes the Kansas No-call Act. The bill amends KSA 2001 Supp. 50-670 by redefining what constitutes an unsolicited telephone call in 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 maintained by the DMA's telephone preference service.

Under the bill, an unsolicited telephone call is also defined as a call in which a prior business relationship was established. The bill makes it clear that an established business relationship is one that was 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 inquiry, application, purchase, or transaction by the consumer, within the preceding 36 months. However, if during the establishment of a business relationship, the consumer objects to a continuation of the relationship and requests that the telephone solicitor cease calling, the telephone solicitor must maintain a record of the consumer's request for 10 years from the time the request is made.

Under the bill, a telephone solicitor cannot withhold the display of his or her phone number from caller ID when that number is being used for telemarketing purposes. The bill amends KSA 2001 Supp. 50-670 to allow an exception that before January 1, 2004, a telephone solicitor's telephone number is not required to be displayed when the solicitor's service or equipment is not capable of showing the telephone number.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/cgi-bin/fulltext/bills.cgi>

Sub. for HB 2100 authorizes the Attorney General to contract with the DMA to maintain the list of Kansas consumers who have requested not to receive a telemarketing call. The bill allows the Attorney General to 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 contract the Attorney General makes shall include:

- ! The maximum fees that telephone solicitors may be charged for access to the no-call list;
- ! The maximum fees that consumers may be charged to register for inclusion on the no-call list;
- ! The schedule of dates by which consumers must register in order to appear on updates of the no-call list;
- ! The schedule of dates by which telephone solicitors will be provided updates of the no-call list; and
- ! The kind of information furnished, without charge, upon a consumer's request, concerning a telemarketer whom the consumer believes has made an unsolicited call.

Under the bill, a telephone solicitor, prior to making a call to a Kansas consumer, must obtain and consult on a quarterly basis, the do-not-call list, and delete from his or her calling list all Kansas residents on the list. Specifically,

- ! The DMA (or other vendor) shall offer to consumers at least one method of registration at no cost and the registration shall last for five years.
- ! Consumers who desire to register to be on the do-not-call list may contact the DMA.
- ! Membership in the DMA is a requirement for telephone solicitors to obtain the telephone preference service list and telephone solicitors shall have access to the list.

- ! The DMA is required to provide the Attorney General with the no-call list in an electronic format, at no cost, and on a quarterly basis.
- ! The Attorney General and the DMA are to ensure that consumers are given clear notice that telephone numbers are not immediately added to the no-call database upon submission of a consumer's registration and that it may be as long as 90 days before calls from telephone solicitors decrease.
- ! Telephone solicitors are not to call a consumer's phone number that appears on the no-call list; solicitors have 60 days from the time they receive the current quarterly update of the do-not-call list to remove a consumer's telephone number.
- ! Telephone solicitors who call a Kansas consumer, whose telephone number appears on the current quarterly no-call list, or who use the list for any unauthorized purpose are liable for violations, which are considered to be unconscionable acts or practices under the Kansas Consumer Protection Act.
- ! Telephone solicitors who have made a violation of the Kansas No-call Act shall make an affirmative defense that they have utilized reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls, and such a defense can only be exercised by a telephone solicitor once within the State of Kansas in any 12-month period.

Sub. for HB 2100 establishes guidelines for the Attorney General and the DMA, or other vendor, to follow concerning enforcement, information sharing, and consumer education:

- ! The DMA shall furnish, at no cost, the Attorney General with all information concerning a telephone solicitor or any person the Attorney General believes has engaged in an unsolicited consumer telephone call.
- ! The DMA shall comply with any lawful subpoena or court order directing disclosure of the list or any other information.

- ! The DMA is required to forward any complaints concerning alleged violations of the no-call act to the Attorney General.
- ! The Attorney General may convene meetings with consumer advocacy groups to collectively develop methods to notify and educate Kansas consumers concerning the no-call list and provisions of the no-call act.
- ! The Attorney General may promulgate rules and regulations to carry out the provisions of the Kansas no-call act.

On or before the first day of each legislative session, the Attorney General shall report to the standing committees of the House and Senate which hear and act on legislation relating to telecommunications issues on:

- ! The status of implementation of the provisions of the no-call act;
- ! The number of consumers who have given notice of objection;
- ! The number of requests for the database;
- ! State revenues received from the respective sources of revenue;
- ! The number of complaints received alleging violations of this section; and
- ! Actions taken to enforce the provisions of the no-call act.

The bill also specifies that if the federal trade commission establishes a single national no-call list, the Attorney General may designate the list established by the federal trade commission as the Kansas no-call list.

## **Background**

Sub. for HB 2100 was introduced by the House Committee on Utilities after considerable debate. The main issue the Committee dealt with was whether to use the DMA or the Information Network of Kansas (INK) – through a contract with Kansas Information Consortium, Inc. (KIC), whose applications and know-how help run the state's official website, [www.accesskansas.org](http://www.accesskansas.org) – to maintain the no-call list.

Proponents of the original bill (that authorized INK to maintain the list) included Representative Nile Dillmore, Representative Dean Newton, the Attorney General's Consumer Protection/Antitrust Division, the Association of Retarded Citizens of Kansas, AARP, Kansas Trial Lawyers Association, Kansas Association of Retired School Personnel, InterHab (the Resource Network for Kansans with Disabilities), Citizens' Utility Ratepayer Board, and the Heart Association. Opponents of the original bill included the DMA, Sprint, the Kansas Association of Financial Services, MCI Worldcom, and SBC Southwestern Bell.

In the fiscal note for Sub. for HB 2100, the Attorney General's office estimates that the fiscal impact of implementing the bill would be \$240,125 in FY 2003, and \$194,250 in FY 2004, and would be funded from the Court Cost Fund, which fund receives moneys from fines imposed for violations of the Consumer Protection Act. 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*.