

Approved: March 17, 1997
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 14, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

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

Conferees appearing before the committee:
Senator David Corbin
Linda DeCoursey, Assistant Director of Governmental & Public Affairs Division,
Insurance Department
Bill Curtis, Kansas Association of School Boards
Andrew Sabolic, Director, Western Region, National Council on Compensation
Insurance, Inc. (NCCI)
Philip S. Harness, Director, Workers Compensation Division
Robert J. Malooly, Vice President, U.S. Rating Bureau, Inc.
C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division

Others attending: See attached list

HCR 5015 - Butler County Port Authority

Senator David Corbin testified in support of **HCR 5015** which grants Butler County the authority to establish a port authority along the abandoned railroad line, Frisco - Burlington Northern, between Augusta and Wichita. Senator Corbin stated the purpose of creating a port authority is to activate the rail line to service industries in the vicinity, promote tourism, and potentially serve as a means of establishing a county industrial park.

Senator Steffes moved, seconded by Senator Ranson, that **HCR 5015** be recommended favorable for passage. The recorded vote was unanimous in favor of the motion.

HB 2011 - Workers compensation pools, rating organizations

Linda DeCoursey, Insurance Department, testified in support of **HB 2011**, which removes reference to the National Council on Compensation Insurance (NCCI) from the workers compensation pool statutes. **HB 2011** was introduced by the Interim Committee on Insurance at the request of the Insurance Commissioner. Ms. DeCoursey stated there are currently two specific references in our laws to NCCI, one being municipal workers compensation pools and the other, group workers compensation pools. Those groups are required to use, "the rules, classifications and rates promulgated by the National Council on Compensation." There are other rating organizations which have expressed an interest in doing business in this state and the Insurance Commissioner believes workers compensation pools should be given the option to use a rating organization other than NCCI. Attachment 1

Bill Curtis, Kansas Association of School Boards (KASB), testified in support of **HB 2011**. Mr. Curtis stated the KASB experience with NCCI has been costly and they favor any legislation that encourages competition by allowing the Commission to approve other workers compensation rating organizations. Competition would lower the price and provide an incentive for rating organizations to treat pool members as customers. KASB is concerned about the escalating fees charged by the NCCI and objects to the monopolistic attitude of NCCI regarding the purchase of all services. Attachment 2

Andrew Sabolic, Director, Western Region, National Council on Compensation Insurance, Inc.,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 14, 1997.

testified in support of **HB 2011**. Mr. Sabolic stated NCCI welcomes competition. Attachment 3

Philip S. Harness, Director, Workers Compensation Division, testified the Workers Compensation Advisory Council did not review **HB 2011**. Mr. Harness stated the Advisory Council requests **HB 2011** be amended to allow information regarding issuance, non-renewal or cancellation of a workers compensation insurance policy to be received by a designee of the Director. Mr. Harness stated the Division is presently in litigation over this issue. Attachment 4

Robert J. Malooly, Vice President, U.S. Rating Bureau, Inc., testified in support of **HB 2011**. Mr. Malooly stated the U.S. Rating Bureau provides workers compensation insurance rating services and competes with NCCI. Presently, U.S. Rating Bureau, which has been licensed to do business in Kansas, is excluded by law from providing rating services to Kansas workers compensation group self-insurance pools that have been in operation for less than 5 years. Mr. Malooly stated free and open competition is essential if workers and employers are to benefit from market competition. Attachment 5

The public hearing on **HB 2011** was concluded.

Senator Steffes moved, seconded by Senator Brownlee, that **HB 2011** be amended as requested by the Workers Compensation Advisory Council. (Attachment 6). The voice vote was in favor of the motion.

Senator Feleciano moved, seconded by Senator Steineger, that **HB 2011** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

HB 2462 - Consumer protection; three-day right to cancel in certain telemarketer business transactions.

C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division, testified in support of **HB 2462** which provides the consumer three-days to cancel a business transaction when the transaction is made in response to telemarketing solicitations. **HB 2462** addresses an area in which the Consumer Protection Division receives numerous consumer complaints. Mr. Rarrick stated consumers receive telephone calls or make calls to 800 numbers in response to mail solicitations from companies inviting them to visit a "showroom" or other place of business to view a presentation for consumer goods or services, travel clubs, campground membership, and timeshare promotions. Consumers are lured to these businesses with promises of free gifts and high pressure sales tactics. Consumers often attempt to cancel these contracts when they realize the extent of the monetary commitment made, only to learn they have no right to cancel. Attachment 7.

