

SENATE JUDICIARY COMMITTEE
S.B. 126 and S.B. 188
“Do Not Call” legislation amending K.S.A. 2002 Supp. 50-670 and 50-670a

Testimony on Behalf of the Citizens’ Utility Ratepayer Board
By Niki Christopher, Attorney for CURB

Chairman Vratil and members of the committee:

Thank you for permitting CURB to offer its comments today on SB 126 and SB 188. Although you may characterize CURB’s positions on these bills as generally supportive of SB 188 and generally opposed to SB 126, CURB has mixed feelings about any legislation that would alter the Do Not Call rules at this stage.

1. Give the Do Not Call Rules a chance to work before amending them.

As you all are well aware, the legislature labored long and hard last session to develop a satisfactory version of the Do Not Call rules. Several of you were sponsors of one or more versions. In fact, the bill’s final name, House Substitute for Substitute for Senate Bill 296, bears witness to how hard everyone worked last year to come up with a version that was protective of consumers without creating undue hardships on business. You did a pretty good job of making everyone happy with the final version of the bill, because it passed 117 - 4 in the House, and 39 - 0 in the Senate.

The nearly half a million Kansans who have signed up for the Do Not Call list so far are happy, too. Their enthusiasm is sending a clear message to you as lawmakers: they *like* this law, and *like* the fact that this law protects them from being bothered with unsolicited telephone calls. They signed up because they don’t want to talk to salespeople -- or their appointment setters or the telemarketers who call on their behalf. Our constituents do not want you to water down the protections they’ve just gained.

Which comes to my major point: it wasn’t until late this fall that the Do Not Call program was really up and running effectively. We’re not sure that it’s appropriate to be tinkering with the rule before we’ve had it in place a while longer, so that its effectiveness can be fairly judged. We certainly don’t think that substantive changes should be made right now.

However, with that thought in mind, I would like to offer some specific comments and a few suggestions about these two bills.

2. SB 126 creates an unnecessarily large loophole in the Do Not Call protections.

Given the substantive change created by SB 126, CURB cannot support it. SB 126 would create a substantial loophole in the current No Call rules to allow companies to call Kansans on the Do Not Call List for the purpose of arranging a face-to-face meeting between a consumer and a salesperson. I don't think making such an exception for appointment setting is consistent with the intent and purpose behind creating the Do Not Call List.

CURB understands the concerns of small businesses that have historically depended on telemarketing to market their services and products. However, as more and more Kansans elect to be protected from these calls, we are sure that those with useful products and services to offer will find other, less intrusive ways to take their messages to consumers.

For example, many of us in this room can remember back when the Avon Lady or the Fuller Brush Man came to our homes. They don't do that anymore, primarily because people became wary of opening their doors to strangers. But Avon and Fuller Brush didn't go out of business. Avon is still a thriving company, and Fuller Brush, a Kansas company that's nearly 100 years old, is going strong. These companies creatively changed their marketing tactics and strategies with the times, and survived.

Likewise, businesses that now rely on making intrusive telemarketing calls will develop creative ways to market their products and services to Kansans who, by signing up on the Do Not Call list, have chosen not to open their homes to unwanted calls. Please don't undermine the effectiveness of the Do Not Call program by creating loopholes for businesses that do not want to respect the choice that a consumer makes when he or she signs up on the Do Not Call List.

3. Respect the consumer's choice to seek Do Not Call protection.

If you must make exceptions to allow such calls, CURB suggests that you strengthen the rules to make it clear that any business caller seeking to arrange a face-to-face meeting who is informed by the consumer that his or her number is enrolled on the Do Not Call List shall regard this as a "negative response" under Section 1(a)(5), and must offer to terminate the call. If the consumer does not wish to continue, the business must terminate the call immediately. This won't alleviate the problem of unwanted interruptions, but it would at least preserve some measure of respect for the choice the customer has made by signing up on the Do Not Call List.

But CURB would prefer that you not enact SB 126 at all. I can confidently tell you that the Do Not Call bill may have been the most universally popular legislation that CURB has ever supported on behalf of its constituents. We believe that they like the protection that it provides, and that they do not want loopholes undermining that protection.

4. SB 188 adds consumer protections that Kansas consumers will support.

Given the short amount of time that the Do Not Call program has actually been in operation, CURB views SB 188 with mixed feelings. As I said a few moments ago, we think it might be more prudent to give the current program more time to work before making changes to the rules.

However, SB 188 makes some minor changes that CURB views as positive changes that are consistent with the intent and purpose of the legislation passed last session. It would bring personal cell phones under the No Call Rules, and permits the attorney general to add the Kansas Do Not Call List to a national list if it becomes available. It protects the privacy of Kansans by limiting the uses that can be made of the information on the Do Not Call List. CURB doesn't object to these relative minor changes. They do not undermine any of the protections that Kansans enjoy under the current rules. They appear to be changes that our constituents would support.

5. We suggest a provision that defines what kind of phone numbers are protected.

It has occurred to us that SB 188's inclusion of personal cell phones within the protections of the rule might be more efficiently accomplished by providing a definition in Section 1 that would establish what kind of phone numbers are eligible for Do Not Call protection.

For example, it might be better to refer to "protected numbers" throughout the statute, and provide a definition that says, for example, "Any telephone number registered on the Do Not Call List that is private and not used for commercial purposes, regardless of the type of telecommunication device or technology that supports it, is a protected number under these rules." The references throughout the statute to calling the "residences of consumers" or "telephone numbers" could be changed to the simple defined phrase "protected numbers."

This would bring new devices under the rule as they become available, without having to continually amend the rules to account for emerging technologies. Customers can now make phone calls with telephones, cell phones, car phones, wireless phones, and even their computers. Who knows what will come down the pike next? You probably don't want to go through this process every year as new devices come along. I strongly suggest that, if you are determined to include personal cell phones under the current rules, that you might as well craft this bill to cover all telecommunications devices that may come along.