

**HOUSE Substitute for  
Substitute for SENATE BILL No. 296**

By Committee on Utilities

3-28

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AN ACT concerning certain unsolicited telephone calls; prohibiting certain acts and providing penalties for violations; amending K.S.A. 2001 Supp. 50-670 and repealing the existing section.

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

Section 1. 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, payment or performance of which has not been completed at the time of such call; or

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest ~~had an existing business relationship if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services; or has an established business relationship, unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls.~~

(3) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

(4) "Automatic dialing-announcing device" means any user terminal

1 equipment which:

2 (A) When connected to a telephone line can dial, with or without  
3 manual assistance, telephone numbers which have been stored or pro-  
4 grammed in the device or are produced or selected by a random or se-  
5 quential number generator; or

6 (B) when connected to a telephone line can disseminate a recorded  
7 message to the telephone number called, either with or without manual  
8 assistance;

9 (5) "Negative response" means a statement from a consumer indi-  
10 cating the consumer does not wish to listen to the sales presentation or  
11 participate in the solicitation presented in the consumer telephone call.

12 (6) *"Established business relationship" means a prior or existing re-*  
13 *lationship formed by a voluntary two-way communication between a per-*  
14 *son or entity and consumer with or without an exchange of consideration,*  
15 *on a basis of an inquiry, application, purchase or transaction by the con-*  
16 *sumer, within the preceding 36 months, regarding products or services*  
17 *offered by such person or entity, which relationship has not been previ-*  
18 *ously terminated by either party.*

19 (b) Any telephone solicitor who makes an unsolicited consumer tel-  
20 ephone call to a residential telephone number shall:

21 (1) Identify themselves;

22 (2) identify the business on whose behalf such person is soliciting;

23 (3) identify the purpose of the call immediately upon making contact  
24 by telephone with the person who is the object of the telephone  
25 solicitation;

26 (4) promptly discontinue the solicitation if the person being solicited  
27 gives a negative response at any time during the consumer telephone call;

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

32 (6) a live operator or an automated dialing-announcing device shall  
33 answer the line within five seconds of the beginning of the call. If an-  
34 swered by automated dialing-announcing device, the message provided  
35 shall include only the information required in subsection (b)(1) and (2),  
36 but shall not contain any unsolicited advertisement.

37 (c) A telephone solicitor shall not withhold the display of the tele-  
38 phone solicitor's telephone number from a caller identification service  
39 when that number is being used for telemarketing purposes ~~and~~, *except*  
40 *that before January 1, 2004, a telephone solicitor's telephone number shall*  
41 *not be required to be displayed* when the telephone solicitor's service or  
42 equipment is *not* capable of allowing the display of such number.

43 (d) A telephone solicitor shall not transmit any written information

1 by facsimile machine or computer to a consumer after the consumer  
2 requests orally or in writing that such transmissions cease.

3 (e) A telephone solicitor shall not obtain by use of any professional  
4 delivery, courier or other pickup service receipt or possession of a con-  
5 sumer's payment unless the goods are delivered with the opportunity to  
6 inspect before any payment is collected.

7 (f) Local exchange carriers and telecommunications carriers shall not  
8 be responsible for the enforcement of the provisions of this section.

9 (g) Any violation of this section is an unconscionable act or practice  
10 under the Kansas consumer protection act.

11 (h) This section shall be part of and supplemental to the Kansas con-  
12 sumer protection act.

13 New Sec. 2. (a) The attorney general shall contract with the direct  
14 marketing association for the no-call list provided for by this act to be the  
15 national no-call list maintained by the telephone preference service of  
16 such association. The contract shall establish:

17 (1) The maximum fees that telephone solicitors may be charged for  
18 access to the no-call list;

19 (2) the maximum fees that consumers may be charge to register for  
20 inclusion on the no-call list;

21 (3) the schedule of dates by which consumers must register in order  
22 to appear on updates of the no-call list;

23 (4) the schedule of dates by which telephone solicitors will be pro-  
24 vided updates of the no-call list; and

25 (5) what information shall be furnished, without charge, upon request  
26 of a consumer, registered in accordance with this section, concerning a  
27 telephone solicitor or other person who the consumer believes has en-  
28 gaged in an unsolicited consumer telephone call prohibited by this  
29 section.

30 If the direct marketing association does not agree to enter into the  
31 contract provided for by this subsection, the attorney general may con-  
32 tract, upon bids, with another vendor to establish and maintain the no-  
33 call list provided for by this section.

34 (b) Prior to making unsolicited consumer telephone calls in this state  
35 and quarterly thereafter, a telephone solicitor shall consult the no-call list  
36 provided for by this act, and shall delete from such telephone solicitor's  
37 calling list all state residents who have registered to be on such list. The  
38 direct marketing association, or other vendor maintaining the no-call list,  
39 shall offer to consumers at least one method of registration at no cost and  
40 such registration shall be for a period of five years. Consumers desiring  
41 to register to be on the no-call list may contact the direct marketing  
42 association, or other vendor maintaining the no-call list. Membership in  
43 the direct marketing association shall not be a requirement for telephone