Mr. Rarrick proposed a technical amendments to bring **HB 2462** into compliance with the language contained in the "Consumer Protection Act. Page 3, Line 32, strike the word "TELEMARKETER" and insert the word "SUPPLIER".

The Committee discussed the adverse impact thereference to supplier could have on all businesses in the state. The Chair announced **HB 2462** will be considered at a later date when the Attorney General has had an opportunity to draft language that addresses the concerns expressed by Senator Donovan.

SB 325 - Use of tax increment financing to assist in development of a major tourist attraction

Senator Brownlee reviewed the Subcommittee recommendation which eliminates the second test found on page 5, lines 16, 17, 18, and 19, and adds criteria setting capital improvements at costing not less than \$100,000,000, and establishing an eight number standard industrial classification code for a speedway, in order to be single project specific.

Senator Brownlee made a substitute motion, seconded by Senator Steineger, that **SB 325** be amended on Page 4, line 43, by inserting a "comma (,)" following the word "guest", Page 5, by striking all of Lines 16, 17, 18, and 19, and inserting in lieu thereof the following" (i) That capital improvements costing not less than \$100,000,000 will be built in the state to construct a project for such major tourism area; and (ii) that the project constructed will be designated within the standard industrial classification code 7948-0201"; and on Page 7, line 40, by striking the words "statute book" and inserting in lieu thereof the words " Kansas register". The voice vote was in favor of the substitute motion.

Senator Steineger moved, seconded by Senator Brownlee, that **SB 325** be recommended favorable

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 14, 1997.

for passage as amended. The recorded vote was unanimous in favor of the motion.

SB 337 - Concerning the enterprise zone law

Senator Brownlee reviewed the Subcommittee recommendation on **SB 337** which is more project specific by adding "0201" to the SIC code "7948". The recommendation would also further strike the number of out-of-state visitors and the amount in retail sales derived from such a project inasmuch as the numbers are impossible to determine. The Subcommittee recommends stipulating capital improvements per project at a cost not less than \$100,000,000.

Senator Brownlee moved, seconded by Senator Steineger, that **SB 337** be amended on Page 2, Line 9, following the number "7948" by adding "-0201"; on Line 13 by striking all following the word "code", and striking all of lines 14 and 15; and inserting in lieu thereof the following: "7948-0201, such enterprises must operate an auto racetrack in the state involving capital improvements costing not less than \$100,000,000.; and on Page 3, Line 2, by striking the words "statute book" and inserting in lieu thereof the words "Kansas register". The voice vote was in favor of the motion.

Senator Steineger moved, seconded by Senator Brownlee, that **SB 337** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

Upon motion by Senator Steineger, seconded by Senator Ranson, the Minutes of the March 13, 1997 Meeting were unanimously approved.

Senator Jordan requested that the Joint Committee on Economic Development review the use of tax increment financing and enterprise zones to encourage tourism. The Chair agreed to write a letter to the Legislative Coordinating Council.

The Chair informed the Committee there will be a meeting Monday morning commencing at 8:30 a.m.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 17, 1997.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Committee on Commerce
From: Linda De Coursey
Assistant Director of Governmental & Public Affairs Division
Re: H.B. 2011 (Rating Organizations/Workers Compensation Pools)
Date: March 14, 1997

Madam Chair and members of the Committee:

Thank you for the opportunity to appear before you on HB 2011 (Rating Organizations/Workers Compensation Pools). The Kansas Insurance Department appears today in support of House Bill 2011 which would remove references to the National Council on Compensation Insurance ("NCCI") from the workers compensation pool statutes. NCCI is an insurer owned rating organization for workers compensation insurance. This bill was introduced by the Interim Committee on Insurance at the request of the Insurance Commissioner.

NCCI is involved in all aspects of the workers compensation market in Kansas. It serves as the only rating organization for workers compensation insurance and each year submits loss costs rates for the voluntary market and final rates for the high risk market to the Kansas Insurance Department for approval. The organization also administers the "assigned risk" pool for employers who are unable to find insurance coverage on the private market. NCCI also establishes rules, classifications and rates used by the group self-insured workers compensation pools to design members' rates.

