

1 [As Further Amended by Senate Committee of the Whole]

2
3 [As Amended by Senate Committee of the Whole]

4 Session of 2002

5
6 **Substitute for SENATE BILL No. 296**

7
8 By Committee on Judiciary

9
10 3-7

11
12 AN ACT concerning consumer protection and privacy; relating to un-
13 solicited consumer telephone calls; ~~no-call database~~ **[do-not call list]**;
14 prohibited acts; amending K.S.A. 2001 Supp. 50-670 and repealing the
15 existing section.

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

18 ***[Section 1. (a) Prior to making unsolicited consumer telephone***
19 ***calls in this state and quarterly thereafter, a telephone solicitor***
20 ***shall consult the national do-not call list maintained by the tele-***
21 ***phone preference service of the direct marketing association, and***
22 ***delete from such telephone solicitor's calling list all state residents***
23 ***who have registered with such service. The direct marketing asso-***
24 ***ciation shall offer to consumers at least one method of registration***
25 ***at no cost and such registration shall be for a period of five years.***
26 ***Consumers desiring to register for such service may contact the***
27 ***direct marketing association or the attorney general. The attorney***
28 ***general may compile a list of telephone numbers from consumers***
29 ***desiring to register for such service. The attorney general shall for-***
30 ***ward the list to the direct marketing association in electronic format***
31 ***no less than 15 days prior to the date of the next quarterly update.***
32 ***No registration fee shall be imposed on the attorney general for***
33 ***submission of such list to the direct marketing association. Mem-***
34 ***bership to the direct marketing association shall not be a require-***
35 ***ment for telephone solicitors to obtain the telephone preference***
36 ***service list and telephone solicitors shall have access to the list on***
37 ***terms approved by the attorney general. The direct marketing as-***
38 ***sociation shall make available the national do not call list to the***
39 ***attorney general in a form prescribed by the attorney general and***
40 ***all quarterly updates of the telephone preference service list at no***
41 ***cost. The attorney general may inform Kansas consumers whether***
42 ***a consumer's name appears on the current list and may register***
43 ***Kansans for inclusion on the list and forward such registrations to***

1 *the direct marketing association.*

2 [(b) Telephone solicitors shall have a period of not more than
3 60 days from the time of receipt of the current quarterly update to
4 remove a consumer's telephone number from the telephone solici-
5 tors' calling lists.

6 [(c) No telephone solicitor may make or cause to be made any
7 unsolicited consumer telephone calls to any consumer if the con-
8 sumer's telephone number or numbers appear in the current quar-
9 terly list of consumers registered with the telephone preference
10 service maintained by the direct marketing association. A telephone
11 solicitor shall not use the telephone preference service list for any
12 other purpose than to remove consumers' telephone numbers from
13 calling lists.

14 [(d) A telephone solicitor shall be liable for violations of sub-
15 section (b) if such telephone solicitor makes or causes to be made
16 an unsolicited telephone call to a state resident whose telephone
17 number appears on the telephone preference service current quar-
18 terly list or uses the list for any unauthorized purpose.

19 [(e) As used in this section, "telephone solicitor" and "unsoli-
20 cated consumer telephone calls" shall mean the same as provided in
21 K.S.A. 50-670, and amendments thereto.

22 [(f) ~~It is~~ [No more than once each 12-month period of time, it
23 shall be] an affirmative defense that the defendant has established
24 and implemented, with due care, reasonable practices and proce-
25 dures to effectively prevent telephone solicitations in violation of
26 the law. A telephone solicitor shall not be held liable for violating
27 this act if the telephone solicitor can demonstrate, by clear and
28 convincing evidence, that the telephone solicitor: (1) Has obtained
29 a copy of the updated do-not call list and established and imple-
30 mented written policies and procedures related to the requirements
31 of these regulations; (2) has trained the telephone solicitor's per-
32 sonnel in the requirements of these regulations; (3) maintains re-
33 cords demonstrating compliance with the regulations; and (4) if the
34 telephone solicitor has made a subsequent unsolicited telemarket-
35 ing sales call, made such call as the result of an error.

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

38 [(h) The attorney general may promulgate rules and regulations
39 to carry out the provisions of this section.

40 [(i) The provisions of this section shall be a part of and supple-
41 mental to the Kansas consumer protection act.

