

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

---

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

---

## MEMORANDUM

To: Senate Committee on Utilities  
From: Office of Revisor of Statutes  
Date: January 23, 2023  
Subject: Legal Primer – Unwanted Telemarketing Calls

### I. Federal Telemarketing Laws

U.S. federal law restricts certain telemarketing calls and practices including what is commonly known as robocalls and caller-ID spoofing. Federal law also prohibits deceptive, misleading and fraudulent conduct by telemarketers. The primary federal agencies with jurisdiction over such telecommunications issues are the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC).

#### *A. Federal Trade Commission and the Telemarketing Sales Rule*

The Telemarketing and Consumer Fraud and Abuse Prevention Act directs the FTC to target deceptive, coercive and abusive telemarketing practices by promulgating rules to tackle such issues.<sup>1</sup> In 1995, the FTC promulgated the telemarketing sales rule which applies to all “telemarketing” which is defined as “a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.”<sup>2</sup>

Generally, the federal telemarketing sales rule:

- Prohibits deceptive telemarketing by requiring telemarketers to make certain disclosures to consumers including the purpose of the call, the identity of the seller, the nature of the goods or services being sold and the terms and conditions that apply;
- Prohibits telemarketers from misrepresenting the costs, quantity, characteristics and conditions of the goods or services being offered;

---

<sup>1</sup> 15 U.S.C. § 6101-6108.

<sup>2</sup> 15 U.S.C. § 6106(4).

- Establishes a national-do not call registry which requires telemarketers to remove listed numbers from call lists every 31 days;
- Prohibits abusive telemarketing such as threats, intimidation or the use of profane or obscene language, repetitive calling patterns, and calls before 8:00 a.m. or after 9:00 p.m.
- Prohibits credit card transaction laundering by telemarketers;
- Prohibits telemarketers from blocking or failing to transmit the correct telephone number on caller-ID services;
- Restricts the use of robocalls using predictive dialers or prerecorded messages without the consent of the consumer. Calls made using prerecorded messages must comply with certain requirements including consent, disclosure, and opt-out requests.
- Requires telemarketers to connect their calls to a sales representative within two seconds after answering unless the call complies with the requirements for a call using a prerecorded message.
- Prohibits telemarketing of debt relief services requiring an advance fee; and
- Prohibits telemarketers from using certain payment mechanisms often used for fraudulent transactions such as remotely created checks, cash-to-cash money transfers and cash reload mechanisms.<sup>3</sup>

The FTC has jurisdiction to enforce the telemarketing sales rule and seek statutory and judicial remedies for violations of the rule. State attorneys general and private citizens are also authorized to assert violations of the act and seek statutory and judicial remedies in court.

*B. Federal Communications Commission and the Telephone Consumer Protection Act*

The Telephone Consumer Protection Act of 1991 (TCPA)<sup>4</sup> amending the communications act of 1934 requires the FCC to regulate and address telemarketing calls, practices and the equipment used by telemarketers. The FCC has adopted rules to implement the TCPA.<sup>5</sup>

Generally, the TCPA and the FCC's rules adopted pursuant to such act:

- Prohibits unsolicited calls using automatic-dialing devices and artificial or prerecorded voice messages without prior written consent;
- Establishes requirements for use of such devices and calling practices including opt-out mechanisms;
- Requires entities making telephone solicitations to maintain company-specific do-not-call lists and comply with the national do-not-call registry;

---

<sup>3</sup> 16 C.F.R. part 310.

<sup>4</sup> 47 U.S.C. 227.

<sup>5</sup> 47 C.F.R. §64.1200

- Prohibits the transmission of blocked or inaccurate caller-ID information subject to limited exceptions;
- Prohibits call abandonment by telemarketers; and
- Authorizes voice service providers to block certain calls before reaching the intended caller.

The Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act of 2019, directed the FCC to undertake new initiatives to combat robocalls and telephone scams. Among a host new requirements and initiatives, the TRACED Act required phone companies to implement the STIR/SHAKEN caller identification framework to reduce malicious caller-ID spoofing. The TRACED Act also required the FCC to provide safe harbor to phone companies that are using reasonable call blocking framework and analytics to block calls.