The assigned risk pool was established by the Kansas Legislature in 1961 to provide a mechanism to make workers compensation insurance coverage available to applicants who were unable to procure insurance through the private market. In 1995, there were 16,833 policies in the assigned risk pool, with a total premium of \$51 million. Ninety-three percent (93%) of the

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Senate Commerce Committee
March 14, 1997
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businesses in the assigned risk market were employers with premiums under \$10,000; in other words, small employers make up the vast share of the assigned risk market. The goal of the assigned risk governing board is to provide compensation and insurance coverage not available in the voluntary market, and to try to move those employers in the pool out into the voluntary market.

There are two specific references in our laws to NCCI which are found in K.S.A. 12-2621 (municipal workers compensation pools) and K.S.A. 44-585 (group workers compensation pools). Those groups are required to use, "the rules, classifications and rates promulgated by the National Council on Compensation Insurance." HB 2011 would replace that language with a requirement that pools use information from any approved rating organization.

Currently, NCCI is the only rating organization for workers compensation insurance in Kansas. Another company has been issued a license in Kansas as a workers compensation rating organization but has not yet filed any rating plans with the Insurance Department. There are other rating organizations which have expressed an interest in doing business in this state. Workers compensation pools should be given the option to use a rating organization other than NCCI. This competition will be healthy for the workers compensation market.

Again, thank you for allowing me this opportunity to appear on HB 2011, and we would respectfully ask your favorable consideration of the bill.



HB 2011

March 14, 1997

Madam Chair and members of the committee, we appreciate the opportunity to testify today on HB 2011 which strikes the statutory reference to the National Council on Compensation Insurance (NCCI) from both statutes governing pools. My name is Bill Curtis and I am the staff member responsible for the workers compensation pool administered by the Kansas Association of School Boards. That pool began operations on July 1, 1987 and currently has 215 members with an annual payroll in excess of \$1 billion. It provides coverage to over 50,000 employees in public schools and community colleges. We support HB 2011.

Prior to September, 1995 the KASB pool annually used the NCCI forms to report the loss information of pool members and, in return, received the updated experience modification or rating factors to correctly calculate premiums. For those services the KASB pool paid NCCI \$35 per member. In September of 1995 we were informed that NCCI would no longer calculate the experience rating factors unless the pool became an affiliate member of NCCI. For the privilege of becoming an affiliate member, the pool would pay for additional services, whether used by the pool or not, which would raise the annual fees to approximately \$100 per member. Those additional services had such titles as affiliation charge, classification system and statistical plan license, experience rating plan license, regulatory and legislative services, data collection fee, policy forms, and experience rating production. Each of these services had to be purchased and were based upon the premium volume of the pool, not a per member charge. It is also worth mentioning that the losses from the KASB pool were never used by the NCCI in rate filings in Kansas. HB 2011 would encourage competition by allowing the Commissioner to approve other workers compensation rating organizations. Competition would lower the price and provide an incentive for rating organizations to treat us as customers.

In summary, KASB is concerned about the escalating fees charged by the NCCI remembering that pools are limited to 30% of premiums for administrative expenses. We also object to the monopolistic attitude of NCCI regarding the purchase of all services. Thank you for listening to our concerns. We urge the committee's favorable action on HB 2011.

*Senate Commerce
Committee
March 14, 1997*

Attachment 2



Government, Consumer
and Industry Affairs
Western Region

Andrew Sabolic
Director

Andrew Sabolic Testimony
Senate Commerce Committee Hearing—March 14, 1997
House Bill 2011

NCCI supports House Bill 2011. A special insurance interim study committee initially recommended the Bill. House Bill 2011 has subsequently passed the House Business and Labor Committee and the full House.

It allows group self-insured funds to use rules, rates and classifications of any approved rating organization instead of solely relying on NCCI. Group self-insureds will benefit from HB 2011 and I would urge your passage of it.

*Senate Commerce
Committee
March 14, 1997
Attachment 3*

TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE
FRIDAY, MARCH 14, 1997

BY PHILIP S. HARNESS, DIRECTOR OF WORKERS COMPENSATION

HOUSE BILL NO. 2011

The Division of Workers Compensation has no specific recommendation to make to the Legislature on House Bill 2011, as it was not reviewed by the Workers Compensation Advisory Council.

