

**SENATE BILL No. 308**

By Committee on Utilities

1-27

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1 AN ACT concerning the Kansas no-call act; amending K.S.A. 50-670 and  
2 50-670a and repealing the existing sections.

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

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

8 (1) "Consumer telephone call" means a call made by a telephone  
9 solicitor to the residence *or mobile telephone number* of a consumer for  
10 the purpose of soliciting a sale of any property or services to the person  
11 called, or for the purpose of soliciting an extension of credit for property  
12 or services to the person called, or for the purpose of obtaining information  
13 that will or may be used for the direct solicitation of a sale of property or  
14 services to the person called or an extension of credit for such purposes.

15 (2) "*Mobile telephone number*" means a telephone number  
16 associated with a wireless telecommunications service as defined in K.S.A.  
17 2013 Supp. 12-5363, and amendments thereto.

18 ~~(2)~~ (3) "Unsolicited consumer telephone call" means a consumer  
19 telephone call other than a call made:

20 (A) In response to an express request *or with the express written*  
21 *agreement* of the person called;

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

25 (C) to any person with whom the telephone solicitor or the telephone  
26 solicitor's predecessor in interest has an established business relationship,  
27 unless the consumer has objected to such consumer telephone calls and  
28 requested that the telephone solicitor cease making consumer telephone  
29 calls. *The telephone solicitor shall honor any such request for five years*  
30 *from the date of such request.*

31 ~~(3)~~ (4) "Telephone solicitor" means any natural person, firm,  
32 organization, partnership, association or corporation who makes or causes  
33 to be made a consumer telephone call, including, but not limited to, calls  
34 made by use of automatic dialing-announcing device.

35 ~~(4)~~ (5) "Automatic dialing-announcing device" means any user  
36 terminal equipment which:

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

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

8 ~~(5)~~ (6) "Negative response" means a statement from a consumer  
9 indicating the consumer does not wish to listen to the sales presentation or  
10 participate in the solicitation presented in the consumer telephone call.

11 ~~(6)~~ (7) "Established business relationship" means a prior or existing  
12 relationship formed by a voluntary two-way communication between a  
13 person or entity and consumer with or without an exchange of  
14 consideration, on a basis of an application, purchase or transaction by the  
15 consumer, within the ~~preceding 36~~ 18 months *immediately preceding the*  
16 *date of the consumer telephone call*, regarding products or services offered  
17 by such person or entity, which relationship has not been previously  
18 terminated by either party.

19 (b) Any telephone solicitor who makes an unsolicited consumer  
20 telephone 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-  
29 announcing device operator, disconnect the automatic dialing-announcing  
30 device from the telephone line within 25 seconds of the termination of the  
31 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  
34 answered 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  
38 telephone solicitor's telephone number from a caller identification service  
39 when that number is being used for telemarketing purposes, ~~except that~~  
40 ~~before January 1, 2005, a telephone solicitor's telephone number shall not~~  
41 ~~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 by

1 facsimile machine or computer to a consumer after the consumer requests  
2 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  
5 consumer'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  
12 consumer protection act.

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

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

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

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

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

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

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

43 ~~If the direct marketing association does not agree to enter into the~~

1 contract provided for by this subsection, the attorney general may contract,  
2 upon bids, with another vendor to establish and maintain the no-call list  
3 provided for by this section.

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

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

1 able to enforce the provisions of this section until 150 days have passed  
2 since the consumer submitted the consumer's registration to be on the no-  
3 call list.

4 ~~(d)~~ (b) Telephone solicitors shall have a period of not more than 30  
5 days from the time of publication of the current quarterly update of the no-  
6 call list to remove a consumer's registration of a consumer's telephone  
7 number on the no-call list to remove that telephone number from the  
8 telephone solicitor's calling lists.

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

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

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

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

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

1       ~~(j) (1) Upon request of the attorney general for the purpose of~~  
2 ~~enforcing the provisions of this section, the direct marketing association,~~  
3 ~~or other vendor, shall furnish the attorney general with all information~~  
4 ~~requested by the attorney general concerning a telephone solicitor or any~~  
5 ~~person the attorney general believes has engaged in an unsolicited~~  
6 ~~consumer telephone call prohibited by this section. The direct marketing~~  
7 ~~association, or other vendor, shall not charge a fee for furnishing the~~  
8 ~~information to the attorney general.~~

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

12       ~~(h) The attorney general may request information from the federal~~  
13 ~~trade commission for the purpose of enforcing the provisions of this~~  
14 ~~section and may comply with requirements of the federal trade commission~~  
15 ~~to receive such information.~~

16       ~~(k) The direct marketing association, or other vendor, shall promptly~~  
17 ~~forward any complaints concerning alleged violations of this section to the~~  
18 ~~attorney general.~~

19       ~~(l) Except as directed by the attorney general, the direct marketing~~  
20 ~~association shall be prohibited from disclosing or using, in any way, any~~  
21 ~~and all addresses obtained from consumers in the course of registering~~  
22 ~~such consumer's phone numbers on the no-call list.~~

23       ~~(m) (i) Penalties and fees recovered from prosecutions of violations~~  
24 ~~of this section shall be paid to the attorney general to investigate and~~  
25 ~~prosecute violations of this section.~~

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

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

41       ~~(p) (l) If the federal trade commission establishes a single national~~  
42 ~~no-call list the attorney general may designate the list established~~  
43 ~~The national no-call list established and maintained by the federal trade~~

1 commission *shall be designated* as the Kansas no-call list.

2       (†) (m) The attorney general may promulgate rules and regulations to  
3 carry out the provisions of the Kansas no-call act. *The attorney general is*  
4 *authorized to promulgate state rules and regulations adopting provisions*  
5 *of federal trade commission regulations implementing the national do not*  
6 *call law, including, but not limited to, the telemarketing sales rule, 16*  
7 *C.F.R. part 310. Any violation of rules and regulations promulgated*  
8 *pursuant to this section shall be considered a violation of this section.*

9       (†) (n) The provisions of this section shall be a part of and  
10 supplemental to the Kansas consumer protection act.

11       (†) (o) The provisions of this section *and K.S.A. 50-670, and*  
12 *amendments thereto*, shall be known and may be cited as the Kansas no-  
13 call act.

14       Sec. 3. K.S.A. 50-670 and 50-670a are hereby repealed.

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