AN ACT concerning the Kansas consumer protection act; relating to the Kansas consumer protection act, definition of protected consumer; relating to the Kansas no-call act, restricting use of automatic dialing-announcing devices; amending K.S.A. 2016 Supp. 50-670 and 50-676 and repealing the existing sections.

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

Section 1. K.S.A. 2016 Supp. 50-676 is hereby amended to read as follows: 50-676. As used in K.S.A. 50-676 through 50-679, and amendments thereto:

(a) "Elder person" means a person who is 60 years of age or older.
(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.
(c) "Immediate family member" means parent, child, stepchild or spouse.
(d) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
(e) "Member of the military" means a member of the armed forces or national guard on active duty or a member of an active reserve unit in the armed forces or national guard.
(f) "Physical or mental impairment" means the following:
(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss substantially affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or
(2) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability and emotional illness.
(g) "Protected consumer" means:
(1) An elder person;
(2) a disabled person;
(3) a veteran;
(4) the surviving spouse of a veteran; and
(5) a member of the military; and
(6) an immediate family member of a member of the military.

(h) "Substantially limits" means:
(1) Unable to perform a major life activity that the average person in
the general population can perform; or
(2) significantly restricted as to the condition, manner or duration
under which an individual can perform a particular major life activity as
compared to the condition, manner or duration under which the average
person in the general population can perform that same major life activity.
Minor temporary ailments or injuries shall not be considered physical or
mental impairments which substantially limit a person's major life
activities. Minor temporary ailments include, but are not limited to, colds,
influenza or sprains or minor injuries.

(i) "Veteran" means a person who has served in the armed forces of
the United States of America and separated from the armed forces under
honorable conditions.

Sec. 2. K.S.A. 2016 Supp. 50-670 is hereby amended to read as
follows: 50-670. (a) As used in this section and K.S.A. 50-670a, and
amendments thereto:

(1) "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.

(2) "Mobile telephone number" means a telephone number
associated with a wireless telecommunications service as defined in

(3) "Unsolicited consumer telephone call" means a consumer
telephone call other than a call made:

(A) In response to an express request or with the express written
agreement 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 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. The telephone solicitor shall honor any such request for five years from the date of such request.

(4) "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.

(5) "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 programmed in the device or are produced or selected by a random or sequential number generator; or

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

(6) "Negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

(7) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and consumer with or without an exchange of consideration, on a basis of an application, purchase or transaction by the consumer, within the 18 months immediately preceding the date of the consumer telephone call, regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call shall:

(1) Identify themselves;

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

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

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

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

(6) not use an automatic dialing-announcing device unless: (A) The person being solicited has knowingly or voluntarily requested, consented to, permitted or authorized receipt of the message; or (B) the message is immediately preceded by a live operator who obtains the person's consent before the message is delivered;

(7) not use an automatic dialing-announcing device such that the person being solicited receives a telephone call before 9 a.m. or after 8 p.m.;

(8) not use an automatic dialing-announcing device to make a telephone call to any of the following:
   (A) A hospital, as defined in K.S.A. 65-425, and amendments thereto;
   (B) an ambulatory surgical center, as defined in K.S.A. 65-425, and amendments thereto;
   (C) a recuperation center, as defined in K.S.A. 65-425, and amendments thereto;
   (D) an ambulance service, as defined in K.S.A. 65-6112, and amendments thereto;
   (E) an emergency medical service facility, as defined in K.S.A. 65-6112, and amendments thereto;
   (F) a mental health center, as defined in K.S.A. 65-4432, and amendments thereto;
   (G) a psychiatric hospital, as defined in K.S.A. 65-5601, and amendments thereto;
   (H) a state institution for people with intellectual disability, as defined in K.S.A. 65-5601, and amendments thereto;
   (I) a law enforcement agency; or
   (J) a city, county, township or other public or private fire department;

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

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes.

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

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or
possession of a consumer's payment unless the goods are delivered
with the opportunity to inspect before any payment is collected.
(f) Local exchange carriers and telecommunications carriers shall
not be responsible for the enforcement of the provisions of this section.
(g) Any violation of this section is an unconscionable act or
practice under the Kansas consumer protection act.
(h) This section shall be part of and supplemental to the Kansas
consumer protection act.
Sec. 2. K.S.A. 2016 Supp. 50-670 and 50-676 are hereby
repealed.
Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.