However, the recommendation by the advisory council to the Legislature would be to amend K.S.A. 44-532 to allow information regarding issuance, non-renewal or cancellation of a workers compensation insurance policy to be received by a designee of the Director. Currently, the Division relies upon NCCI to furnish the Division this information, from which the Division investigates compliance issues. While the statute has never been very clear in this regard, custom and practice in the industry has been to file that information with NCCI, who furnishes to the Division at the cost of \$50.00 per month. If H.B. 2011 passes and allows other "approved rating organizations" the Division may seek to contract with a different one.

*Senate Commerce
Committee
March 14, 1997
Attachment 4*

**Robert J. Malooly, V.P.
U.S. Rating Bureau, Inc.
230 West Monroe, Suite 520
Chicago, Illinois 60606
Phone: (312) 456-8694**

**Testimony in support of H.B. 2011
before
Senate Commerce Committee**

March 14, 1997

I am Robert Malooly, Vice President of the U.S. Rating Bureau. Thank-you for the opportunity to address the Committee to voice my support for passage of H.B. 2011.

The U.S. Rating Bureau provides workers' compensation insurance rating services and competes with the organization that is named in the Kansas statutes. Our company is currently excluded by law from providing rating services to Kansas workers' compensation group self-insurance pools that have been in operation for less than 5 years. This prohibition gives our competitor a 5 year head start which makes it very difficult for a free market in rating services to operate in Kansas. This statutory language creates a serious barrier for any new company, even if the new company provides superior technology, higher quality products, improved customer service and lower prices.

Free and open competition is essential if Kansas workers and employers are to benefit from the best the market has to offer in this important program. Workers' compensation costs are part of the cost of every good and service produced in Kansas. Workplace accidents and injuries have tragic effects on workers. Better information can help guide efforts to both cut costs and avoid accidents and injuries. Should Kansas workers and employers have the freedom to benefit from the improved information that is made available as a result of market competition?

The freedom to choose, that this proposed legislation would create, will shift power from the provider of the service to the customer. Instead of hoping that the rating organization will improve services, adopt better technology or lower costs, the customer can demand these improvements or simply choose an organization that already provides these advantages.

I think group self-insured pools in Kansas should be given the opportunity to make these choices and therefore encourage the Committee to recommend the enactment of this legislation.

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Attachment 5*

44-532. Subrogation of insurer or group-funded pool to rights and duties of employer; methods of securing payment of compensation; failure to secure; notice to director by insurers; change of status notice by self-insurers and group-funded pool members; eligibility to self-insure. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; (3) by maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class A misdemeanor.

(d) In addition, whenever the director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section, the director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.

(e) Any civil penalty imposed or final action taken under this section shall be subject to review in accordance with the act for judicial review of agency actions in the district court of Shawnee county.

(f) All moneys received under this section for costs assessed or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fund.

(g)(1) Every insurance carrier writing workers' compensation insurance for any employment covered under the workers compensation act shall file, with the director *or his designee*, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing workers compensation coverage, within 10 days after such issuance, nonrenewal or cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

(2) Every employer covered by the workers compensation act who is a qualified self-insurer shall give written notice to the director *or his designee*, if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.

(3) Every employer covered by the workers compensation act who is a member of a

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qualified group-funded workers compensation pool shall give written notice to the director *or his designee*, if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

(4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.

(5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).

(h) As used in this section, 'qualified group-funded workers compensation pool' means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(i) A private firm shall not be eligible to apply to become a self-insurer unless it has been in continuous operation for at least five years or is purchasing an existing self-insured Kansas firm, plant or facility and the operation of the purchased firm, plant or facility: (1) Has been in continuous operation in Kansas for at least 10 years; (2) has generated an after-tax profit of at least \$1,000,000 annually for the preceding three consecutive years; and (3) has a ratio of debt to equity of not greater than 3.5 to 1. As used in this subsection, 'debt' means the sum of long-term borrowing maturing in excess of one year plus the current portion of long-term borrowing plus short-term financial institution borrowing plus commercial paper borrowing, and 'equity' means the sum of the book value of stock plus paid-in capital plus retained earnings.



