

SENATE BILL No. 188

By Committee on Judiciary

2-10

AN ACT relating to telecommunications; concerning telephone solici-
tations; amending K.S.A. 2002 Supp. 50-670 and 50-670a and repeal-
ing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 50-670 is hereby amended to read as
follows: 50-670. (a) As used in this section and K.S.A. 2002 Supp. 50-
670a, and amendments thereto:

(1) "Consumer telephone call" means a call made by a telephone
solicitor to the residence of a consumer *or to the cellular phone number
of a consumer* for the purpose of soliciting a sale of any property or serv-
ices 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 tele-
phone 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 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, organiza-
tion, 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
equipment which:

(A) When connected to a telephone line can dial, with or without
manual assistance, telephone numbers which have been stored or pro-

1 grammed in the device or are produced or selected by a random or se-
2 quential number generator; or

3 (B) when connected to a telephone line can disseminate a recorded
4 message to the telephone number called, either with or without manual
5 assistance.

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

9 (6) "Established business relationship" means a prior or existing re-
10 lationship formed by a voluntary two-way communication between a per-
11 son or entity and consumer with or without an exchange of consideration,
12 on a basis of an application, purchase or transaction by the consumer,
13 within the preceding 36 months, regarding products or services offered
14 by such person or entity, which relationship has not been previously ter-
15 minated by either party.

16 (b) Any telephone solicitor who makes an unsolicited consumer tel-
17 ephone call to a residential telephone number *or to a cellular phone*
18 *number* shall:

19 (1) Identify themselves;

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

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

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

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

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

35 (c) A telephone solicitor shall not withhold the display of the tele-
36 phone solicitor's telephone number from a caller identification service
37 when that number is being used for telemarketing purposes, except that
38 before January 1, 2005, a telephone solicitor's telephone number shall
39 not be required to be displayed when the telephone solicitor's service or
40 equipment is not capable of allowing the display of such number.

41 (d) A telephone solicitor shall not transmit any written information
42 by facsimile machine or computer to a consumer after the consumer
43 requests orally or in writing that such transmissions cease.

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

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

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

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

11 Sec. 2. K.S.A. 2002 Supp. 50-670a is hereby amended to read as
12 follows: 50-670a. (a) The attorney general shall contract with the direct
13 marketing association for the no-call list provided for by this section to
14 be the national no-call list maintained by the telephone preference service
15 of such association. The contract shall establish:

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

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

20 (3) the schedule of dates by which consumers must register in order
21 to appear on updates of the no-call list. Such schedule of dates shall
22 provide that time period prior to the date of the next quarterly update in
23 which consumers must submit their information in order to be included
24 in the next quarterly update shall not exceed 30 days;

25 (4) the schedule of dates by which telephone solicitors will be pro-
26 vided updates of the no-call list. Such schedule of dates shall provide that
27 the no-call list shall be updated no less frequently than on a quarterly
28 basis, on January 1, April 1, July 1 and October 1;

29 (5) what information shall be furnished, without charge, upon request
30 of a consumer, registered in accordance with this section, concerning a
31 telephone solicitor or other person who the consumer believes has en-
32 gaged in an unsolicited consumer telephone call prohibited by this sec-
33 tion; and

34 (6) the consent of the direct marketing association to subject itself to
35 the jurisdiction of the courts of this state for the purpose of enforcing the
36 provisions of this section; the designation of a resident agent, who is a
37 resident of Kansas, by the direct marketing association, for service of
38 process, and who registers with the secretary of state pursuant to K.S.A.
39 60-306, and amendments thereto; and the agreement of the direct mar-
40 keting association and its resident agent to comply with the provisions of
41 this section.

42 If the direct marketing association does not agree to enter into the
43 contract provided for by this subsection, the attorney general may con-

1 tract, upon bids, with another vendor to establish and maintain the no-
2 call list provided for by this section.

