

As Amended by House Committee

Session of 2017

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
35 sclerosis, cancer, heart disease, diabetes, intellectual disability and
36 emotional illness.

1 (g) "Protected consumer" means:

2 (1) An elder person;

3 (2) a disabled person;

4 (3) a veteran;

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

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

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

8 (h) "Substantially limits" means:

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

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

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

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

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

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

36 (3) "Unsolicited consumer telephone call" means a consumer
37 telephone call other than a call made:

38 (A) In response to an express request or with the express written
39 agreement of the person called;

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

43 (C) to any person with whom the telephone solicitor or the

1 telephone solicitor's predecessor in interest has an established business
2 relationship, unless the consumer has objected to such consumer
3 telephone calls and requested that the telephone solicitor cease making
4 consumer telephone calls. The telephone solicitor shall honor any such
5 request for five years from the date of such request.

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

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

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

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

19 (6) "Negative response" means a statement from a consumer
20 indicating the consumer does not wish to listen to the sales
21 presentation or participate in the solicitation presented in the
22 consumer telephone call.

23 (7) "Established business relationship" means a prior or existing
24 relationship formed by a voluntary two-way communication between
25 a person or entity and consumer with or without an exchange of
26 consideration, on a basis of an application, purchase or transaction by
27 the consumer, within the 18 months immediately preceding the date of
28 the consumer telephone call, regarding products or services offered by
29 such person or entity, which relationship has not been previously
30 terminated by either party.

31 (b) Any telephone solicitor who makes an unsolicited consumer
32 telephone call shall:

33 (1) Identify themselves;

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

35 (3) identify the purpose of the call immediately upon making
36 contact by telephone with the person who is the object of the telephone
37 solicitation;

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

41 (5) hang up the phone, or in the case of an automatic dialing-
42 announcing device operator, disconnect the automatic dialing-
43 announcing device from the telephone line within ~~25~~ 10 seconds of the

1 **termination of the call by the person being called; and**

2 (6) *not use an automatic dialing-announcing device unless: (A) The*
3 *person being solicited has knowingly or voluntarily requested, consented*
4 *to, permitted or authorized receipt of the message; or (B) the message is*
5 *immediately preceded by a live operator who obtains the person's consent*
6 *before the message is delivered;*

7 (7) *not use an automatic dialing-announcing device such that the*
8 *person being solicited receives a telephone call before 9 a.m. or after 8*
9 *p.m.;*

10 (8) *not use an automatic dialing-announcing device to make a*
11 *telephone call to any of the following:*

12 (A) *A hospital, as defined in K.S.A. 65-425, and amendments thereto;*

13 (B) *an ambulatory surgical center, as defined in K.S.A. 65-425, and*
14 *amendments thereto;*

15 (C) *a recuperation center, as defined in K.S.A. 65-425, and*
16 *amendments thereto;*

17 (D) *an ambulance service, as defined in K.S.A. 65-6112, and*
18 *amendments thereto;*

19 (E) *an emergency medical service facility, as defined in K.S.A. 65-*
20 *6112, and amendments thereto;*

21 (F) *a mental health center, as defined in K.S.A. 65-4432, and*
22 *amendments thereto;*

23 (G) *a psychiatric hospital, as defined in K.S.A. 65-5601, and*
24 *amendments thereto;*

25 (H) *a state institution for people with intellectual disability, as*
26 *defined in K.S.A. 65-5601, and amendments thereto;*

27 (I) *a law enforcement agency; or*

28 (J) *a city, county, township or other public or private fire department;*
29 *and*

30 ~~(6)~~(9) **ensure a live operator or an automated dialing-announcing**
31 **device shall answer the line within five seconds of the beginning of the**
32 **call. If answered by automated dialing-announcing device, the**
33 **message provided shall include only the information required in**
34 **subsection (b)(1) and (2), but shall not contain any unsolicited**
35 **advertisement.**

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

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

42 (e) **A telephone solicitor shall not obtain by use of any**
43 **professional delivery, courier or other pickup service receipt or**

1 **possession of a consumer's payment unless the goods are delivered**
2 **with the opportunity to inspect before any payment is collected.**

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

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

7 **(h) This section shall be part of and supplemental to the Kansas**
8 **consumer protection act.**

9 Sec. ~~2~~ **3.** K.S.A. 2016 Supp. **50-670 and 50-676**~~is~~ are hereby
10 repealed.

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