

SENATE BILL No. 538

By Senators Adkins, Allen, Barnett, Barone, Brungardt, Corbin, Downey, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Hensley, Jackson, Lee, Oleen, Praeger, Salmans, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger and Vratil

2-7

AN ACT concerning consumer protection and privacy; relating to unsolicited consumer telephone calls; no-call database; prohibited acts; 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~~ *has* an ~~existing~~ *established* 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

1 manual assistance, telephone numbers which have been stored or pro-
2 grammed in the device or are produced or selected by a random or se-
3 quential number generator; or

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

7 (5) “negative response” means a statement from a consumer indicat-
8 ing the consumer does not wish to listen to the sales presentation or
9 participate in the solicitation presented in the consumer telephone call;
10 or

11 (6) “*established business relationship*” means the existence of an oral
12 or written arrangement, agreement, contract or other such legal state of
13 affairs between the telephone solicitor and a consumer, where both parties
14 have a course of conduct or established pattern of activity for commercial
15 or mercantile purposes and for the benefit or profit of both parties. The
16 “*established business relationship*” must exist between the consumer and
17 business directly, and does not extend to any related business entity or
18 other business organization of the telephone solicitor or related to the
19 telephone solicitor or such solicitor’s agent, including, but not limited to,
20 a parent corporation, subsidiary partnership, company or other corpo-
21 ration or affiliate.

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

24 (1) Identify themselves;

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

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

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

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

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

40 (c) A telephone solicitor shall not withhold the display of the tele-
41 phone solicitor’s *identifying information and* telephone number from a
42 caller identification service when that number is being used for telemar-
43 keting purposes ~~and when the telephone solicitor’s service or equipment~~

1 ~~is capable of allowing the display of such number.~~

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

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

9 (f) *No supplier shall make or cause to be made any unsolicited tele-*
10 *phone call to the residential telephone number of any consumer in this*
11 *state who has given notice to the information network of Kansas, in ac-*
12 *cordance with section 2, and amendments thereto, of such consumer's*
13 *objection to receiving consumer telephone calls.*

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

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

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

20 New Sec. 2. (a) A consumer living or residing in Kansas may give
21 notice of such consumer's objection to receiving unsolicited consumer
22 telephone calls to such consumer's residential telephone number. There
23 shall be no cost to the consumer for such notice of objection. Such con-
24 sumer's telephone number shall be listed in Kansas' no-call database by
25 doing any of the following:

26 (1) Completing a written form designed by the attorney general and
27 the information network of Kansas for the purpose of recording a con-
28 sumer's notice of objection to receiving unsolicited consumer telephone
29 calls and submitting that to the information network of Kansas;

30 (2) calling a toll-free number established by the attorney general and
31 the information network of Kansas for the purpose of recording a con-
32 sumer's notice of objection to receiving unsolicited consumer telephone
33 calls and properly responding to the voice prompts; or

34 (3) accessing the appropriate internet site established by the attorney
35 general and the information network of Kansas for the purpose of re-
36 cording a consumer's notice of objection to receiving unsolicited con-
37 sumer telephone calls and inputting the proper data requested by the
38 website prompts.

39 (b) The no-call database shall consist of the aggregate collection of
40 the telephone numbers of properly submitted notices of objection to re-
41 ceiving unsolicited consumer telephone calls. The information network
42 of Kansas may maintain the no-call database in either a written or an
43 electronic format.

1 (c) The telephone numbers of properly submitted notices of objec-
2 tion to receiving unsolicited consumer telephone calls shall become part
3 of the no-call database in the quarter following the deadline for receipt
4 of notice according to the following:

5 (1) The receipt deadline for the quarter commencing January 1 and
6 ending March 31 is November 1;

7 (2) the receipt deadline for the quarter commencing April 1 and end-
8 ing June 30 is February 1;

9 (3) the receipt deadline for the quarter commencing July 1 and end-
10 ing September 30 is May 1; and

11 (4) the receipt deadline for the quarter commencing October 1 and
12 ending December 31 is August 1.

13 (d) A notice of objection to receiving unsolicited consumer telephone
14 calls shall remain in effect for two years from the date that telephone
15 number first appears in the no-call database. The notice of objection may
16 be renewed for additional two-year periods by using the methods pro-
17 vided in subsection (a).