3 (b) Prior to making unsolicited consumer telephone calls in this state
4 and quarterly thereafter, a telephone solicitor shall consult the no-call list
5 provided for by this act, and shall delete from such telephone solicitor's
6 calling list all state residents who have registered to be on such list. The
7 direct marketing association, or other vendor maintaining the no-call list,
8 shall offer to consumers at least one method of registration at no cost and
9 such registration shall be for a period of five years. Consumers desiring
10 to register to be on the no-call list may contact the direct marketing
11 association or other vendor maintaining the no-call list, or the attorney
12 general. The attorney general may compile a list of telephone numbers
13 *and cellular phone numbers* from consumers desiring to register for such
14 service. The attorney general shall forward the list to the direct marketing
15 association or such other vendor in electronic format no less than 15 days
16 prior to the date of the next quarterly update. No registration fee shall
17 be imposed on the attorney general for submission of such list to the
18 direct marketing association or such other vendor. Membership in the
19 direct marketing association shall not be a requirement for telephone
20 solicitors to obtain the telephone preference service list and telephone
21 solicitors shall have access to the list. A telephone solicitor prior to ac-
22 ceding the no-call list shall submit the appropriate fee and complete a
23 subscription agreement that: (1) Restricts use of the no-call list exclusively
24 for purposes authorized by this act; (2) provides the telephone solicitor's
25 contact and mailing information; and (3) selects the method of updates
26 required (monthly or quarterly). A consumer desiring to register shall
27 submit to the direct marketing association, or other vendor, the con-
28 sumer's name, address, city, state and zip code and the telephone num-
29 bers *and cellular phone numbers* to be registered. The direct marketing
30 association, or other vendor, shall make available to the attorney general,
31 in an electronic format, the no-call list and all quarterly updates of such
32 list at no cost.

33 (c) The attorney general and the direct marketing association, or
34 other vendor, shall ensure that consumers are given clear notice that
35 telephone numbers *and cellular phone numbers* are not immediately
36 added to the no-call list upon submission of a consumer's registration and
37 that it may be as long as 120 days before telephone solicitors receive a
38 new no-call list which includes the consumer's telephone number *and*
39 *cellular phone numbers*; that it may be as long as 30 days from the time
40 of publication of the current quarterly update of the no-call list before
41 the consumer's telephone number *and cellular phone number* is removed
42 from the telephone solicitor's calling lists; and that the consumer and the
43 attorney general may not be able to enforce the provisions of this section

1 until 150 days have passed since the consumer submitted the consumer's
2 registration to be on the no-call list.

3 (d) Telephone solicitors shall have a period of not more than 30 days
4 from the time of publication of the current quarterly update of the no-
5 call list to remove a consumer's telephone number *and cellular phone*
6 *number* from the telephone solicitor's calling lists.

7 (e) No telephone solicitor may make or cause to be made any unso-
8 licited consumer telephone calls to any consumer if the consumer's tel-
9 ephone number or numbers *or cellular phone number or numbers* appear
10 in the current quarterly list of consumers registered on the no-call list. A
11 telephone solicitor shall not use the no-call list for any other purpose than
12 to remove consumers' telephone numbers *and cellular phone numbers*
13 from calling lists.

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

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

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

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

43 (j) (1) Upon request of the attorney general for the purpose of en-

1 forcing the provisions of this section, the direct marketing association, or
2 other vendor, shall furnish the attorney general with all information re-
3 quired by the attorney general concerning a telephone solicitor or any
4 person the attorney general believes has engaged in an unsolicited con-
5 sumer telephone call prohibited by this section. The direct marketing
6 association, or other vendor, shall not charge a fee for furnishing the
7 information to the attorney general.

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

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

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

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

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

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

36 (p) If the federal trade commission establishes a single national no-
37 call list the attorney general may designate the list established by the
38 federal trade commission as the Kansas no-call list. *If the federal trade*
39 *commission establishes a single national no-call list, the attorney general*
40 *may direct the direct marketing association, or other vendor, to transfer*
41 *the information on the Kansas no-call list to the national no-call list.*

42 (q) The attorney general may promulgate rules and regulations to
43 carry out the provisions of the Kansas no-call act.

1 (r) The provisions of this section shall be a part of and supplemental
2 to the Kansas consumer protection act.

3 (s) *The consumer registration information compiled to create the*
4 *Kansas no-call list shall not be considered a public record under the Kan-*
5 *sas open records act. The provisions of this subsection shall expire on July*
6 *1, 2008, unless the legislature acts to reenact such provision. The provision*
7 *of this subsection shall be reviewed by the legislature prior to July 1, 2008.*

8 (t) The provisions of this section shall be known and may be cited as
9 the Kansas no-call act.

10 Sec. 3. K.S.A. 2002 Supp. 50-670 and 50-670a are hereby repealed.

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

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