

## Substitute for HOUSE BILL No. 2100

By Committee on Utilities

3-20

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

*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 *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 business relationship if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services; or has an established business relationship, unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls, in which case the telephone solicitor must maintain a record of the consumer's request not to receive future consumer telephone calls and shall honor the consumer's request for 10 years from the time the request is made.~~

(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;

1 (4) “Automatic dialing-announcing device” means any user terminal  
2 equipment which:

3 (A) When connected to a telephone line can dial, with or without  
4 manual assistance, telephone numbers which have been stored or pro-  
5 grammed in the device or are produced or selected by a random or se-  
6 quential number generator; or

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

10 (5) “Negative response” means a statement from a consumer indi-  
11 cating the consumer does not wish to listen to the sales presentation or  
12 participate in the solicitation presented in the consumer telephone call.

13 (6) *“Established business relationship” means a prior or existing re-  
14 lationship formed by a voluntary two-way communication between a per-  
15 son or entity and consumer with or without an exchange of consideration,  
16 on a basis of an inquiry, application, purchase or transaction by the con-  
17 sumer, within the preceding 36 months, regarding products or services  
18 offered by such person or entity, which relationship has not been previ-  
19 ously terminated by either party.*

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

22 (1) Identify themselves;

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

24 (3) identify the purpose of the call immediately upon making contact  
25 by telephone with the person who is the object of the telephone  
26 solicitation;

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

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

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

38 (c) A telephone solicitor shall not withhold the display of the tele-  
39 phone solicitor’s telephone number from a caller identification service  
40 when that number is being used for telemarketing purposes ~~and~~, *except*  
41 *that before January 1, 2004, a telephone solicitor’s telephone number shall*  
42 *not be required to be displayed* when the telephone solicitor’s service or  
43 equipment is *not* capable of allowing the display of such number.

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

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

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

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

12 (h) This section shall be part of and supplemental to the Kansas con-  
13 sumer protection act.

14 New Sec. 2. (a) The attorney general shall contract with the direct  
15 marketing association for the no-call list provided for by this act to be the  
16 national do-not-call list maintained by the telephone preference service  
17 of such 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 charge 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;

24 (4) the schedule of dates by which telephone solicitors will be pro-  
25 vided updates of the no-call list; and

26 (5) what information shall be furnished, without charge, upon request  
27 of a consumer, registered in accordance with this section, concerning a  
28 telephone solicitor or other person who the consumer believes has en-  
29 gaged in an unsolicited consumer telephone call prohibited by this  
30 section.

31 If the direct marketing association does not agree to enter into the  
32 contract provided for by this subsection, the attorney general may con-  
33 tract, upon bids, with another vendor to establish and maintain the no-  
34 call list provided for by this section.

35 (b) Prior to making unsolicited consumer telephone calls in this state  
36 and quarterly thereafter, a telephone solicitor shall consult the do-not call  
37 list provided for by this act, and shall delete from such telephone solici-  
38 tor's calling list all state residents who have registered to be on such list.  
39 The direct marketing association, or other vendor maintaining the do-not  
40 call list, shall offer to consumers at least one method of registration at no  
41 cost and such registration shall be for a period of five years. Consumers  
42 desiring to register to be on the do-not call list may contact the direct  
43 marketing association, or other vendor maintaining the do-not call list.

1 Membership in the direct marketing association shall not be a require-  
2 ment for telephone solicitors to obtain the telephone preference service  
3 list and telephone solicitors shall have access to the list. The direct mar-  
4 keting association, or other vendor, shall make available to the attorney  
5 general, in an electronic format, the no-call list and all quarterly updates  
6 of such list at no cost.

7 (c) The attorney general and the direct marketing association, or  
8 other vendor, shall ensure that consumers are given clear notice that  
9 telephone numbers are not immediately added to the no-call database  
10 upon submission of a consumer's registration and that it may be as long  
11 as 90 days before telephone solicitors receive a new no-call database  
12 which includes the consumer's telephone number.

13 (d) Telephone solicitors shall have a period of not more than 60 days  
14 from the time of receipt of the current quarterly update of the do-not  
15 call list to remove a consumer's telephone number from the telephone  
16 solicitor's calling lists.

17 (e) No telephone solicitor may make or cause to be made any unsol-  
18 licited consumer telephone calls to any consumer if the consumer's tel-  
19 ephone number or numbers appear in the current quarterly list of con-  
20 sumers registered on the no-call list. A telephone solicitor shall not use  
21 the no-call list for any other purpose than to remove consumers' tele-  
22 phone numbers from calling lists.

23 (f) A telephone solicitor shall be liable for violations of subsection (d)  
24 if such telephone solicitor makes or causes to be made an unsolicited  
25 telephone call to a state resident whose telephone number appears on  
26 the current quarterly no-call list or uses the list for any unauthorized  
27 purpose.

28 (g) It shall be an affirmative defense in any action or proceeding  
29 brought under this section that the defendant has established and imple-  
30 mented, with due care, reasonable practices and procedures to effectively  
31 prevent unsolicited consumer telephone calls in violation of this act. Such  
32 defense shall not be exercised by a telephone solicitor more than once  
33 within the state of Kansas in any 12-month period.

34 (h) Any violation of this section is an unconscionable act or practice  
35 under the Kansas consumer protection act.

36 (i) (1) Upon request of the attorney general for the purpose of en-  
37 forcing the provisions of this section, the direct marketing association, or  
38 other vendor, shall furnish the attorney general with all information re-  
39 quested by the attorney general concerning a telephone solicitor or any  
40 person the attorney general believes has engaged in an unsolicited con-  
41 sumer telephone call prohibited by this section. The direct marketing  
42 association, or other vendor, shall not charge a fee for furnishing the  
43 information to the attorney general.

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

4 (j) The direct marketing association, or other vendor, shall promptly  
5 forward any complaints concerning alleged violations of this section to  
6 the attorney general.

7 (k) The attorney general may convene a meeting or meetings with  
8 consumer advocacy groups to collectively develop a method or methods  
9 to notify the consumer advocacy group's membership and educate and  
10 promote to Kansas consumers generally the availability of the no-call list,  
11 and of a telephone solicitor's obligations under this act.

12 (l) On or before the first day of each regular legislative session, the  
13 attorney general shall report to the standing committees of the house and  
14 senate which hear and act on legislation relating to telecommunications  
15 issues on the status of implementation of the provisions of this section,  
16 including, but not limited to, the number of consumers who have given  
17 notice of objection, the number of requests for the data base, state rev-  
18 enues received from the respective sources of revenue under this section,  
19 the number of complaints received alleging violations of this section and  
20 actions taken to enforce the provisions of this section.

21 (m) If the federal trade commission establishes a single national no-  
22 call list the attorney general may designate the list established by the  
23 federal trade commission as the Kansas no-call list.

24 (n) The attorney general may promulgate rules and regulations to  
25 carry out the provisions of the Kansas no-call act.

26 (o) The provisions of this section shall be a part of and supplemental  
27 to the Kansas consumer protection act.

28 New Sec. 3. This act shall be known and may be cited as the Kansas  
29 no-call act.

30 Sec. 4. K.S.A. 2001 Supp. 50-670 is hereby repealed.

31 Sec. 5. This act shall take effect and be in force from and after its  
32 publication in the statute book.

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