42 [Sec. 2. No later than December 31, 2002, the attorney general
43 shall convene a meeting or meetings with consumer groups to col-

1 *lectively develop a method or methods to notify the consumer*
2 *groups' membership and educate and promote to Kansas consumers*
3 *generally the availability of the direct marketing association's tel-*
4 *ephone preference service and of a telephone solicitor's obligations*
5 *under this act.*

6 *[Sec. 3. This act shall take effect and be in force from and after*
7 *its publication in the statute book [Kansas Register.]*

8 Section 1.—K.S.A. 2001 Supp. 50-670 is hereby amended to read as
9 follows: 50-670. (a) As used in this section *and section 2, and amendments*
10 *thereto:*

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

18 —(2)—“unsolicited consumer telephone call” means a consumer tele-
19 phone call other than a call made:

20 —(A)—In response to an express request of the person called;

21 —(B)—primarily in connection with an existing debt or contract, payment
22 or performance of which has not been completed at the time of such call;
23 or

24 —(C)—to any person with whom the telephone solicitor or the telephone
25 solicitor's predecessor in interest had *has* an existing *established* business
26 relationship if the solicitor is not an employee, a contract employee or an
27 independent contractor of a provider of telecommunications services; or

28 —(3)—“telephone solicitor” means any natural person, firm, organiza-
29 tion, partnership, association or corporation who makes or causes to be
30 made a consumer telephone call, including, but not limited to, calls made
31 by use of automatic dialing-announcing device;

32 —(4)—“automatic dialing-announcing device” means any user terminal
33 equipment which:

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

38 —(B)—when connected to a telephone line can disseminate a recorded
39 message to the telephone number called, either with or without manual
40 assistance;

41 —(5)—“negative response” means a statement from a consumer indicat-
42 ing the consumer does not wish to listen to the sales presentation or
43 participate in the solicitation presented in the consumer telephone call;

1 ~~or~~

2 ~~—(6) “established business relationship” means the existence of an oral~~
3 ~~or written arrangement, agreement, contract or other such legal state of~~
4 ~~affairs between the telephone solicitor and a consumer, where both parties~~
5 ~~have a course of conduct or established pattern of activity for commercial~~
6 ~~or mercantile purposes and for the benefit or profit of both parties. The~~
7 ~~“established business relationship” must exist between the consumer and~~
8 ~~business directly, and does not extend to any related business entity or~~
9 ~~other business organization of the telephone solicitor or related to the~~
10 ~~telephone solicitor or such solicitor’s agent, including, but not limited to,~~
11 ~~a parent corporation, subsidiary partnership, company or other corpo-~~
12 ~~ration or affiliate.~~

13 ~~—(b) Any telephone solicitor who makes an unsolicited consumer tel-~~
14 ~~ephone call to a residential telephone number shall:~~

15 ~~—(1) Identify themselves;~~

16 ~~—(2) identify the business on whose behalf such person is soliciting;~~

17 ~~—(3) identify the purpose of the call immediately upon making contact~~
18 ~~by telephone with the person who is the object of the telephone~~
19 ~~solicitation;~~

20 ~~—(4) promptly discontinue the solicitation if the person being solicited~~
21 ~~gives a negative response at any time during the consumer telephone call;~~

22 ~~—(5) hang up the phone, or in the case of an automatic dialing an-~~
23 ~~nouncing device operator, disconnect the automatic dialing-announcing~~
24 ~~device from the telephone line within 25 seconds of the termination of~~
25 ~~the call by the person being called; and~~

26 ~~—(6) a live operator or an automated dialing-announcing device shall~~
27 ~~answer the line within five seconds of the beginning of the call. If an-~~
28 ~~swered by automated dialing-announcing device, the message provided~~
29 ~~shall include only the information required in subsection (b)(1) and (2),~~
30 ~~but shall not contain any unsolicited advertisement.~~

31 ~~—(c) A telephone solicitor shall not withhold the display of the tele-~~
32 ~~phone solicitor’s identifying information and telephone number from a~~
33 ~~caller identification service when that number is being used for telemar-~~
34 ~~keting purposes and when the telephone solicitor’s service or equipment~~
35 ~~is capable of allowing the display of such number **[and when the tele-**~~
36 ~~**phone solicitor’s service or equipment is capable of allowing the**~~
37 ~~**display of such number].**~~

38 ~~—(d) A telephone solicitor shall not transmit any written information~~
39 ~~by facsimile machine or computer to a consumer after the consumer~~
40 ~~requests orally or in writing that such transmissions cease.~~

41 ~~—(e) A telephone solicitor shall not obtain by use of any professional~~
42 ~~delivery, courier or other pickup service receipt or possession of a con-~~
43 ~~sumer’s payment unless the goods are delivered with the opportunity to~~

1 inspect before any payment is collected.