CARLA J. STOVALL
ATTORNEY GENERAL

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Testimony of
C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Commerce Committee
RE: HB 2462
March 14, 1997

Chairperson Salisbury and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in support of House Bill 2462. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

Attorney General Stovall supports this bill because it addresses an area in which our office receives numerous consumer complaints. These consumers receive telephone calls or make calls to 800 numbers in response to mail solicitations from companies inviting them to visit a "showroom" or other place of business to view a presentation for consumer goods or services (e.g., travel clubs, campground memberships, and timeshare promotions). Consumers are lured to these businesses with promises of free gifts, then subjected to high pressure sales tactics. Consumers often promptly attempt to cancel these contracts when they realize the extent of the monetary commitment they have made, only to learn they have no right to cancel. When consumers file complaints with our office, we are all too often unable to assist them, absent any overt deceptive act.

We currently are in litigation with one campground membership company which used these sales tactics, in addition to the deceptive practices which formed the basis for our lawsuit. Many of the 630 Kansas families who have filed complaints with our office signed contracts because of the high pressure sales tactics utilized, and unsuccessfully tried to cancel the agreement shortly thereafter. Under this bill, future consumers in this situation would be able to cancel such agreements within three business days.

The Attorney General proposed some technical amendments to the bill to mirror existing statutory language contained in the Consumer Protection Act and to reflect current telemarketing practices. These amendments were adopted by the House Business, Commerce & Labor Committee. However, because one "telemarketer" reference did not get changed to "supplier," we have attached to my testimony a balloon amendment reflecting the needed change at page 3, line 32.

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We believe this bill, as amended, will provide a reasonable "cooling off" period for consumers subjected to high pressure sales tactics by these businesses. On behalf of Attorney General Stovall, I urge your favorable consideration of HB 2462. Thank you.

HOUSE BILL No. 2462

By Representatives Dillon, Adkins, Alldritt, Burroughs, Dean, Flaharty, Garner, Gilbert, Grant, Kirk, Klein, Kuether, Larkin, E.Peterson, Phelps, Reardon, Ruff, Sawyer, Toelkes and Welshimer

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12 AN ACT concerning consumer protection; relating to telemarketers;
13 amending K.S.A. 50-672 and 50-673 and repealing the existing
14 sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 50-672 is hereby amended to read as follows: 50-
18 672. (a) (1) Any verbal agreement made by a consumer to purchase any
19 goods or services from a telemarketer shall not be considered valid and
20 legally binding unless the telemarketer receives from the consumer a
21 signed confirmation that discloses in full the terms of the sale agreed
22 upon.

23 (b) (2) The confirmation shall include, but is not limited to, the fol-
24 lowing information:

25 (1) (A) The name of the telemarketer;

26 (2) (B) the address and telephone number at which personal or voice
27 contact with an employee or agent of the telemarketer can be made dur-
28 ing normal business hours;

29 (3) (C) a list of all prices or fees being requested, including any han-
30 dling, shipping, delivery, or other charges;

31 (4) (D) the date of the transaction;

32 (5) (E) a detailed description of the goods or services being sold;

33 (6) (F) a duplicate copy with the complete information as presented
34 in the original confirmation, to be retained by the consumer as proof of
35 the terms of the agreement to purchase; and

36 (7) (G) in a type size of a minimum of twelve points, in a space im-
37 mediately preceding the space allotted for the consumer signature, the
38 following statement:

39 "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS
40 YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE
41 SELLER."

42 (e) (3) A telemarketer may not make or submit any charge to the
43 consumer's credit card account until the telemarketer has received from

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1 the consumer an original copy of a confirmation, signed by the consumer,
2 that complies with this section. Any merchandise sent or services provided
3 without such written confirmation shall be considered as unsolicited
4 goods subject to the provisions of K.S.A. 50-617 and amendments thereto.

5 ~~(d)~~ (4) No consumer shall be held liable for payment for any good or
6 service provided by a telemarketer unless such telemarketer has first re-
7 ceived the written consent of the consumer in the form of a confirmation
8 as defined in this section.

9 ~~(e)~~ (5) In the event that the consumer sends payment to the tele-
10 marketer in the form of a personal check, cash money, or any other form
11 of payment other than credit card without having included a signed copy
12 of such confirmation, the consumer shall have the right to choose at any
13 time to cancel the sale by notifying the telemarketer in writing, provided
14 the consumer returns to the telemarketer the goods sold in substantially
15 the same condition as when they were received by the consumer. A tele-
16 marketer that has received such notice to cancel from a consumer shall
17 then, within 10 business days of the receipt of such notice:

18 ~~(1)~~ (A) Refund all payments made, including any down payment
19 made under the agreement;

20 ~~(2)~~ (B) return any goods or property traded in to the seller on account
21 of or in contemplation of the agreement, in substantially the same con-
22 dition as when received by the telemarketer; and

23 ~~(3)~~ (C) take any action necessary or appropriate to terminate
24 promptly any security interest created in connection with the agreement.

