



Sen. Dan Kotowski

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1 AMENDMENT TO SENATE BILL 1978

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1978 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Restricted Credit Card Solicitation Registry Act.

6 Section 5. Definitions. As used in this Act:

7 "Established business relationship" means the existence of  
8 an oral or written transaction, agreement, contract, or other  
9 legal state of affairs involving a person or entity and an  
10 existing customer under which both parties have a course of  
11 conduct or established pattern of activity for commercial or  
12 mercantile purposes and for the benefit or profit of both  
13 parties. A pattern of activity does not necessarily mean  
14 multiple previous contacts. The established business  
15 relationship must exist between the existing customer and the  
16 person or entity directly, and does not extend to any related

1 business entity or other business organization of the person or  
2 entity or related to the person or entity or the person or  
3 entity's agent including but not limited to a parent  
4 corporation, subsidiary partnership, company, or other  
5 corporation or affiliate.

6 "Existing customer" means an individual who has either:

7 (1) entered into a transaction, agreement, contract,  
8 or other legal state of affairs between a person or entity  
9 and a resident of this State under which the payment or  
10 exchange of consideration for any goods or services has  
11 taken place within the preceding 18 months or has been  
12 arranged to take place at a future time; or

13 (2) opened or maintained a debit account, credit card  
14 account, or other credit or discount program offered by or  
15 in conjunction with the person or entity and has not  
16 requested the person or entity to close the account or  
17 terminate the program.

18 "Credit card solicitation" or "pre-approved credit card  
19 offer" means any communication sent through the United States  
20 Postal Service or other mail carrier for the purpose of asking,  
21 enticing, or requesting a resident to read, review, or consider  
22 materials relating to an application for a credit card or to  
23 complete an application for a credit card, but does not include  
24 communications:

25 (1) to any resident of this State with that resident's  
26 prior express invitation or permission when a voluntary

1 2-way communication between a person or entity and the  
2 resident has occurred with or without an exchange of  
3 consideration. A credit card solicitation or pre-approved  
4 credit card offer is presumed not to be made at the express  
5 request of a resident if one of the following occurs, as  
6 applicable:

7 (A) The credit card solicitation or pre-approved  
8 credit card offer is made more than 30 business days  
9 after the last date on which the resident contacted a  
10 business with the purpose of inquiring about the  
11 potential purchase of goods or services.

12 (B) The credit card solicitation or pre-approved  
13 credit card offer is made more than 30 business days  
14 after the last date on which the resident consented to  
15 be contacted.

16 (C) The credit card solicitation or pre-approved  
17 credit card offer is made more than 30 business days  
18 after a product or service becomes available, if the  
19 resident has made a request to the business for that  
20 product or service, which was not then available, and  
21 requests to be mailed a notice when the product or  
22 service becomes available;

23 (2) by or on behalf of any person or entity with whom a  
24 resident has an established business relationship that has  
25 not been terminated in writing by either party and that is  
26 related to the nature of the established business

1 relationship; or

2 (3) by or on behalf of any person or entity with whom a  
3 resident is an existing customer, unless the customer has  
4 stated to the person or entity or the person or entity's  
5 agent that he or she no longer wishes to receive the  
6 mailings of the person or entity, or unless the nature of  
7 the mailing is unrelated to the established business  
8 relationship with the existing customer.

9 "Registry" means the Restricted Credit Card Solicitation  
10 Registry established under this Act.

11 Section 10. Prohibited mailings. Beginning January 1,  
12 2010, it is a violation of this Act for any person or entity to  
13 make or cause to be made any credit card solicitation or  
14 pre-approved credit card offer to any resident of this State  
15 more than 45 days after the person or entity obtains the  
16 Registry or any update of the Registry on which the resident's  
17 mailing address first appears.

18 Section 15. Complaints. The Illinois Commerce Commission  
19 shall receive credit card solicitation complaints or  
20 pre-approved credit card offer complaints from residents who  
21 object to the mailings. Complaints shall be taken by any means  
22 deemed appropriate by the Illinois Commerce Commission.

23 Section 20. Registry.

1           (a) The Illinois Commerce Commission shall establish and  
2 provide for the operation of a Restricted Credit Card  
3 Solicitation Registry, which shall contain a list of the  
4 mailing addresses of residents who do not wish to receive  
5 credit card solicitations or pre-approved credit card offers.

6           (b) Residents may cause their mailing address to appear on  
7 the Registry in any manner prescribed by the Illinois Commerce  
8 Commission.

9           (c) Any person or entity conducting credit card  
10 solicitations or pre-approved credit card offers as defined by  
11 Section 5 of this Act within the State of Illinois shall  
12 purchase the Restricted Credit Card Solicitation Registry and  
13 updates no less frequently than every 3 months exclusively from  
14 the Illinois Commerce Commission. Failure to do so prior to  
15 conducting credit card solicitations or pre-approved credit  
16 card offers is a violation subject to the penalties provided  
17 for in Section 35 of this Act.

18           (d) The Illinois Commerce Commission may adopt rules  
19 consistent with this Act that the Illinois Commerce Commission  
20 deems necessary and appropriate to fully implement this Act.

