

[As Amended by House Committee of the Whole]

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Session of 2002

**HOUSE BILL No. 2767**

By Committee on Business, Commerce and Labor

2-5

AN ACT concerning consumer protection; ~~relating to prohibited acts re-~~  
~~garding licensure~~ **[amending K.S.A. 2001 Supp. 50-627 and 50-**  
**670 and repealing the existing sections].**

*Be it enacted by the Legislature of the State of Kansas:*

[New] Section 1. (a) No supplier shall engage in any act or practice in conjunction with any consumer transaction without a license, permit, certificate, registration, approval or other form of authority **regulating such act or practice** if such license, permit, certificate, registration, approval or other form of authority is required by any federal, state or local law.

(b) Violation of this section is an unconscionable act ~~of~~ or practice under the Kansas consumer protection act.

(c) This section shall be part of and supplemental to the Kansas consumer protection act.

**[Sec. 2. K.S.A. 2001 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section and section 2, and amendments thereto:**

**[(1) “Consumer telephone call” means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes;**

**[(2) “unsolicited consumer telephone call” means a consumer telephone call other than a call made:**

**[(A) In response to an express request of the person called;**

**[(B) primarily in connection with an existing debt or contract,**

1 **payment or performance of which has not been completed at the**  
2 **time of such call; or**

3 **[(C) to any person with whom the telephone solicitor or the**  
4 **telephone solicitor’s predecessor in interest** ~~had~~ *has* ~~an existing es-~~  
5 ~~ablished~~ **business relationship** ~~if the solicitor is not an employee, a~~  
6 ~~contract employee or an independent contractor of a provider of telecom-~~  
7 ~~munications services; or~~

8 **[(3) “telephone solicitor” means any natural person, firm, or-**  
9 **ganization, partnership, association or corporation who makes or**  
10 **causes to be made a consumer telephone call, including, but not**  
11 **limited to, calls made by use of automatic dialing-announcing**  
12 **device;**

13 **[(4) “automatic dialing-announcing device” means any user**  
14 **terminal equipment which:**

15 **[(A) When connected to a telephone line can dial, with or with-**  
16 **out manual assistance, telephone numbers which have been stored**  
17 **or programmed in the device or are produced or selected by a**  
18 **random or sequential number generator; or**

19 **[(B) when connected to a telephone line can disseminate a re-**  
20 **corded message to the telephone number called, either with or**  
21 **without manual assistance;**

22 **[(5) “negative response” means a statement from a consumer**  
23 **indicating the consumer does not wish to listen to the sales pres-**  
24 **entation or participate in the solicitation presented in the con-**  
25 **sumer telephone call; or**

26 **[(6) “established business relationship” means the existence of an oral**  
27 **or written arrangement, agreement, contract or other such legal state of**  
28 **affairs between the telephone solicitor and a consumer, where both parties**  
29 **have a course of conduct or established pattern of activity for commercial**  
30 **or mercantile purposes and for the benefit or profit of both parties. The**  
31 **“established business relationship” must exist between the consumer and**  
32 **business directly, and does not extend to any related business entity or**  
33 **other business organization of the telephone solicitor or related to the**  
34 **telephone solicitor or such solicitor’s agent, including, but not limited to,**  
35 **a parent corporation, subsidiary partnership, company or other corpo-**  
36 **ration or affiliate.**

37 **[(b) Any telephone solicitor who makes an unsolicited con-**  
38 **sumer telephone call to a residential telephone number shall:**

39 **[(1) Identify themselves;**

40 **[(2) identify the business on whose behalf such person is**  
41 **soliciting;**

42 **[(3) identify the purpose of the call immediately upon making**  
43 **contact by telephone with the person who is the object of the tel-**

1 ephone solicitation;

2 [(4) promptly discontinue the solicitation if the person being  
3 solicited gives a negative response at any time during the con-  
4 sumer telephone call;

5 [(5) hang up the phone, or in the case of an automatic dialing-  
6 announcing device operator, disconnect the automatic dialing-an-  
7 nouncing device from the telephone line within 25 seconds of the  
8 termination of the call by the person being called; and

9 [(6) a live operator or an automated dialing-announcing device  
10 shall answer the line within five seconds of the beginning of the  
11 call. If answered by automated dialing-announcing device, the  
12 message provided shall include only the information required in  
13 subsection (b)(1) and (2), but shall not contain any unsolicited  
14 advertisement.

15 [(c) A telephone solicitor shall not withhold the display of the  
16 telephone solicitor's *identifying information and telephone number*  
17 from a caller identification service when that number is being used  
18 for telemarketing purposes and when the telephone solicitor's service  
19 or equipment is capable of allowing the display of such number.

20 [(d) A telephone solicitor shall not transmit any written infor-  
21 mation by facsimile machine or computer to a consumer after the  
22 consumer requests orally or in writing that such transmissions  
23 cease.

24 [(e) A telephone solicitor shall not obtain by use of any profes-  
25 sional delivery, courier or other pickup service receipt or posses-  
26 sion of a consumer's payment unless the goods are delivered with  
27 the opportunity to inspect before any payment is collected.