25 *(b) (1) Any consumer who is contacted by a telemarketer, **supplier**
26 **or both**, asked to go to ~~the telemarketer's~~ **a supplier's** business estab-
27 **lishment** in a fixed permanent location to listen to an offer for the sale of
28 **any goods or services from a ~~telemarketer~~ supplier** and promised in re-
29 **turn a free gift or vacation for listening to such offer shall have the right**
30 **to cancel any written agreement signed at ~~the telemarketer's~~ a **supplier's****
31 **business establishment in a fixed permanent location until midnight of the**
32 **third business day after the day on which the consumer signs an agree-**
33 **ment or offer to purchase which includes the disclosures required by this**
34 **section.***

35 *(2) In connection with any written agreement made the disclosure*
36 *shall include, but is not limited to the following information:*

37 *(A) A fully completed receipt or copy of any agreement pertaining to*
38 *such sale at the time of its execution, which is in the same language,*
39 *Spanish for example, as that principally used in the oral sales presentation*
40 *and which shows the date of the transaction and contains the name and*
41 *address of the ~~telemarketer~~ **supplier**, and in immediate proximity to the*
42 *space reserved in the contract for the signature of the consumer or on the*
43 *front page of the receipt if an agreement is not used and in boldface type*

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1 of a minimum size of 10 points, a statement in substantially the following
2 form:

3 "YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY
4 TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AF-
5 TER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED
6 NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF
7 THIS RIGHT."

8 For purposes of the required notices under this section, the term "buyer"
9 shall have the same meaning as the term "consumer."

10 (B) A completed form in duplicate, captioned "NOTICE OF CAN-
11 CELLATION," which shall be attached to the agreement or receipt and
12 be easily detachable, and which shall contain in 10-point boldface type
13 the following information and statements in the same language, Spanish
14 for example, as that used in the contract:

15 NOTICE OF CANCELLATION

16
17 (Enter date of transaction)

18 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGA-
19 TION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

20 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU
21 UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXE-
22 CUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING
23 RECEIPT BY THE ~~TELEMARKETER~~ SUPPLIER OF YOUR CANCELLATION NO-
24 TICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL
25 BE CANCELED.

26 IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE ~~TELEMARKETER~~ SUP-
27 PLIER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS
28 WHEN RECEIVED, ANY PROPERTY DELIVERED TO YOU UNDER THIS AGREE-
29 MENT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS
30 OF THE ~~TELEMARKETER~~ SUPPLIER REGARDING THE RETURN SHIPMENT OF
31 THE PROPERTY AT THE ~~TELEMARKETER'S~~ SUPPLIER'S EXPENSE AND RISK.

32 IF YOU DO MAKE THE PROPERTY AVAILABLE TO THE TELEMARKETER, AND
33 IF THE ~~TELEMARKETER~~ SUPPLIER DOES NOT PICK SUCH PROPERTY UP
34 WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY
35 RETAIN OR DISPOSE OF THE PROPERTY WITHOUT ANY FURTHER OBLIGATION.
36 IF YOU FAIL TO MAKE THE PROPERTY AVAILABLE TO THE ~~TELEMARKETER~~
37 SUPPLIER, OR IF YOU AGREE TO RETURN THE PROPERTY TO THE ~~TELEMAR-~~
38 ~~KETER~~ SUPPLIER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PER-
39 FORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

40 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED
41 COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR
42 SEND A TELEGRAM,

TELEMARKETER SUPPLIER

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1 TO _____
2 (Name of ~~TELEMARKETER~~ SUPPLIER)

3 AT _____
4 (Address of ~~TELEMARKETER's~~ SUPPLIER's Place of Business)

5 NOT LATER THAN MIDNIGHT OF
6 _____
7 (Date)

8 I HEREBY CANCEL THIS TRANSACTION.
9 _____
10 (Date) (Buyer's Signature)

11 (C) Copies of the "notice of cancellation" to the consumer, to complete
12 both copies by entering the name of the supplier, the address of the sup-
13 plier's place of business, the date of the transaction, and the date, not
14 earlier than the third business day following the date of the transaction,
15 by which the consumer may give notice of cancellation.