21           (e) Information pertaining to residents in the Registry is  
22 confidential and shall be afforded reasonable privacy  
23 protection except as necessary for compliance with Sections 10  
24 and 25 and this Section or in a proceeding or action under  
25 Section 35 or 40. The information is not a public record under  
26 the Freedom of Information Act.

1           (f) A person or entity that obtains the Registry shall not  
2 use the Registry for any purpose other than to comply with this  
3 Act. These unlawful purposes include, but are not limited to,  
4 causing a resident to participate in and be included in the  
5 Registry without the resident's knowledge or consent, selling  
6 or leasing the Registry to a person other than a mailing  
7 solicitor, selling or leasing by a mailing solicitor of the  
8 Registry, and a mailing solicitor, either directly or  
9 indirectly, persuading a resident with whom it has an  
10 established business relationship to place his or her mailing  
11 address in the Registry, if the solicitation has the effect of  
12 preventing competitors from contacting that solicitor's  
13 customers.

14           (g) No person or entity that sells, leases, exchanges, or  
15 rents mailing solicitation lists shall include in those lists  
16 those mailing addresses that appear in the current Registry.

17           Section 25. Notice of establishment of Registry. The  
18 Illinois Commerce Commission shall provide notice to residents  
19 of the establishment of the Registry.

20           Section 30. Public notification. The Illinois Commerce  
21 Commission shall work to notify residents about the  
22 availability of and instructions for requesting information  
23 from the Illinois Commerce Commission. The Illinois Commerce  
24 Commission shall include, on its Internet web site, information

1 to residents regarding their right to be included in the  
2 Registry and the various methods of being included in the  
3 Registry. The Illinois Commerce Commission shall make  
4 information available on its web site no later than January 1,  
5 2010.

6 Section 35. Violation; relief.

7 (a) The Illinois Commerce Commission may initiate  
8 administrative proceedings in accordance with rules adopted  
9 under this Act relating to a knowing and willful violation of  
10 Section 10.

11 (b) If it is determined after a hearing that a person has  
12 knowingly and willfully violated one or more provisions of this  
13 Act, the Illinois Commerce Commission may assess a fine not to  
14 exceed \$1,000 for the first violation and not to exceed \$2,500  
15 for a second or subsequent violation. Each individual violation  
16 of Section 10 of this Act shall be a separate and distinct  
17 offense under this Section. In imposing a penalty under this  
18 Section, the Commission shall, at a minimum, consider the  
19 following factors:

20 (1) whether the offense was knowing or willful;

21 (2) whether the entity committing the offense has a  
22 prior history of non-compliance with this Act;

23 (3) the offender's relative ability to pay a penalty;

24 (4) whether the offender has or has not cooperated with  
25 the Commission in pursuing the investigation; and

1           (5) such other special, mitigating, or aggravating  
2           circumstances as the Commission may find to exist.

3           (c) Any proceeding conducted under this Section is subject  
4           to the Illinois Administrative Procedure Act.

5           (d) Nothing in this Section may be construed to restrict  
6           any right that any person may have under any other law or at  
7           common law.

8           (e) No action or proceeding may be brought under this  
9           Section:

10           (1) more than one year after the person bringing the  
11           action knew or should have known of the occurrence of the  
12           alleged violation; or

13           (2) more than one year after the termination of any  
14           proceeding or action arising out of the same violation or  
15           violations by the State of Illinois, whichever is later.

16           (f) The remedies, duties, prohibitions, and penalties in  
17           this Act are not exclusive and are in addition to all other  
18           causes of action, remedies, and penalties provided by law.

19           (g) There is created in the State Treasury a special fund  
20           to be known as the Restricted Credit Card Solicitation Registry  
21           Fund. All fines collected in the administration and enforcement  
22           of this Act shall be deposited into the Fund. Moneys in the  
23           Fund shall, subject to appropriation, be used by the Illinois  
24           Commerce Commission for implementation, administration, and  
25           enforcement of this Act.



1 Section 40. Exemption.

2 (a) A person or entity may not be held liable for violating  
3 this Act if:

4 (1) the person or entity has obtained copies of the  
5 Registry and updates in compliance with this Act and has  
6 established and implemented written policies and  
7 procedures related to the requirements of this Act;

8 (2) the person or entity has trained its personnel in  
9 the requirements of this Act;

10 (3) the person or entity maintains records  
11 demonstrating compliance with subdivisions (1) and (2) of  
12 this Section and the requirements of this Act; and

13 (4) any subsequent credit card solicitation or  
14 pre-approved credit card offer is the result of  
15 unintentional error.

16 (b) A person or entity that has entered into a contract  
17 with another person or entity to make credit card solicitations  
18 or pre-approved credit card offers on its behalf is not liable  
19 for a violation of this Act by the person or entity making such  
20 solicitations or offers under the contract if the person or  
21 entity on whose behalf the credit card solicitations or  
22 pre-approved credit card offers were made has provided written  
23 notification to the person or entity that it is necessary to  
24 comply with the provisions of this Act when making credit card  
25 solicitations or pre-approved credit card offers.

1           Section 300. The State Finance Act is amended by adding  
2 Section 5.719 as follows:

3           (30 ILCS 105/5.719 new)

4           Sec. 5.719. The Restricted Credit Card Solicitation  
5 Registry Fund.

6           Section 999. Effective date. This Act takes effect upon  
7 becoming law.".