28 [(f) *No supplier shall make or cause to be made any unsolicited tele-  
29 phone call to the residential telephone number of any consumer in this  
30 state who has given notice to the information network of Kansas, in ac-  
31 cordance with section 2, and amendments thereto, of such consumer's  
32 objection to receiving consumer telephone calls.*

33 [(g) Local exchange carrier and telecommunications carriers  
34 shall not be responsible for the enforcement of the provisions of  
35 this section.

36 [~~(g)~~ (h) Any violation of this section is an unconscionable act or  
37 practice under the Kansas consumer protection act.

38 [~~(h)~~ (i) This section shall be part of and supplemental to the  
39 Kansas consumer protection act.

40 [New Sec. 3. (a) A consumer living or residing in Kansas may  
41 give notice of such consumer's objection to receiving unsolicited  
42 consumer telephone calls to such consumer's residential telephone  
43 number. There shall be no cost to the consumer for such notice of

1 objection. Such consumer's telephone number shall be listed in  
2 Kansas' no-call database by doing any of the following:

3 [(1) Completing a written form designed by the attorney gen-  
4 eral and the information network of Kansas for the purpose of  
5 recording a consumer's notice of objection to receiving unsolicited  
6 consumer telephone calls and submitting that to the information  
7 network of Kansas;

8 [(2) calling a toll-free number established by the attorney gen-  
9 eral and the information network of Kansas for the purpose of  
10 recording a consumer's notice of objection to receiving unsolicited  
11 consumer telephone calls and properly responding to the voice  
12 prompts; or

13 [(3) accessing the appropriate internet site established by the  
14 attorney general and the information network of Kansas for the  
15 purpose of recording a consumer's notice of objection to receiving  
16 unsolicited consumer telephone calls and inputting the proper  
17 data requested by the website prompts.

18 [(b) The no-call database shall consist of the aggregate collec-  
19 tion of the telephone numbers of properly submitted notices of  
20 objection to receiving unsolicited consumer telephone calls. The  
21 information network of Kansas may maintain the no-call database  
22 in either a written or an electronic format.

23 [(c) The telephone numbers of properly submitted notices of  
24 objection to receiving unsolicited consumer telephone calls shall  
25 become part of the no-call database in the quarter following the  
26 deadline for receipt of notice according to the following:

27 [(1) The receipt deadline for the quarter commencing January  
28 1 and ending March 31 is November 1;

29 [(2) the receipt deadline for the quarter commencing April 1  
30 and ending June 30 is February 1;

31 [(3) the receipt deadline for the quarter commencing July 1  
32 and ending September 30 is May 1; and

33 [(4) the receipt deadline for the quarter commencing October  
34 1 and ending December 31 is August 1.

35 [(d) A notice of objection to receiving unsolicited consumer tel-  
36 ephone calls shall remain in effect for two years from the date that  
37 telephone number first appears in the no-call database. The notice  
38 of objection may be renewed for additional two-year periods by  
39 using the methods provided in subsection (a).

40 [(e) If a consumer whose telephone number is part of the no-  
41 call database changes telephone numbers, such consumer shall  
42 submit a new notice of objection to receiving unsolicited consumer  
43 telephone calls and provide the new number to the information

1 network of Kansas.

2 [(f) A consumer may revoke notice of objection to receiving  
3 unsolicited consumer telephone calls by completing a written form  
4 designed by the attorney general and the information network of  
5 Kansas for the purpose of revoking a consumer's notice of objec-  
6 tion to receiving unsolicited consumer telephone calls and sub-  
7 mitting that completed form to the information network of Kansas.  
8 A consumer may also revoke notice of objection to receiving un-  
9 solicited consumer telephone calls by accessing the appropriate  
10 internet site established by the information network of Kansas and  
11 inputting the proper data requested by the website prompts. Upon  
12 receipt of such revocation notice, the information network of Kan-  
13 sas will remove the relevant telephone number from the no-call  
14 database according to the same schedule used for adding tele-  
15 phone numbers to the no-call database as provided in subsection  
16 (c). In addition, the information network of Kansas may remove a  
17 telephone number from the no-call database if the Kansas certified  
18 local exchange carrier responsible for the assignment of the rele-  
19 vant telephone number indicates in writing, or if available, by in-  
20 ternet, to the information network of Kansas that the consumer  
21 who submitted the objection to receiving unsolicited consumer tel-  
22 ephone calls is no longer assigned to that telephone number.

