

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2599

By Committee on Utilities

1-12

10 AN ACT concerning **the Kansas consumer protection act; relating**  
11 **to dissemination of electronic mail addresses and** certain unsoli-  
12 cited facsimile transmissions; prohibiting certain acts and providing  
13 remedies and penalties for violations.  
14

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

16 Section 1. As used in ~~this act~~ **sections 1 through 4, and amend-**  
17 **ments thereto:**

18 (a) "Consumer fax" means a transmission to a telephone facsimile  
19 machine made by a fax solicitor to the residence of a consumer for the  
20 purpose of soliciting a sale of any property or services to the recipient, or  
21 for the purpose of soliciting an extension of credit for property or services  
22 to the recipient, or for the purpose of obtaining information that will or  
23 may be used for the direct solicitation of a sale of property or services to  
24 the recipient or an extension of credit for such purposes.

25 (b) "Established business relationship" means a prior or existing re-  
26 lationship formed by a voluntary two-way communication between a per-  
27 son or entity and consumer with or without an exchange of consideration,  
28 on a basis of an application, purchase or transaction by the consumer,  
29 within the preceding 36 months, regarding products or services offered  
30 by such person or entity, which relationship has not been previously ter-  
31 minated by either party.

32 (c) "Fax solicitor" means any natural person, firm, organization, part-  
33 nership, association or corporation who makes or causes to be made a  
34 consumer fax.

35 (d) "Telephone facsimile machine" means equipment which has the  
36 capacity to:

37 (1) Transcribe text or images, or both, from paper into an electronic  
38 signal and to transmit that signal over a regular telephone line; or

39 (2) transcribe text or images, or both, from an electronic signal re-  
40 ceived over a regular telephone line onto paper.

41 (e) "Unsolicited consumer fax" means a consumer fax other than a  
42 fax made:

43 (1) In response to an express request of the recipient;

1 (2) primarily in connection with an existing debt or contract, payment  
2 or performance of which has not been completed at the time of such fax;  
3 or

4 (3) to any person with whom the fax solicitor or the fax solicitor's  
5 predecessor in interest has an established business relationship, unless  
6 the consumer has objected to such consumer faxes and requested that  
7 the fax solicitor cease making consumer faxes.

8 Sec. 2. (a) Any fax solicitor who makes an unsolicited consumer fax  
9 to a residential fax number shall clearly mark, in a margin at the top or  
10 bottom of each transmitted page of the message or on the first page of  
11 the transmission, the date and time it is sent and an identification of the  
12 business, other entity or individual sending the message and the tele-  
13 phone number of the sending machine or of such business, other entity  
14 or individual.

15 (b) A fax solicitor shall not transmit any consumer fax to a consumer  
16 after the consumer requests orally or in writing that such transmissions  
17 cease.

18 (c) Any violation of this section is an unconscionable act or practice  
19 under the Kansas consumer protection act.

20 Sec. 3. (a) The attorney general shall contract with the direct mar-  
21 keting association for the no-fax list provided for by this section. The  
22 contract shall establish:

23 (1) The maximum fees that fax solicitors may be charged for access  
24 to the no-fax list;

25 (2) the maximum fees that consumers may be charged to register for  
26 inclusion on the no-fax list;

27 (3) the schedule of dates by which consumers must register in order  
28 to appear on updates of the no-fax list. Such schedule of dates shall pro-  
29 vide that time period prior to the date of the next quarterly update in  
30 which consumers must submit their information in order to be included  
31 in the next quarterly update shall not exceed 30 days;

32 (4) the schedule of dates by which fax solicitors will be provided up-  
33 dates of the no-fax list. Such schedule of dates shall provide that the no-  
34 fax list shall be updated no less frequently than on a quarterly basis, on  
35 January 1, April 1, July 1 and October 1;

36 (5) what information shall be furnished, without charge, upon request  
37 of a consumer, registered in accordance with this section, concerning a  
38 fax solicitor or other person who the consumer believes has engaged in  
39 transmission of an unsolicited consumer fax prohibited by this section;  
40 and

41 (6) the consent of the direct marketing association to subject itself to  
42 the jurisdiction of the courts of this state for the purpose of enforcing the  
43 provisions of this section; the designation of a resident agent, who is a

1 resident of Kansas, by the direct marketing association for service of pro-  
2 cess, and who registers with the secretary of state pursuant to K.S.A. 60-  
3 306, and amendments thereto; and the agreement of the direct marketing  
4 association and its resident agent to comply with the provisions of this  
5 section.

