

SENATE BILL No. 201

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning ~~the Kansas~~ consumer protection ~~act~~; relating to the
2 **Kansas consumer protection act**, definition of protected consumer;
3 **relating to the Kansas no-call act, restricting use of automatic**
4 **dialing-announcing devices**; amending K.S.A. 2016 Supp. **50-670**
5 **and 50-676** and repealing the existing ~~section~~ **sections**.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2016 Supp. 50-676 is hereby amended to read as
9 follows: 50-676. As used in K.S.A. 50-676 through 50-679, and
10 amendments thereto:

11 (a) "Elder person" means a person who is 60 years of age or older.

12 (b) "Disabled person" means a person who has physical or mental
13 impairment, or both, which substantially limits one or more of such
14 person's major life activities.

15 (c) "Immediate family member" means parent, child, stepchild or
16 spouse.

17 (d) "Major life activities" includes functions such as caring for one's
18 self, performing manual tasks, walking, seeing, hearing, speaking,
19 breathing, learning and working.

20 (e) "Member of the military" means a member of the armed forces or
21 national guard on active duty or a member of an active reserve unit in the
22 armed forces or national guard.

23 (f) "Physical or mental impairment" means the following:

24 (1) Any physiological disorder or condition, cosmetic disfigurement
25 or anatomical loss substantially affecting one or more of the following
26 body systems: Neurological; musculoskeletal; special sense organs;
27 respiratory, including speech organs; cardiovascular; reproductive;
28 digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

29 (2) any mental or psychological disorder, such as intellectual
30 disability, organic brain syndrome, emotional or mental illness and specific
31 learning disabilities.

32 The term "physical or mental impairment" includes, but is not limited
33 to, such diseases and conditions as orthopedic, visual, speech and hearing
34 impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple

1 sclerosis, cancer, heart disease, diabetes, intellectual disability and
2 emotional illness.

3 (g) "Protected consumer" means:

4 (1) An elder person;

5 (2) a disabled person;

6 (3) a veteran;

7 (4) the surviving spouse of a veteran; ~~and~~

8 (5) *a member of the military; and*

9 (6) an immediate family member of a member of the military.

10 (h) "Substantially limits" means:

11 (1) Unable to perform a major life activity that the average person in
12 the general population can perform; or

13 (2) significantly restricted as to the condition, manner or duration
14 under which an individual can perform a particular major life activity as
15 compared to the condition, manner or duration under which the average
16 person in the general population can perform that same major life activity.
17 Minor temporary ailments or injuries shall not be considered physical or
18 mental impairments which substantially limit a person's major life
19 activities. Minor temporary ailments include, but are not limited to, colds,
20 influenza or sprains or minor injuries.

21 (i) "Veteran" means a person who has served in the armed forces of
22 the United States of America and separated from the armed forces under
23 honorable conditions.

24 **Sec. 2. K.S.A. 2016 Supp. 50-670 is hereby amended to read as**
25 **follows: 50-670. (a) As used in this section and K.S.A. 50-670a, and**
26 **amendments thereto:**

27 **(1) {(A)} "Consumer telephone call" means a call made by a**
28 **telephone solicitor to the residence or mobile telephone number of a**
29 **consumer for the purpose of soliciting a sale of any property or**
30 **services to the person called, or for the purpose of soliciting an**
31 **extension of credit for property or services to the person called, or for**
32 **the purpose of obtaining information that will or may be used for the**
33 **direct solicitation of a sale of property or services to the person called**
34 **or an extension of credit for such purposes.**

35 **{(B) The term "consumer telephone call" shall not include a call**
36 **made solely for the purpose of communicating with a consumer about**
37 **services already being received and maintenance of those services.}**

38 **(2) "Mobile telephone number" means a telephone number**
39 **associated with a wireless telecommunications service as defined in**
40 **K.S.A. 2016 Supp. 12-5363, and amendments thereto.**

41 **(3) "Unsolicited consumer telephone call" means a consumer**
42 **telephone call other than a call made:**

43 **(A) In response to an express request or with the express written**

1 agreement of the person called}. For purposes of this subsection, an
2 express request or express written agreement includes the implied
3 consent or agreement resulting from a consumer providing a
4 telephone number to a utility company, local exchange carrier,
5 telecommunications carrier or video services provider as contact
6 information};

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

10 (C) to any person with whom the telephone solicitor or the
11 telephone solicitor's predecessor in interest has an established business
12 relationship, unless the consumer has objected to such consumer
13 telephone calls and requested that the telephone solicitor cease making
14 consumer telephone calls. The telephone solicitor shall honor any such
15 request for five years from the date of such request.

