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Federal and State Affairs

D-7 Regulation of Robocalls

Unsolicited calls are among the most frequent consumer complaints received by the Federal Communications Commission (FCC) and Federal Trade Commission (FTC). The use of automatic dialing-announcing devices (referred to as robocalls) to make these calls is on the rise, with estimates indicating 4.1 billion such calls were received across the United States in July 2018 alone. Utilities, pharmacies and health care providers, schools, and other entities use robocalls to provide billing, scheduling, and other information to the public. However, an increasing number of robocalls made to consumers are unsolicited, illegitimate, and unwanted. As the frequency of these calls increases, states have been taking action to minimize robocalls. This article discusses the current state of the law concerning robocalls in Kansas and other states, as well as recent legislation and court cases at both the state and federal levels.

Current Kansas Law

KSA 2018 Supp. 50-670 prohibits calls to consumers from automatic dialing-announcing devices in certain instances. The statute defines “automatic dialing-announcing device” to mean any user terminal equipment that when connected to a telephone line, can dial, with or without manual assistance, telephone numbers that have been stored or programmed in the device or are produced or selected by a random or sequential number generator, or when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance. The statute requires any telephone solicitor making calls, including robocalls, to:

- Identify themselves;
- Identify the business on whose behalf such person is soliciting;
- Identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;
- Promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call;
- Hang up the telephone, 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

- Answer the line within 5 seconds of the beginning of the call by a live operator or an automated dialing-announcing device. If answered by automated dialing-announcing device, the message provided shall include only caller identification information, but shall not contain any unsolicited advertisement.

The statute states a telephone solicitor shall not be allowed to do the following:

- Withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes;
- Transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease; and
- 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.

The statute is supplemental to the Kansas Consumer Protection Act (KCPA) and provides local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section and any violation of this section is an unconscionable act or practice under the KCPA.

State Action¹

Currently, 44 states limit commercial robocalls in some way. Several states also limit robocalls to mobile devices. Laws in Arizona, California, Colorado, Connecticut, Florida, Indiana, Louisiana, Michigan, Missouri, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, and Washington specifically limit the use of automated

text messages. Some states also specifically prohibit robocalls from being made to emergency rooms, hospitals, hotel rooms, vacation rentals, paging devices, unlisted or unpublished numbers, and other numbers.

Most states generally prohibit robocalls and automatic text messages, but have specific exceptions in their statutes. Examples of instances where automated calling or messaging may be allowed despite a general prohibition on the practice include delivery, delay, or other information about a purchase; prior relationship between the parties; charitable or nonprofit organization, public opinion polls, research surveys, or radio or television broadcast rating organization; collection of lawful debts; public school programs; and employee work schedules.

Additionally, some states have requirements for the time, day, duration, time of disconnection after call ended, and purpose for which robocalls may be used. Other requirements that states place on robocalls include providing the caller's contact information or not blocking the caller identification; stating the name of the person for whom the call is intended; a live operator obtaining permission before playing a recorded message; requiring automated systems to be attended while in use; and, for political calls, identifying who paid for the call, whether a candidate authorized the call, and other identifying information.

Kansas HB 2273 (2017)

The bill would have increased restrictions on robocalls. Under the provisions of the bill, robocalls would have been prohibited unless the person who is receiving the call has consented to or has authorized receipt of the message or the message is immediately preceded by a live operator who obtains the person's consent. Additionally, the bill would have prohibited robocalls before 9:00 a.m. or after 8:00 p.m. The bill also would have prohibited calls from being made to hospitals, ambulatory surgical centers, recuperation centers, ambulance services, emergency medical service facilities, mental health centers, psychiatric hospitals, state institutions for people with intellectual disabilities,

law enforcement agencies, or fire departments. The bill died in the House Committee on Utilities at the end of the 2018 Legislative Session.