6 If the direct marketing association does not agree to enter into the  
7 contract provided for by this subsection, the attorney general may con-  
8 tract, upon bids, with another vendor to establish and maintain the no-  
9 fax list provided for by this section.

10 (b) Prior to making unsolicited consumer faxes in this state and quar-  
11 terly thereafter, a fax solicitor shall consult the no-fax list provided for by  
12 this act, and shall delete from such fax solicitor's faxing list all state resi-  
13 dents who have registered to be on such list. The direct marketing asso-  
14 ciation, or other vendor maintaining the no-fax list, shall offer to consum-  
15 ers at least one method of registration at no cost and such registration  
16 shall be for a period of five years. Consumers desiring to register to be  
17 on the no-fax list may contact the direct marketing association or other  
18 vendor maintaining the no-fax list, or the attorney general. The attorney  
19 general may compile a list of fax numbers from consumers desiring to  
20 register for such service. The attorney general shall forward the list to  
21 the direct marketing association or such other vendor in electronic format  
22 no less than 15 days prior to the date of the next quarterly update. No  
23 registration fee shall be imposed on the attorney general for submission  
24 of such list to the direct marketing association or such other vendor.  
25 Membership in the direct marketing association shall not be a require-  
26 ment for fax solicitors to obtain the fax preference service list and fax  
27 solicitors shall have access to the list. A fax solicitor prior to accessing the  
28 no-fax list shall submit the appropriate fee and complete a subscription  
29 agreement that: (1) Restricts use of the no-fax list exclusively for purposes  
30 authorized by this act; (2) provides the fax solicitor's contact and mailing  
31 information; and (3) selects the method of updates required (monthly or  
32 quarterly). A consumer desiring to register shall submit to the direct mar-  
33 keting association, or other vendor, the consumer's name, address, city,  
34 state and zip code and the fax numbers to be registered. The direct mar-  
35 keting association, or other vendor, shall make available to the attorney  
36 general, in an electronic format, the no-fax list and all quarterly updates  
37 of such list at no cost.

38 (c) The attorney general and the direct marketing association, or  
39 other vendor, shall ensure that consumers are given clear notice that fax  
40 numbers are not immediately added to the no-fax list upon submission  
41 of a consumer's registration and that it may be as long as 120 days before  
42 fax solicitors receive a new no-fax list which includes the consumer's fax  
43 number; that it may be as long as 30 days from the time of publication

1 of the current quarterly update of the no-fax list before the consumer's  
2 fax number is removed from the fax solicitor's faxing lists; and that the  
3 consumer and the attorney general may not be able to enforce the pro-  
4 visions of this section until 150 days have passed since the consumer  
5 submitted the consumer's registration to be on the no-fax list.

6 (d) Fax solicitors shall have a period of not more than 30 days from  
7 the time of publication of the current quarterly update of the no-fax list  
8 to remove a consumer's fax number from the fax solicitor's faxing lists.

9 (e) No fax solicitor may make or cause to be made any unsolicited  
10 consumer fax to any consumer if the consumer's fax number or numbers  
11 appear in the current quarterly list of consumers registered on the no-fax  
12 list. A fax solicitor shall not use the no-fax list for any other purpose than  
13 to remove consumers' fax numbers from faxing lists.

14 (f) A fax solicitor shall be liable for violations of subsections (d) and  
15 (e) if such fax solicitor makes or causes to be made an unsolicited con-  
16 sumer fax to a state resident whose fax number appears on the current  
17 quarterly no-fax list or uses the list for any unauthorized purpose.

18 (g) It shall be an affirmative defense to a violation of this section if  
19 the fax solicitor can demonstrate, by clear and convincing evidence, that:  
20 (1) The fax solicitor at the time of the alleged violation had: (A) Obtained  
21 a copy of the updated no-fax list; (B) established and implemented, with  
22 due care, reasonable practices and procedures to effectively prevent un-  
23 solicited consumer faxes in violation of this section; (C) trained the fax  
24 solicitor's personnel in the requirements of this section; and (D) main-  
25 tained records demonstrating compliance with this section; and (2) the  
26 unsolicited consumer fax was the result of an error. Such defense shall  
27 not be exercised by a fax solicitor more than once within the state of  
28 Kansas in any 12-month period. A fax solicitor shall be deemed to have  
29 exercised such defense if asserted in response to any consumer complaint  
30 about a violation of this section, regardless of whether litigation has been  
31 initiated.