18 (e) If a consumer whose telephone number is part of the no-call da-
19 tabase changes telephone numbers, such consumer shall submit a new
20 notice of objection to receiving unsolicited consumer telephone calls and
21 provide the new number to the information network of Kansas.

22 (f) A consumer may revoke notice of objection to receiving unsoli-
23 cited consumer telephone calls by completing a written form designed by
24 the attorney general and the information network of Kansas for the pur-
25 pose of revoking a consumer's notice of objection to receiving unsolicited
26 consumer telephone calls and submitting that completed form to the in-
27 formation network of Kansas. A consumer may also revoke notice of ob-
28 jection to receiving unsolicited consumer telephone calls by accessing the
29 appropriate internet site established by the information network of Kan-
30 sas and inputting the proper data requested by the website prompts.
31 Upon receipt of such revocation notice, the information network of Kan-
32 sas will remove the relevant telephone number from the no-call database
33 according to the same schedule used for adding telephone numbers to
34 the no-call database as provided in subsection (c). In addition, the infor-
35 mation network of Kansas may remove a telephone number from the no-
36 call database if the Kansas certified local exchange carrier responsible for
37 the assignment of the relevant telephone number indicates in writing, or
38 if available, by internet, to the information network of Kansas that the
39 consumer who submitted the objection to receiving unsolicited consumer
40 telephone calls is no longer assigned to that telephone number.

41 (g) A person or entity desiring to make unsolicited consumer tele-
42 phone calls in Kansas may obtain a copy of the no-call database for such
43 person's or entity's lawful use, or for the lawful use by such entity's em-

1 ployees, or for the lawful use by such person's or entity's independent
2 contractors for use in their business, so long as the independent contrac-
3 tor is regularly associated with the person or entity and is engaged in the
4 same or related type of business as the person or entity, by doing the
5 following:

6 (1) Signing a written confidentiality agreement prepared by the at-
7 torney general and the information network of Kansas that: (A) Restricts
8 use of the no-call database exclusively for the purpose of compliance with
9 this section; and (B) prohibits the transfer of the copy of the no-call
10 database to any person or entity who has not submitted the signed written
11 confidentiality agreement and payment to the information network of
12 Kansas for receipt of a copy of the no-call database; and

13 (2) submitting the signed confidentiality agreement along with pay-
14 ment in an amount equal to \$25 per quarter for each Kansas area code
15 to the information network of Kansas for providing a copy of the no-call
16 database in downloadable electronic format. Those persons or entities
17 desiring to obtain access to only part of the no-call database may do so
18 by submitting the signed confidentiality agreement along with a request
19 designating by area code the portion or portions of the no-call database
20 they desire and providing payment in the amount of \$25 per quarter per
21 area code to the information network of Kansas for providing a copy of
22 the requested portion of the no-call database in downloadable electronic
23 format. The information network of Kansas may require payment of a
24 media and handling charge from persons who request a computer disk
25 copy of the no-call database.

26 (h) No supplier who obtains a copy of the no-call database shall use
27 that information for purposes other than compliance with this section.
28 Information contained in the no-call database shall be used only for the
29 purpose of compliance with this section or in a proceeding or action for
30 violations of this section. Such information shall not be considered a pub-
31 lic record pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto.

32 (i) Moneys collected pursuant to subsection (g) shall be used first to
33 pay the cost of the database maintained by the information network of
34 Kansas. Any moneys collected pursuant to subsection (g) in excess of the
35 cost of the database maintained by the information network of Kansas
36 shall be paid to the attorney general to investigate and prosecute violations
37 of this section. Penalties and fees recovered from prosecutions of viola-
38 tions of this section shall be paid to the attorney general to investigate
39 and prosecute violations of this section.

40 (j) The attorney general may enter into agreements with private en-
41 tities, as determined necessary by the attorney general, to comply with
42 the provisions of this act related to the creation and maintenance of the
43 no-call data base.

1 Sec. 3. K.S.A. 2001 Supp. 50-670 is hereby repealed.

2 Sec. 4. This act shall take effect and be in force from and after July
3 1, 2003 and its publication in the statute book.

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