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

20 (5) "Automatic dialing-announcing device" means any user
21 terminal equipment which:

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

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

29 (6) "Negative response" means a statement from a consumer
30 indicating the consumer does not wish to listen to the sales
31 presentation or participate in the solicitation presented in the
32 consumer telephone call.

33 (7) "Established business relationship" means a prior or existing
34 relationship formed by a voluntary two-way communication between
35 a person or entity and consumer with or without an exchange of
36 consideration, on a basis of an application, purchase or transaction by
37 the consumer, within the 18 months immediately preceding the date of
38 the consumer telephone call, regarding products or services offered by
39 such person or entity, which relationship has not been previously
40 terminated by either party.

41 (b) Any telephone solicitor who makes an unsolicited consumer
42 telephone call shall:

43 (1) Identify themselves;

- 1 **(2) identify the business on whose behalf such person is soliciting;**
2 **(3) identify the purpose of the call immediately upon making**
3 **contact by telephone with the person who is the object of the telephone**
4 **solicitation;**
5 **(4) promptly discontinue the solicitation if the person being**
6 **solicited gives a negative response at any time during the consumer**
7 **telephone call;**
8 **(5) hang up the phone, or in the case of an automatic dialing-**
9 **announcing device operator, disconnect the automatic dialing-**
10 **announcing device from the telephone line within ~~25~~ 10 seconds of the**
11 **termination of the call by the person being called; and**
12 *(6) not use an automatic dialing-announcing device unless: (A) The*
13 *person being solicited has knowingly or voluntarily requested, consented*
14 *to, permitted or authorized receipt of the message; or (B) the message is*
15 *immediately preceded by a live operator who obtains the person's consent*
16 *before the message is delivered;*
17 *(7) not use an automatic dialing-announcing device such that the*
18 *person being solicited receives a telephone call before 9 a.m. or after 8*
19 *p.m.;*
20 *(8) not use an automatic dialing-announcing device to make a*
21 *telephone call to any of the following:*
22 *(A) A hospital, as defined in K.S.A. 65-425, and amendments thereto;*
23 *(B) an ambulatory surgical center, as defined in K.S.A. 65-425, and*
24 *amendments thereto;*
25 *(C) a recuperation center, as defined in K.S.A. 65-425, and*
26 *amendments thereto;*
27 *(D) an ambulance service, as defined in K.S.A. 65-6112, and*
28 *amendments thereto;*
29 *(E) an emergency medical service facility, as defined in K.S.A. 65-*
30 *6112, and amendments thereto;*
31 *(F) a mental health center, as defined in K.S.A. 65-4432, and*
32 *amendments thereto;*
33 *(G) a psychiatric hospital, as defined in K.S.A. 65-5601, and*
34 *amendments thereto;*
35 *(H) a state institution for people with intellectual disability, as*
36 *defined in K.S.A. 65-5601, and amendments thereto;*
37 *(I) a law enforcement agency; or*
38 *(J) a city, county, township or other public or private fire department;*
39 *and*
40 **(~~6~~) (9) ensure a live operator or an automated dialing-announcing**
41 **device shall answer the line within five seconds of the beginning of the**
42 **call. If answered by automated dialing-announcing device, the**
43 **message provided shall include only the information required in**

1 subsection (b)(1) and (2), but shall not contain any unsolicited
2 advertisement.

3 (c) A telephone solicitor shall not withhold the display of the
4 telephone solicitor's telephone number from a caller identification
5 service when that number is being used for telemarketing purposes.

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

9 (e) A telephone solicitor shall not obtain by use of any
10 professional delivery, courier or other pickup service receipt or
11 possession of a consumer's payment unless the goods are delivered
12 with the opportunity to inspect before any payment is collected.

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

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

17 (h) This section shall be part of and supplemental to the Kansas
18 consumer protection act.

19 Sec. ~~2~~ 3. K.S.A. 2016 Supp. 50-670 and 50-676~~is~~ are hereby
20 repealed.

21 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its
22 publication in the statute book.