32 (h) It shall be an affirmative defense to a violation of this section if  
33 the fax solicitor can demonstrate by clear and convincing evidence that:  
34 (1) The consumer affirmatively listed or held out to the public such con-  
35 sumer's residential number as a business number; (2) the fax solicitor had  
36 knowledge of and relied upon such consumer's actions as provided in  
37 subsection (h)(1) at the time of the fax solicitor's alleged violation; and  
38 (3) the purpose of the fax was directly related to the consumer's business.

39 (i) Any violation of this section is an unconscionable act or practice  
40 under the Kansas consumer protection act.

41 (j) (1) Upon request of the attorney general for the purpose of en-  
42 forcing the provisions of this section, the direct marketing association, or  
43 other vendor, shall furnish the attorney general with all information re-

1 requested by the attorney general concerning a fax solicitor or any person  
2 the attorney general believes has engaged in an unsolicited consumer fax  
3 prohibited by this section. The direct marketing association, or other ven-  
4 dor, shall not charge a fee for furnishing the information to the attorney  
5 general.

6 (2) The direct marketing association, or other vendor, shall comply  
7 with any lawful subpoena or court order directing disclosure of the list or  
8 any other information.

9 (k) The direct marketing association, or other vendor, shall promptly  
10 forward any complaints concerning alleged violations of this section to  
11 the attorney general.

12 (l) Except as directed by the attorney general, the direct marketing  
13 association shall be prohibited from disclosing or using, in any way, any  
14 and all addresses obtained from consumers in the course of registering  
15 such consumer's phone numbers on the no-fax list.

16 (m) Penalties and fees recovered from prosecutions of violations of  
17 this section shall be paid to the attorney general to investigate and pros-  
18 ecute violations of this section.

19 (n) The attorney general may convene a meeting or meetings with  
20 consumer advocacy groups to collectively develop a method or methods  
21 to notify the consumer advocacy group's membership and educate and  
22 promote to Kansas consumers generally the availability of the no-fax list,  
23 and of a fax solicitor's obligations under this section.

24 (o) On or before the first day of each regular legislative session, the  
25 attorney general shall report to the standing committees of the house and  
26 senate which hear and act on legislation relating to telecommunications  
27 issues on the status of implementation of the provisions of this section,  
28 including, but not limited to, the number of consumers who have given  
29 notice of objection, the number of requests for the data base, state rev-  
30 enues received from the respective sources of revenue under this section,  
31 the number of complaints received alleging violations of this section and  
32 actions taken to enforce the provisions of this section.

33 (p) If the federal trade commission establishes a single national no-  
34 fax list the attorney general may designate the list established by the  
35 federal trade commission as the Kansas no-fax list.

36 (q) The attorney general may promulgate rules and regulations to  
37 carry out the provisions of the Kansas no-fax act.

38 (r) The provisions of this section shall be known and may be cited as  
39 the Kansas no-fax act.

40 Sec. 4. The provisions of ~~this act~~ **sections 1 through 3, and**  
41 **amendments thereto**, shall be a part of and supplemental to the Kansas  
42 consumer protection act.

43 **Sec. 5. (a) A person sponsoring, arranging or conducting a**

1 conference, seminar or other meeting shall not sell or otherwise  
2 disseminate to any person for use for commercial purposes any  
3 electronic mail address received in the course of registration for  
4 such conference, seminar or other meeting without the express  
5 authorization of the registrant.

6 (b) Violation of this section is a deceptive act or practice under  
7 the provisions of the Kansas consumer protection act and shall be  
8 subject to any and all enforcement provisions of the Kansas con-  
9 sumer protection act.

10 (c) Any person alleging a violation of the provisions of this sec-  
11 tion may bring a private action to seek relief pursuant to K.S.A.  
12 50-634, 50-636 and this section, and amendments thereto, and  
13 such person may be defined as a consumer pursuant to K.S.A. 50-  
14 624, and amendments thereto, for the purposes of such private  
15 action.

16 (d) As used in this section, “commercial purposes” means for  
17 purposes of selling or offering for sale any property or service.

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

20 Sec. 5 6. This act shall take effect and be in force from and after its  
21 publication in the statute book.