2 — (f) ~~No [On and after July 1, 2003, no] supplier shall make or cause~~
3 ~~to be made any unsolicited telephone call to the residential telephone~~
4 ~~number of any consumer in this state who has given notice to the infor-~~
5 ~~mation network of Kansas, in accordance with section 2, and amendments~~
6 ~~thereto, of such consumer's objection to receiving consumer telephone~~
7 ~~calls.~~

8 — (g) ~~Local exchange carrier and telecommunications carriers shall not~~
9 ~~be responsible for the enforcement of the provisions of this section.~~

10 — (g) (h) ~~Any violation of this section is an unconscionable act or prac-~~
11 ~~tice under the Kansas consumer protection act.~~

12 — (h) (i) ~~This section shall be part of and supplemental to the Kansas~~
13 ~~consumer protection act.~~

14 — New Sec. 2. — (a) ~~A consumer living or residing in Kansas may give~~
15 ~~notice of such consumer's objection to receiving unsolicited consumer~~
16 ~~telephone calls to such consumer's residential telephone number. There~~
17 ~~shall be no cost to the consumer for such notice of objection. Such con-~~
18 ~~sumer's telephone number shall be listed in Kansas' no-call database by~~
19 ~~doing any of the following:~~

20 — (1) ~~Completing a written form designed by the attorney general and~~
21 ~~the information network of Kansas for the purpose of recording a con-~~
22 ~~sumer's notice of objection to receiving unsolicited consumer telephone~~
23 ~~calls and submitting that to the information network of Kansas;~~

24 — (2) ~~calling a toll-free number established by the attorney general and~~
25 ~~the information network of Kansas for the purpose of recording a con-~~
26 ~~sumer's notice of objection to receiving unsolicited consumer telephone~~
27 ~~calls and properly responding to the voice prompts; or~~

28 — (3) ~~accessing the appropriate internet site established by the attorney~~
29 ~~general and the information network of Kansas for the purpose of re-~~
30 ~~ording a consumer's notice of objection to receiving unsolicited con-~~
31 ~~sumer telephone calls and inputting the proper data requested by the~~
32 ~~website prompts.~~

33 — (b) ~~The no-call database shall consist of the aggregate collection of~~
34 ~~the telephone numbers of properly submitted notices of objection to re-~~
35 ~~ceiving unsolicited consumer telephone calls. The information network~~
36 ~~of Kansas may maintain the no-call database in either a written or an~~
37 ~~electronic format.~~

38 — (c) ~~The telephone numbers of properly submitted notices of objec-~~
39 ~~tion to receiving unsolicited consumer telephone calls shall become part~~
40 ~~of the no-call database in the quarter following the deadline for receipt~~
41 ~~of notice according to the following:~~

42 — (1) ~~The receipt deadline for the quarter commencing January 1 and~~
43 ~~ending March 31 is November 1;~~

1 ~~—(2)—the receipt deadline for the quarter commencing April 1 and end-~~
2 ~~ing June 30 is February 1;~~

3 ~~—(3)—the receipt deadline for the quarter commencing July 1 and end-~~
4 ~~ing September 30 is May 1, and~~

5 ~~—(4)—the receipt deadline for the quarter commencing October 1 and~~
6 ~~ending December 31 is August 1.~~

7 ~~—(d)—A notice of objection to receiving unsolicited consumer telephone~~
8 ~~calls shall remain in effect for two **[five]** years from the date that tele-~~
9 ~~phone number first appears in the no-call database. The notice of objec-~~
10 ~~tion may be renewed for additional two-year **[five-year]** periods by using~~
11 ~~the methods provided in subsection (a).~~

12 ~~—(e)—If a consumer whose telephone number is part of the no-call da-~~
13 ~~tabase changes telephone numbers, such consumer shall submit a new~~
14 ~~notice of objection to receiving unsolicited consumer telephone calls and~~
15 ~~provide the new number to the information network of Kansas.~~