The FCC has jurisdiction to enforce the TCPA and may seek statutory and judicial remedies for violations of the TCPA and the FCC's rules adopted pursuant to such act. Additionally, the TCPA authorizes state attorneys general and private citizens seek statutory and judicial remedies for violations of the TCPA in court and seek statutory and judicial remedies in court.

### *C. State's Authority under TCPA*

47 U.S.C. § 227(f) expressly provides that the TCPA is not intended to preempt state laws that impose more restrictive intrastate requirements on:

- The use of other electronic devices to send unsolicited advertisements;
- the use of automatic telephone dialing systems;
- the use of artificial or prerecorded voice messages; or
- the making of telephone solicitations.

## **II. Kansas Telemarketing Laws**

The Kansas No-Call Act imposes state legal requirements for telephone solicitors and the making of telemarketing calls.<sup>6</sup> The act prohibits unsolicited consumer telephone calls to landlines and mobile phones unless certain conditions are met. A call is not an unsolicited consumer telephone call if the person has: (1) Consented to the call through an express or written consent; (2) the call is made in connection with an existing debt, contract, payment or performance which

---

<sup>6</sup> K.S.A. 50-670 and 50-670a

has not been completed; or (3) the call is made pursuant to an established business relationship unless the person has requested that such call cease.

K.S.A. 50-670 and 50-670a requires any telephone solicitor who makes an unsolicited consumer telephone call to:

- Identify themselves and the business on whose behalf such person is calling;
- Immediately disclose the purpose of the call;
- Promptly discontinue the solicitation if the called person gives a negative response at any time;
- Hang up the phone or disconnect the automatic dialing-announcing device within 25 seconds after the termination of the call by the person being called;
- Answer the line with a live operator or with the automatic dialing announcing device within 5 seconds from the beginning of the call;
- Not withhold the display of the telephone solicitor's telephone from the caller-ID service; and
- Consult the national no-call list every 30 days and remove numbers on the list from the solicitor's call list. The act designates the national do-not call list as the state's do-not call list.

Any violation of the Kansas No-Call Act is an unconscionable act or practice under the Kansas consumer protection and subject to the penalties and remedies provided pursuant to such act. The attorney general is authorized to investigate violations of the act through the collection of evidence and the issuance of subpoenas. The attorney general is also authorized to promulgate state rules and regulations adopting provisions of federal trade commission regulations implementing the national do not call law.

The following terminology is used in the Kansas No-Call Act:

- "Consumer telephone call" means a call made by a telephone solicitor to the residence or mobile telephone number 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.
- "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.

Under Kansas law, any verbal agreement to purchase goods or services from a telemarketer is not a valid and binding agreement unless the telemarketer receives from the consumer a signed confirmation that discloses the full terms of the sale.<sup>7</sup>

### **III. Prior Kansas Telemarketing Legislation**

2017 HB 2273 would have amended the Kansas No-Call Act to add specific restrictions on the use of automatic dialing-announcing devices by telephone solicitors.<sup>8</sup>

2020 HB 2110 would have imposed restrictions on text message solicitations, the use of automatic dialing-announcing devices, the conveyance of telephone numbers and the transmission of inaccurate caller-ID information.<sup>9</sup>

2020 HB 2620 would have adopted a new section of law to generally prohibit any person or entity from using or offering for download, purchase or use any caller-ID spoofing technology.<sup>10</sup>

---

<sup>7</sup> K.S.A. 50-671 et seq.

<sup>8</sup> [http://kslegislature.org/li/b2017\\_18/measures/hb2273/](http://kslegislature.org/li/b2017_18/measures/hb2273/)

<sup>9</sup> [http://kslegislature.org/li\\_2020/b2019\\_20/measures/hb2110/](http://kslegislature.org/li_2020/b2019_20/measures/hb2110/)

<sup>10</sup> [http://kslegislature.org/li\\_2020/b2019\\_20/measures/hb2620/](http://kslegislature.org/li_2020/b2019_20/measures/hb2620/)