

50-670a. Same; no-call list; prohibitions; remedies; attorney general, powers and duties. (a) Prior to making unsolicited consumer telephone calls in this state and not less frequently than every 30 days thereafter, a telephone solicitor shall consult the no-call list provided for by this act, and shall delete from such telephone solicitor's calling list all telephone numbers of consumers appearing on such list. The attorney general shall direct consumers desiring to register their telephone number on the no-call list to contact the federal trade commission to register on the national no-call list.

(b) Telephone solicitors shall have a period of not more than 30 days from the time of registration of a consumer's telephone number on the no-call list to remove that telephone number from the telephone solicitor's calling lists.

(c) No telephone solicitor may make or cause to be made any unsolicited consumer telephone calls to any consumer if the consumer's telephone number or numbers appear on the no-call list. A telephone solicitor shall not use the no-call list for any other purpose than to remove consumers' telephone numbers from calling lists.

(d) A telephone solicitor shall be liable for violations of subsections (b) and (c) if such telephone solicitor makes or causes to be made an unsolicited telephone call to a consumer whose telephone number appears on the no-call list or uses the list for any unauthorized purpose.

(e) It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate, by clear and convincing evidence, that: (1) The telephone solicitor at the time of the alleged violation had: (A) Obtained a copy of the updated no-call list; (B) established and implemented, with due care, reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls in violation of this section; (C) trained the telephone solicitor's personnel in the requirements of this section; and (D) maintained records demonstrating compliance with this section; and (2) the unsolicited consumer telephone call was the result of an error. Such defense shall not be exercised by a telephone solicitor more than once within the state of Kansas in any 12-month period. A telephone solicitor shall be deemed to have exercised such defense if asserted in response to any consumer complaint about a violation of this section, regardless of whether litigation has been initiated.

(f) It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate by clear and convincing evidence that: (1) The consumer affirmatively listed or held out to the public such consumer's residential or mobile telephone number as a business number; (2) the telephone solicitor had knowledge of and relied upon such consumer's actions as provided in subsection (f)(1) at the time of the telephone solicitor's alleged violation; and (3) the purpose of the call was directly related to the consumer's business.

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

(h) The attorney general may request information from the federal trade commission for the purpose of enforcing the provisions of this section and may comply with requirements of the federal trade commission to receive such information.

(i) Penalties and fees recovered from prosecutions of violations of this section shall be paid to the attorney general to investigate and prosecute violations of this section.

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

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

(l) The national no-call list established and maintained by the federal trade commission shall be designated as the Kansas no-call list.

(m) The attorney general may promulgate rules and regulations to carry out the provisions of the Kansas no-call act. The attorney general is authorized to promulgate state rules and regulations adopting provisions of federal trade commission regulations implementing the national do not call law, including, but not limited to, the telemarketing sales rule, 16 C.F.R. part 310. Any violation of rules and regulations promulgated pursuant to this section shall be considered a violation of this section.

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

(o) The provisions of this section and K.S.A. 50-670, and amendments thereto, shall be known and may be cited as the Kansas no-call act.

History: L. 2002, ch. 179, § 2; L. 2014, ch. 18, § 2; July 1.