

LEGISLATIVE BILL 180

Approved by the Governor February 24, 1988

Introduced by Wesely, 26

AN ACT relating to telephones; to amend sections 87-302, 87-303.08, and 87-307 to 87-311, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to automatic dialing-announcing devices; to change a penalty; to redefine and define terms; to change provisions relating to permits; to provide a fee; to change provisions relating to agreements; to prohibit sequential dialing as prescribed; to provide powers; to provide for appeals; to provide for expiration of certain permits as prescribed; to require the registration of certain devices; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 87-302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-302. (a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace

parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;

(7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparages the goods, services, or business of another by false or misleading representation of fact;

(9) Advertises goods or services with intent not to sell them as advertised;

(10) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Uses or promotes the use of a chain distributor scheme in connection with the solicitation of business or personal investments from members of the public;

(13) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement; or

(14) ~~installs or uses~~ Connects or operates an automatic dialing-announcing device for advertising purposes without first obtaining a unless there is in force with respect to such device a current permit issued pursuant to sections 87-308 to 87-311.

(b) In order to prevail in an action under sections 87-301 to 87-306, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Sec. 2. That section 87-303.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-303.08. Any person who violates subdivision (a)(14) of section 87-302 or sections 87-308 to 87-311 and sections 6 and 9 of this act shall be guilty of a Class II misdemeanor except as otherwise provided in such sections. Any person who violates any of the other provisions of section 87-302 or 87-303.01; ~~or sections 87-308 to 87-311~~ shall be guilty of a Class

III misdemeanor.

Sec. 3. That section 87-307, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-307. As used in sections 87-302, 87-303.08, and 87-307 to 87-311 and sections 6 and 9 of this act, unless the context otherwise requires:

(1) Advertising purposes shall mean all representations disseminated automatically on an automatic dialing-announcing device intended or likely to induce the purchase or use of any product or concept or to solicit a contribution to any group, organization, or committee;

(2) Automatic, ~~automatic~~ dialing-announcing device shall mean a device which selects and dials telephone numbers and automatically without obtaining permission of the recipient plays a recorded advertising message; and

(3) Person shall mean any individual, corporation, governmental agency or subdivision, partnership, company, association, or any other legal or commercial entity.

Sec. 4. That section 87-308, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-308. No person shall connect or operate any automatic dialing-announcing device for advertising purposes to on any telephone line without first obtaining unless there is in force with respect to such device a current permit from the Public Service Commission. Each person desiring such a permit shall make a written application to the Public Service Commission. Such application shall be in the form prescribed by the Public Service Commission and shall require the applicant to provide information as to the type of automatic dialing-announcing device proposed to be connected or operated, the time of day such telephone calls are proposed to be placed using such device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, and such additional information as the Public Service Commission may require. The applicant shall include a five-hundred-dollar application fee along with the application.

Upon receiving such an application for service, the Public Service Commission may deny the application (1) modify and grant the application as so modified or modify the application and grant the application as so modified (2) deny the application if

the commission determines that (a) the applicant is unwilling or unable to meet the requirements placed on such operations by law, rule, or regulation or has failed to comply with such requirements in the past, (b) the connection or operation of such device would result in a significant decline in the quality of service or access to service for other telephone users, (c) the applicant's equipment is unable to meet the requirements of law, rule, or regulation, or (d) the application does not contain adequate information. If a permit is granted, such permit shall remain in force for two years from the date of issuance, and each application for the renewal of a permit shall be treated as a new application.

Prior to connecting or operating any automatic dialing-announcing device on any telephone line, the permitholder shall notify the local telephone company of the telephone line on which the device is proposed to be connected or operated. Such telephone line shall be considered a business telephone line.

Sec. 5. That section 87-309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-309. Prior to issuing a permit pursuant to section 87-308, the Public Service Commission shall require each applicant to agree to:

(1) Include, on all calls made on the automatic dialing-announcing device, a statement of the nature of the call and the name, address, and telephone number of the business or organization being represented, if any; and

(2) as As soon as the serving telephone company's central office equipment allows, disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called; and

(3) Prevent such device from calling emergency telephone numbers of police or fire stations or medical or other facilities providing emergency services as designated by the Public Service Commission.

Any or all of the provisions of such agreement may be suspended by a written agreement between the called and calling parties. When making an application for a permit or at any time after obtaining a permit, any owner or operator of an automatic dialing-announcing device may apply to the Public Service Commission for an exemption to any or all of the provisions of such agreement. The Public Service Commission may grant a permanent or temporary exemption from some or all of the

provisions of such agreement upon finding that it would be in the public interest. Failure to comply with the provisions of such an agreement which have not been exempted shall, after ten days' notice and a hearing, be grounds for revocation or suspension of a permit.

Sec. 6. A person shall not connect or operate any automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially. Failure to comply with this section shall, after ten days' notice and a hearing, be grounds for revocation or suspension of a permit.

Sec. 7. That section 87-310, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-310. The Public Service Commission shall adopt and promulgate all rules and regulations necessary to carry out the provisions of sections 87-302, 87-303.08, and 87-307 to 87-311 and sections 6 and 9 of this act. Such rules and regulations shall include, but not be limited to, limitations on the length of messages and the days of the week, holidays, and the time of day when calls can be made. The Public Service Commission may conduct investigations and enforce sections 87-302, 87-303.08, and 87-307 to 87-311 and sections 6 and 9 of this act. A person may appeal any decision of the Public Service Commission made pursuant to section 87-308 or 87-309 or section 6 of this act in the manner provided in section 75-137.

Sec. 8. That section 87-311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-311. It is the intent of the Legislature that sections 87-302, 87-303.08, and 87-307 to 87-311 and sections 6 and 9 of this act shall apply to any automatic dialing-announcing devices connected to or operated on any telephone line both prior and subsequent to August 24, 1979. Each person who has obtained a permit prior to the effective date of this act or who was operating such device in compliance with the requirements of law prior to the effective date of this act may continue to connect or operate such device for six months or less after the effective date of this act but shall not continue to connect or operate such device after the expiration of the six-month period without obtaining a new permit pursuant to section 87-308.

Sec. 9. Any person using an automatic dialing-announcing device other than for advertising purposes shall register the device and the use with the Public Service Commission.

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Sec. 10. That original sections 87-302, 87-303.08, and 87-307 to 87-311, Reissue Revised Statutes of Nebraska, 1943, are repealed.