Connecticut HB 5563 (2018)

This bill adds criminal penalties for a person making unsolicited recorded calls while using a blocking device or service to circumvent a caller identification service or device. Current state law already prohibits unsolicited robocalls. The bill was passed and signed into law during the 2018 Session of the Connecticut Legislature.

Kentucky HB 59 (2018)

The bill would create a new section of law prohibiting the marketing, sharing, or selling of wireless telephone numbers of subscribers without express written consent of the subscriber and create a penalty between \$1,000 and \$10,000 for each violation. The bill died in the House Committee on Small Business and Information Technology at the end of the 2018 Session of the Kentucky Legislature.

Massachusetts HB 154, HB 201, and HB 2828 (2017)

These proposals would prohibit all robocalls to hands-free mobile telephones, mobile electronic devices, and mobile telephones. Each of the bills contains a combination of the following exceptions: school districts, employers, correctional facilities, municipalities, utilities, health care services, or informational calls. HB 154 accompanied HB 138, which was referred to the House Committee on Ways and Means in March 2018. HB 201 is currently in the House Committee of the Whole. HB 2828 also accompanied HB 138. As of October 2018, none of the bills had been signed into law.

Massachusetts HB 138 (2017)

This bill would amend current telephone solicitation laws to require the telephone number listed in the identification service or device to be a valid telephone number in which the consumer can directly communicate with the solicitor. The

bill, accompanied by HB 154 and HB 2828, was referred to the House Committee on Ways and Means in March 2018.

New Jersey SR 24 (2018)

This resolution would urge the FCC to require landline and wireless telephone service providers to implement necessary technology to block robocalls to customers, free of charge, and to enact regulations to prevent robocalls from reaching customers. The resolution was passed during the 2018 Session of the New Jersey Legislature.

New York S 8674 and A 10739 (2018)

These bills would limit autodialed telephone calls to state residents and require telephone service providers to offer free call mitigation technologies to telephone customers. Both bills died during the 2018 Session of the New York Assembly.

Pennsylvania HB 105 (2017)

This bill would give consumers the ability to sign up for the national “do-not-call” list for as long as they hold the number they register, without requiring them to re-register every five years. The bill would also prohibit telemarketing on legal holidays and robocalls. The bill was laid on the table on July 27, 2017.

Vermont JRH 15 (2018)

The resolution requests the FTC, the FCC, and Congress to adopt more effective measures to enforce the National Do Not Call Registry and to police illegal robocalls. The resolution was adopted by the Vermont House of Representatives on April 4, 2018, and the Vermont Senate on April 19, 2018.

Federal Legislation

S 3078 and HR 6026 (2018)

These pieces of legislation would give the FCC more authority to crack down on robocallers,

allow telephone customers to revoke permission they previously gave to receive calls, ban calls to numbers that have transferred from one customer to another, and extend the statute of limitations from one year to four years for prosecuting violators. S 3078 was referred to the Senate Committee on Commerce, Science, and Transportation in June 2018. HR 6026 was referred to the House Committee on Energy and Commerce in June 2018.

Difficulties of Regulation

The Pew Charitable Trusts note regulation of these types of calls is difficult because of the impracticality of enforcement. Many companies

simply do not follow the laws concerning robocalls and increasingly these companies are operating overseas, away from the investigative jurisdiction of the states. The National Do Not Call Registry only blocks legally operating businesses. Telephone companies have stated they are blocking known offensive numbers and are working to help law enforcement agents trace illegal robocalls to identify their origin. The FTC is also working on identifying “spoofed” numbers, which are fake phone numbers beginning with a local or familiar looking area code. Many advocates urge federal and state partnerships for maximum impact in preventing these calls. Ultimately, most concerned parties agree technology and apps will likely be the answer to avoiding and ending illegal robocalls.

- 1 Delaware, Iowa, Ohio, Pennsylvania, Vermont, and West Virginia do not currently have statutory limits on commercial robocalls. Information provided by NCSL August 1, 2017. Updated by KLRD staff 2018.

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