1 solicitors to obtain the telephone preference service list and telephone  
2 solicitors shall have access to the list. The direct marketing association,  
3 or other vendor, shall update the no-call list on a quarterly basis and shall  
4 publish and make the updated list available to telephone solicitors on or  
5 before the first day of the following months: January, April, July and  
6 October. A telephone solicitor prior to accessing the no-call list shall sub-  
7 mit the appropriate fee and complete a subscription agreement that: (1)  
8 Restricts use of the no-call list exclusively for purposes authorized by this  
9 act; (2) provides the telephone solicitor's contact and mailing information;  
10 and (3) selects the method of updates required (monthly or quarterly).  
11 Consumers who have submitted their information no less than 30 days  
12 prior to the date of the next quarterly update shall be included in the next  
13 quarterly update. A consumer desiring to register shall submit to the  
14 direct marketing association, or other vendor, the consumer's name, ad-  
15 dress, city, state and zip code and the telephone numbers to be registered.  
16 The direct marketing association, or other vendor, shall make available to  
17 the attorney general, in an electronic format, the no-call list and all quar-  
18 terly updates of such list at no cost.

19 (c) The attorney general and the direct marketing association, or  
20 other vendor, shall ensure that consumers are given clear notice that  
21 telephone numbers are not immediately added to the no-call database  
22 upon submission of a consumer's registration and that it may be as long  
23 as 90 days before telephone solicitors receive a new no-call database  
24 which includes the consumer's telephone number.

25 (d) Telephone solicitors shall have a period of not more than 60 days  
26 from the time of publication of the current quarterly update of the no-  
27 call list to remove a consumer's telephone number from the telephone  
28 solicitor's calling lists.

29 (e) No telephone solicitor may make or cause to be made any unsol-  
30 licited consumer telephone calls to any consumer if the consumer's tel-  
31 ephone number or numbers appear in the current quarterly list of con-  
32 sumers registered on the no-call list. A telephone solicitor shall not use  
33 the no-call list for any other purpose than to remove consumers' tele-  
34 phone numbers from calling lists.

35 (f) A telephone solicitor shall be liable for violations of subsections  
36 (d) and (e) if such telephone solicitor makes or causes to be made an  
37 unsolicited telephone call to a state resident whose telephone number  
38 appears on the current quarterly no-call list or uses the list for any unau-  
39 thorized purpose.

40 (g) It shall be an affirmative defense to a violation of this section if  
41 the telephone solicitor can demonstrate, by clear and convincing evi-  
42 dence, that: (1) The telephone solicitor at the time of the alleged violation  
43 had: (A) Obtained a copy of the updated no-call list; (B) established and

1 implemented, with due care, reasonable practices and procedures to ef-  
2 fectively prevent unsolicited consumer telephone calls in violation of this  
3 section; (C) trained the telephone solicitor's personnel in the require-  
4 ments of this section; and (D) maintained records demonstrating compli-  
5 ance with this section; and (2) the unsolicited consumer telephone call  
6 was the result of an error. Such defense shall not be exercised by a tel-  
7 ephone solicitor more than once within the state of Kansas in any 12-  
8 month period. A telephone solicitor shall be deemed to have exercised  
9 such defense if asserted in response to any consumer complaint about a  
10 violation of this section, regardless of whether litigation has been initiated.

11 (h) Any violation of this section is an unconscionable act or practice  
12 under the Kansas consumer protection act.

13 (i) (1) Upon request of the attorney general for the purpose of en-  
14 forcing the provisions of this section, the direct marketing association, or  
15 other vendor, shall furnish the attorney general with all information re-  
16 quested by the attorney general concerning a telephone solicitor or any  
17 person the attorney general believes has engaged in an unsolicited con-  
18 sumer telephone call prohibited by this section. The direct marketing  
19 association, or other vendor, shall not charge a fee for furnishing the  
20 information to the attorney general.

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

24 (j) The direct marketing association, or other vendor, shall promptly  
25 forward any complaints concerning alleged violations of this section to  
26 the attorney general.

27 (k) Penalties and fees recovered from prosecutions of violations of  
28 this section shall be paid to the attorney general to investigate and pros-  
29 ecute violations of this section.

30 (l) The attorney general may convene a meeting or meetings with  
31 consumer advocacy groups to collectively develop a method or methods  
32 to notify the consumer advocacy group's membership and educate and  
33 promote to Kansas consumers generally the availability of the no-call list,  
34 and of a telephone solicitor's obligations under this act.

35 (m) On or before the first day of each regular legislative session, the  
36 attorney general shall report to the standing committees of the house and  
37 senate which hear and act on legislation relating to telecommunications  
38 issues on the status of implementation of the provisions of this section,  
39 including, but not limited to, the number of consumers who have given  
40 notice of objection, the number of requests for the data base, state rev-  
41 enues received from the respective sources of revenue under this section,  
42 the number of complaints received alleging violations of this section and  
43 actions taken to enforce the provisions of this section.

1 (n) If the federal trade commission establishes a single national no-  
2 call list the attorney general may designate the list established by the  
3 federal trade commission as the Kansas no-call list.

4 (o) The attorney general may promulgate rules and regulations to  
5 carry out the provisions of the Kansas no-call act.

6 (p) The provisions of this section shall be a part of and supplemental  
7 to the Kansas consumer protection act.

8 New Sec. 3. This act shall be known and may be cited as the Kansas  
9 no-call act.

10 Sec. 4. K.S.A. 2001 Supp. 50-670 is hereby repealed.

11 Sec. 5. This act shall take effect and be in force from and after its  
12 publication in the statute book.

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