

HOUSE BILL No. 2100

By Committee on Utilities

1-22

AN ACT concerning certain unsolicited telephone calls; prohibiting certain acts and providing remedies for violations; amending K.S.A. 2000 Supp. 50-670 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section *and section 2, and amendments thereto:*

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services 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 telephone 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 had ~~an existing~~ a business relationship *within the last 36 months*, if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services; ~~or~~.

(3) "Telephone solicitor" means any natural person, firm, organization, 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 programmed in the device or are produced or selected by a random or se-

1 sequential number generator; or

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

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

8 (6) "*Qualified trade association*" means an organization that has:

9 (A) *Written bylaws, or other governing documents, that include a*
10 *code of conduct for the organization's members; and*

11 (B) *criteria and procedures for expelling or suspending members who*
12 *violate such bylaws or governing documents.*

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~~ *subsections*
30 (b)(1) and (2); but shall not contain any unsolicited advertisement.

31 (c) A telephone solicitor shall not withhold the display of the tele-
32 phone solicitor's telephone number from a caller identification service
33 when that number is being used for telemarketing purposes and when
34 the telephone solicitor's service or equipment is capable of allowing the
35 display of such number.

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

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

43 (f) *A telephone solicitor shall not engage in an unsolicited consumer*

1 *telephone call of a consumer at a telephone number included on the then*
2 *current list published by the administrator of the telephone solicitation*
3 *program established under section 2, and amendments thereto. A tele-*
4 *phone solicitor shall not be in violation of this section if the unsolicited*
5 *consumer telephone call was made within 15 days of the distribution of*
6 *the then current list immediately following the consumer's number being*
7 *added to the list.*

8 ~~(g)~~ (g) Local exchange carriers and telecommunications carriers shall
9 not 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) The attorney general shall advertise for bids and
15 enter into a contract with an entity to act as the administrator of the
16 telephone solicitation program described in subsection (b). The contract
17 may include any provision that the attorney general determines is in the
18 public interest.

19 (b) The administrator referred to in subsection (a) shall create, main-
20 tain and distribute a database containing a list of telephone numbers of
21 consumers who do not wish to receive any unsolicited consumer tele-
22 phone calls at the listed numbers. Beginning on the date specified in the
23 contract between the administrator and the attorney general, and at least
24 once each month thereafter, the administrator shall update the list by:

25 (1) Adding the numbers of consumers who have filed notice and paid
26 the fee as required in subsection (c); and

27 (2) removing the numbers of those consumers who have requested
28 that their numbers be removed or whose listing has expired without
29 renewal.

30 (c) A consumer may file with the administrator a notice, together with
31 a fee of \$10 per listed number or such lesser amount as may be specified
32 in the contract, indicating the consumer's desire to place one or more
33 telephone numbers on the list described in subsection (b). The notice
34 shall be filed in the form and manner specified in the contract between
35 the administrator and the attorney general. The notice shall be effective
36 for the calendar year in which it is filed and may be renewed by the filing
37 and payment of an additional notice and fee as specified in the contract.

38 (d) The administrator shall not furnish the list or any information
39 about a consumer to any person except as follows:

40 (1) Upon request of a telephone solicitor engaging in or intending to
41 engage in unsolicited consumer telephone calls and after payment of a
42 fee in an amount specified in the contract between the administrator and
43 the attorney general, the administrator shall furnish the most recent copy

1 of the list described in subsection (b) to the telephone solicitor. The list
2 shall be made available in printed and electronic form.

3 (2) Upon request of a qualified trade association and after payment
4 of a fee in an amount specified in the contract between the administrator
5 and the attorney general, the administrator shall furnish the most recent
6 copy of the list described in subsection (b) to the qualified trade associ-
7 ation. The list shall be made available in printed and electronic form. A
8 qualified trade association receiving a list under this subsection (d)(2) may
9 make the list available to the association's members on any terms the
10 association and its members may impose.

11 (3) Upon request of the attorney general for the purpose of enforcing
12 the provisions of K.S.A. 50-670, and amendments thereto, the adminis-
13 trator shall furnish the attorney general with all information requested by
14 the attorney general concerning a telephone solicitor or any person the
15 attorney general believes has engaged in an unsolicited consumer tele-
16 phone call prohibited by K.S.A. 50-670, and amendments thereto. The
17 administrator shall not charge a fee for furnishing the information to the
18 attorney general.

19 (4) Upon request of any consumer who has filed a notice and paid
20 the fee as provided in subsection (c), the administrator shall furnish the
21 consumer with all information requested by that consumer concerning
22 the telephone solicitor or any person who the consumer believes has
23 engaged in an unsolicited consumer telephone call prohibited by K.S.A.
24 50-670, and amendments thereto. The administrator shall not charge a
25 fee for furnishing the information to the consumer.

26 (5) The administrator shall comply with any lawful subpoena or court
27 order directing disclosure of the list or any other information.

28 (6) The administrator shall provide all information that may be re-
29 quested by any successor administrator who may be selected by the at-
30 torney general. The administrator shall not charge a fee for furnishing
31 the information to the successor administrator.

32 (e) The administrator shall promptly forward any complaints con-
33 cerning alleged violations of K.S.A. 50-670, and amendments thereto, to
34 the attorney general.

35 (f) Fees paid to the administrator under this section shall be consid-
36 ered income to the administrator in the manner specified in the contract
37 between the administrator and the attorney general.

38 (g) The attorney general may adopt rules and regulations relating to
39 any aspect of the establishment, operation or administration of the tele-
40 phone solicitation program established under this section.

41 (h) The state corporation commission shall require by rules and reg-
42 ulations that telecommunications carriers inform consumers of the pro-
43 visions of this section. Notification may be by:

1 (1) Annual inserts in billing statements mailed to consumers which
2 shall contain the specified notice form; or

3 (2) conspicuous publication of the specified notice form in the con-
4 sumer information pages of local telephone directories.

5 Sec. 3. K.S.A. 2000 Supp. 50-670 is hereby repealed.

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

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