16 (D) Any confession of judgment or any waiver of any of the rights to
17 which the consumer is entitled under this section including specifically
18 such consumer's right to cancel the sale in accordance with the provisions
19 of this section.

20 (E) Inform each consumer orally, at the time such consumer signs the
21 contract or purchases the property or services, of such consumer's right
22 to cancel.

23 (3) ~~It shall be unlawful for any telemarketer to~~ A supplier shall not
24 fail or refuse to honor any valid notice of cancellation by a consumer and
25 within 10 business days after the receipt of such notice, to: (A) Refund all
26 payments made under the contract or sale; (B) return any property traded
27 in, in substantially as good condition as when received by the supplier;
28 (C) cancel and return any negotiable instrument executed by the con-
29 sumer in connection with the contract or sale and take any action nec-
30 essary or appropriate to terminate promptly any security interest created
31 in the transaction.

32 (4) ~~It shall be unlawful for any telemarketer to~~ A supplier shall not
33 negotiate, transfer, sell or assign any note or other evidence of indebted-
34 ness to a finance company or other third party prior to midnight of the
35 fifth business day following the day the contract was signed or the prop-
36 erty or services were purchased.

37 (5) ~~It shall be unlawful for any telemarketer to~~ A supplier, within 10
38 business days of receipt of the consumer's notice of cancellation, ~~fail to~~
39 shall notify the consumer whether the supplier intends to repossess or to
40 abandon any shipped or delivered property.

41 (6) Violations of subsections (b)(1) through (b)(5) shall be
42 deemed deceptive acts and practices as defined by K.S.A. 50-626,
43 and amendments thereto.

Sec. 2. K.S.A. 50-673 is hereby amended to read as follows: 50-673.

(a) The provisions of K.S.A. 50-671 through 50-674 and amendments thereto do not apply to a transaction:

(a) That has been made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a business establishment that has a fixed permanent location and where consumer goods or services are displayed or offered for sale on a continuing basis;

(b) (1) In which the business establishment making the solicitation has made a prior sale to the consumer, is establishing a business to business relationship or has a clear, preexisting business relationship with the consumer, provided that relationship resulted in the consumer becoming aware of the full name, business address and phone number of the establishment;

(c) in which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, catalogue, or other mailing material of the telemarketer that contains:

(1) The name, address, and telephone number of the telemarketer;

(2) a full description of the goods or services being sold along with a list of all prices or fees being requested, including any handling, shipping, or delivery charges; and

(3) any limitations or restrictions that apply to the offer; or

(d) (2) except as provided in subsection (b) of K.S.A. 50-672, and amendments thereto, in which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within seven days after receipt by the consumer, and the seller will process the refund within 30 days after receipt of the returned merchandise by the consumer or the refund for any services not performed or a pro rata refund for any services not yet performed for the consumer. The return and refund privilege shall be disclosed to the consumer orally by telephone or in writing with advertising, promotional material or with delivery of the product or service. The words "satisfaction guaranteed," "free inspection," "no risk guarantee" or similar words and phrases meet the requirements of this act.

(e) (b) Any telemarketer who, pursuant to this section, is exempted from K.S.A. 50-671 through 50-674 and amendments thereto, impliedly warrants the goods or property to be satisfactory to the consumer to the extent that the consumer shall have the right to choose at any time within the seven-day refund period, to cancel the sale by notifying the telemarketer in writing, provided the consumer returns to the telemarketer the goods sold in substantially the same condition as when they were received by the consumer. A telemarketer that has received such notice to cancel from a consumer shall then, within 30 business days of the receipt of such

1 notice:

2 (1) Refund all payments made, including any down payment made
3 under the agreement;

4 (2) return any goods or property traded in to the seller on account of
5 or in contemplation of the agreement, in substantially the same condition
6 as when received by the telemarketer; and

7 (3) take any action necessary or appropriate to terminate promptly
8 any security interest created in connection with the agreement.

9 Sec. 3. K.S.A. 50-672 and 50-673 are hereby repealed.

10 Sec. 4. This act shall take effect and be in force from and after its
11 publication in the statute book.

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