23 [(g) A person or entity desiring to make unsolicited consumer  
24 telephone calls in Kansas may obtain a copy of the no-call database  
25 for such person's or entity's lawful use, or for the lawful use by  
26 such entity's employees, or for the lawful use by such person's or  
27 entity's independent contractors for use in their business, so long  
28 as the independent contractor is regularly associated with the per-  
29 son or entity and is engaged in the same or related type of business  
30 as the person or entity, by doing the following:

31 [(1) Signing a written confidentiality agreement prepared by  
32 the attorney general and the information network of Kansas that:  
33 (A) Restricts use of the no-call database exclusively for the purpose  
34 of compliance with this section; and (B) prohibits the transfer of  
35 the copy of the no-call database to any person or entity who has  
36 not submitted the signed written confidentiality agreement and  
37 payment to the information network of Kansas for receipt of a copy  
38 of the no-call database; and

39 [(2) submitting the signed confidentiality agreement along  
40 with payment in an amount equal to \$25 per quarter for each Kan-  
41 sas area code to the information network of Kansas for providing  
42 a copy of the no-call database in downloadable electronic format.  
43 Those persons or entities desiring to obtain access to only part of

1 the no-call database may do so by submitting the signed confidential-  
2 tiality agreement along with a request designating by area code  
3 the portion or portions of the no-call database they desire and  
4 providing payment in the amount of \$25 per quarter per area code  
5 to the information network of Kansas for providing a copy of the  
6 requested portion of the no-call database in downloadable elec-  
7 tronic format. The information network of Kansas may require  
8 payment of a media and handling charge from persons who re-  
9 quest a computer disk copy of the no-call database.

10 [(h) No supplier who obtains a copy of the no-call database  
11 shall use that information for purposes other than compliance with  
12 this section. Information contained in the no-call database shall be  
13 used only for the purpose of compliance with this section or in a  
14 proceeding or action for violations of this section. Such informa-  
15 tion shall not be considered a public record pursuant to K.S.A. 45-  
16 215 *et seq.*, and amendments thereto.

17 [(i) Moneys collected pursuant to subsection (g) shall be used  
18 first to pay the cost of the database maintained by the information  
19 network of Kansas. Any moneys collected pursuant to subsection  
20 (g) in excess of the cost of the database maintained by the infor-  
21 mation network of Kansas shall be paid to the attorney general to  
22 investigate and prosecute violations of this section. Penalties and  
23 fees recovered from prosecutions of violations of this section shall  
24 be paid to the attorney general to investigate and prosecute vio-  
25 lations of this section.

26 [(j) The attorney general may enter into agreements with pri-  
27 vate entities, as determined necessary by the attorney general, to  
28 comply with the provisions of this act related to the creation and  
29 maintenance of the no-call data base.

30 [Sec. 4. K.S.A. 2001 Supp. 50-627 is hereby amended to read  
31 as follows: 50-627. (a) No supplier shall engage in any unconscion-  
32 able act or practice in connection with a consumer transaction. An  
33 unconscionable act or practice violates this act whether it occurs  
34 before, during or after the transaction.

35 [(b) The unconscionability of an act or practice is a question  
36 for the court. In determining whether an act or practice is uncon-  
37 scionable, the court shall consider circumstances of which the sup-  
38 plier knew or had reason to know, such as, but not limited to the  
39 following that:

40 [(1) The supplier took advantage of the inability of the con-  
41 sumer reasonably to protect the consumer's interests because of  
42 the consumer's physical infirmity, ignorance, illiteracy, inability to  
43 understand the language of an agreement or similar factor;

1 [(2) when the consumer transaction was entered into, the price  
2 grossly exceeded the price at which similar property or services  
3 were readily obtainable in similar transactions by similar  
4 consumers;

5 [(3) the consumer was unable to receive a material benefit  
6 from the subject of the transaction;

7 [(4) when the consumer transaction was entered into, there  
8 was no reasonable probability of payment of the obligation in full  
9 by the consumer;

10 [(5) the transaction the supplier induced the consumer to enter  
11 into was excessively onesided in favor of the supplier;

12 [(6) the supplier made a misleading statement of opinion on  
13 which the consumer was likely to rely to the consumer's detriment;  
14 and

15 [(7) except as provided by K.S.A. 50-639, and amendments  
16 thereto, the supplier excluded, modified or otherwise attempted  
17 to limit either the implied warranties of merchantability and fit-  
18 ness for a particular purpose or any remedy provided by law for a  
19 breach of those warranties.

20 [(c) (1) "Contractor" means a person who owns a commodity that is  
21 produced by a contract producer at the contract producer's contract op-  
22 eration according to a production contract;

23 [(2) "producer" means a person who produces a commodity, includ-  
24 ing but not limited to, a contract producer. Producer does not include a  
25 commercial fertilizer or pesticide applicator, a feed supplier or a veteri-  
26 narian, when acting in such capacity; and

27 [(3) "production contract" means an oral or written agreement that  
28 provides for the production of a commodity or the provision of manage-  
29 ment services relating to the production of a commodity by a contract  
30 producer. A production contract is executed when it is signed or orally  
31 agreed to by each party to the contract or by a person authorized to act  
32 on the party's behalf.

33 [(d) For purposes of this section, a producer shall be deemed a "con-  
34 sumer" and a contractor shall be deemed a "supplier" as defined in K.S.A.  
35 50-624, and amendments thereto, when they are parties to a production  
36 contract.

37 **[Sec. 5. K.S.A. 2001 Supp. 50-627 and 50-670 are hereby**  
38 **repealed.]**

39 ~~Sec. 6.]~~ This act shall take effect and be in force from and after  
40 its publication in the statute book.

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