16 ~~—(f)—A consumer may revoke notice of objection to receiving unsoli-~~
17 ~~cited consumer telephone calls by completing a written form designed by~~
18 ~~the attorney general and the information network of Kansas for the pur-~~
19 ~~pose of revoking a consumer's notice of objection to receiving unsolicited~~
20 ~~consumer telephone calls and submitting that completed form to the in-~~
21 ~~formation network of Kansas. A consumer may also revoke notice of ob-~~
22 ~~jection to receiving unsolicited consumer telephone calls by accessing the~~
23 ~~appropriate internet site established by the information network of Kan-~~
24 ~~sas and inputting the proper data requested by the website prompts.~~
25 ~~Upon receipt of such revocation notice, the information network of Kan-~~
26 ~~sas will remove the relevant telephone number from the no-call database~~
27 ~~according to the same schedule used for adding telephone numbers to~~
28 ~~the no-call database as provided in subsection (e). In addition, the infor-~~
29 ~~mation network of Kansas may remove a telephone number from the no-~~
30 ~~call database if the Kansas certified local exchange carrier responsible for~~
31 ~~the assignment of the relevant telephone number indicates in writing, or~~
32 ~~if available, by internet, to the information network of Kansas that the~~
33 ~~consumer who submitted the objection to receiving unsolicited consumer~~
34 ~~telephone calls is no longer assigned to that telephone number.~~

35 ~~—(g)—A person or entity desiring to make unsolicited consumer tele-~~
36 ~~phone calls in Kansas may obtain a copy of the no-call database for such~~
37 ~~person's or entity's lawful use, or for the lawful use by such entity's em-~~
38 ~~ployees, or for the lawful use by such person's or entity's independent~~
39 ~~contractors for use in their business, so long as the independent contrac-~~
40 ~~tor is regularly associated with the person or entity and is engaged in the~~
41 ~~same or related type of business as the person or entity, by doing the~~
42 ~~following:~~

43 ~~—(1)—Signing a written confidentiality agreement prepared by the at-~~

1 torney general and the information network of Kansas that: (A) Restricts
2 use of the no-call database exclusively for the purpose of compliance with
3 this section; and (B) prohibits the transfer of the copy of the no-call
4 database to any person or entity who has not submitted the signed written
5 confidentiality agreement and payment to the information network of
6 Kansas for receipt of a copy of the no-call database; and

7 —(2)—submitting the signed confidentiality agreement along with pay-
8 ment in an amount equal to \$25 per quarter for each Kansas area code
9 to the information network of Kansas for providing a copy of the no-call
10 database in downloadable electronic format. Those persons or entities
11 desiring to obtain access to only part of the no-call database may do so
12 by submitting the signed confidentiality agreement along with a request
13 designating by area code the portion or portions of the no-call database
14 they desire and providing payment in the amount of \$25 per quarter per
15 area code to the information network of Kansas for providing a copy of
16 the requested portion of the no-call database in downloadable electronic
17 format. The information network of Kansas may require payment of a
18 media and handling charge from persons who request a computer disk
19 copy of the no-call database.

20 —(h)—No supplier who obtains a copy of the no-call database shall use
21 that information for purposes other than compliance with this section.
22 Information contained in the no-call database shall be used only for the
23 purpose of compliance with this section or in a proceeding or action for
24 violations of this section. Such information shall not be considered a pub-
25 lic record pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto.

26 —(i)—Moneys collected pursuant to subsection (g) shall be used first to
27 pay the cost of the database maintained by the information network of
28 Kansas. Any moneys collected pursuant to subsection (g) in excess of the
29 cost of the database maintained by the information network of Kansas
30 shall be paid to the attorney general to investigate and prosecute violations
31 of this section. Penalties and fees recovered from prosecutions of viola-
32 tions of this section shall be paid to the attorney general to investigate
33 and prosecute violations of this section.

34 —(j)—The attorney general may enter into agreements with private en-
35 tities, as determined necessary by the attorney general, to comply with
36 the provisions of this act related to the creation and maintenance of the
37 no-call data base.

38 —Sec. 3.—K.S.A. 2001 Supp. 50-670 is hereby repealed.

39 —Sec. 4.—This act shall take effect and be in force from and after July
40 1, 2003, and its publication in the statute book.

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