

## HOUSE BILL No. 2903

By Representatives Dillmore, Barnes, Crow, Findley, Flora, Gilbert, Kirk, Loganbill, McClure, Nichols, Phelps, Reardon, Ruff, Sharp, Showalter, Spangler, Storm, Swenson, Wilson and Winn

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AN ACT concerning unsolicited consumer telephone calls; prohibiting certain acts and providing remedies for violations; amending K.S.A. 2001 Supp. 50-670 and repealing the existing section; also repealing K.S.A. 2001 Supp. 50-675a.

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

Section 1. K.S.A. 2001 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section:

(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 business relationship 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 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 (b) Any telephone solicitor who makes an unsolicited consumer tel-  
10 ephone call to a residential telephone number shall:

11 (1) Identify themselves;

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

13 (3) identify the purpose of the call immediately upon making contact  
14 by telephone with the person who is the object of the telephone  
15 solicitation;

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

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

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

27 (c) A telephone solicitor shall not withhold the display of the tele-  
28 phone solicitor’s telephone number from a caller identification service  
29 when that number is being used for telemarketing purposes and when  
30 the telephone solicitor’s service or equipment is capable of allowing the  
31 display of such number.

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

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

39 (f) *No telephone solicitor shall make or cause to be made any unso-*  
40 *solicited consumer telephone call to the residence of any consumer in this*  
41 *state who has given notice to the attorney general, in accordance with*  
42 *rules and regulations adopted under section 2, and amendments thereto,*  
43 *of the consumer’s objection to receiving unsolicited consumer telephone*

1 *calls.*

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

4 ~~(g)~~ (h) Any violation of this section is an unconscionable act or prac-  
5 tice under the Kansas consumer protection act.

6 (i) *It shall be a defense in any action or proceeding brought under*  
7 *this section that the defendant has established and implemented, with due*  
8 *care, reasonable practices and procedures to effectively prevent unsoli-*  
9 *cited consumer telephone calls in violation of this section.*

10 ~~(h)~~ (j) This section shall be part of and supplemental to the Kansas  
11 consumer protection act.

12 New Sec. 2. (a) The attorney general shall establish and provide for  
13 the operation of a data base to compile a list of telephone numbers of  
14 consumers who object to receiving unsolicited consumer telephone calls.  
15 It shall be the duty of the attorney general to have such data base in  
16 operation no later than July 1, 2001. Such data base may be operated by  
17 the attorney general or by another entity under contract with the attorney  
18 general.

19 (b) No later than July 1, 2003, the attorney general shall adopt rules  
20 and regulations that:

21 (1) Require each local exchange carrier, each telecommunications  
22 carrier and each wireless telecommunications service provider to inform  
23 its residential subscribers that a consumer has the opportunity to give  
24 notice to the attorney general or the attorney general's contractor that  
25 the consumer objects to receiving unsolicited consumer telephone calls;

26 (2) specify one or more methods by which a consumer may give no-  
27 tice to the attorney general or the attorney general's contractor of the  
28 consumer's objection to receiving unsolicited consumer telephone calls  
29 and one or more methods by which a consumer may revoke that notice;

30 (3) specify the time period for which a notice of objection shall be  
31 effective and the effect of a change of telephone number on such notice;

32 (4) specify the methods by which objections and revocations shall be  
33 collected and added to the data base;

34 (5) specify one or more methods by which a telephone solicitor can  
35 obtain access to the data base as required to avoid calling the telephone  
36 numbers of consumers included in the data base; and

37 (6) specify such other matters relating to the data base that the at-  
38 torney general deems desirable.

39 (c) If the federal communications commission establishes a single na-  
40 tional data base of telephone numbers of subscribers who object to re-  
41 ceiving telephone solicitations, the attorney general shall include the part  
42 of such single national data base that relates to Kansas in the data base  
43 established under this section.

1 (d) A residential subscriber shall pay the attorney general a fee of \$5  
2 for each notice for inclusion in the data base established under this sec-  
3 tion. A telephone solicitor shall pay the attorney general a fee of \$10 per  
4 year for access to or for paper or electronic copies of the data base es-  
5 tablished under this section.

6 (e) Information contained in the data base established under this sec-  
7 tion shall be used only for the purpose of compliance with this section or  
8 in a proceeding or action under K.S.A. 50-670, and amendments thereto.  
9 Such information shall not be subject to public inspection or disclosure  
10 under the open records act.

11 Sec. 3. K.S.A. 2001 Supp. 50-670 and 50-675a are hereby repealed.

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

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