

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 654

Introduced by Murante, 49.

Read first time January 18, 2017

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Automatic Dialing-Announcing Devices
2 Act; to amend sections 75-132.01, 86-236, 86-250, 86-252, 86-253,
3 86-254, 86-255, 86-256, and 86-257, Reissue Revised Statutes of
4 Nebraska, and section 49-14,123, Revised Statutes Cumulative
5 Supplement, 2016; to change duties of the Public Service Commission;
6 to provide duties and separate jurisdiction for the Nebraska
7 Accountability and Disclosure Commission for political telephone
8 calls or messages; to change provisions relating to registration,
9 enforcement, fines, and appeals; to harmonize provisions; to repeal
10 the original sections; and to outright repeal section 86-239,
11 Reissue Revised Statutes of Nebraska.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 49-14,123, Revised Statutes Cumulative
2 Supplement, 2016, is amended to read:

3 49-14,123 In addition to any other duties prescribed by law, the
4 commission shall:

5 (1) Adopt and promulgate rules and regulations to carry out the
6 Nebraska Political Accountability and Disclosure Act pursuant to the
7 Administrative Procedure Act;

8 (2) Prescribe forms for statements and reports required to be filed
9 pursuant to the Nebraska Political Accountability and Disclosure Act and
10 furnish such forms to persons required to file such statements and
11 reports;

12 (3) Prepare and publish one or more manuals explaining the duties of
13 all persons and other entities required to file statements and reports by
14 the act and setting forth recommended uniform methods of accounting and
15 reporting for such filings;

16 (4) Accept and file any reasonable amount of information voluntarily
17 supplied that exceeds the requirements of the act;

18 (5) Make statements and reports filed with the commission available
19 for public inspection and copying during regular office hours and make
20 copying facilities available at a cost of not more than fifty cents per
21 page;

22 (6) Compile and maintain an index of all reports and statements
23 filed with the commission to facilitate public access to such reports and
24 statements;

25 (7) Prepare and publish summaries of statements and reports filed
26 with the commission and special reports and technical studies to further
27 the purposes of the act;

28 (8) Review all statements and reports filed with the commission in
29 order to ascertain whether any person has failed to file a required
30 statement or has filed a deficient statement;

31 (9) Preserve statements and reports filed with the commission for a

1 period of not less than five years from the date of receipt;

2 (10) Issue and publish advisory opinions on the requirements of the
3 act upon the request of a person or government body directly covered or
4 affected by the act. Any such opinion rendered by the commission, until
5 amended or revoked, shall be binding on the commission in any subsequent
6 charges concerning the person or government body who requested the
7 opinion and who acted in reliance on it in good faith unless material
8 facts were omitted or misstated by the person or government body in the
9 request for the opinion;

10 (11) Act as the primary civil enforcement agency for violations of
11 the Nebraska Political Accountability and Disclosure Act and the rules or
12 regulations adopted and promulgated thereunder;

13 (12) Receive all late filing fees, civil penalties, and interest
14 imposed pursuant to the Nebraska Political Accountability and Disclosure
15 Act and remit all such funds to the State Treasurer for credit to the
16 Nebraska Accountability and Disclosure Commission Cash Fund;~~and~~

17 (13) Prepare and distribute to the appropriate local officials
18 statements of financial interest, campaign committee organization forms,
19 filing instructions and forms, and such other forms as the commission may
20 deem appropriate; and -

21 (14) Adopt and promulgate rules and regulations to carry out its
22 duties under the Automatic Dialing-Announcing Devices Act.

23 Sec. 2. Section 75-132.01, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 75-132.01 (1) Notwithstanding the provisions of section 75-131 and
26 except as provided by section 86-253, the commission shall have exclusive
27 original jurisdiction over any action concerning a violation of any
28 provision of (a) the Automatic Dialing-Announcing Devices Act, the
29 Emergency Telephone Communications Systems Act, the Enhanced Wireless 911
30 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska
31 Telecommunications Regulation Act, the Nebraska Telecommunications

1 Universal Service Fund Act, the Telecommunications Relay System Act, or
2 the Telephone Consumer Slamming Prevention Act by any person providing
3 telecommunications service for a fee in Nebraska intrastate commerce
4 pursuant to such acts or (b) sections 86-574 to 86-578 by an agency or
5 political subdivision of the state.

6 (2) If the commission enters an order declining jurisdiction under
7 subsection (1) of this section, any interested person may petition the
8 district court of the county in which such alleged violation has
9 occurred. If it appears to the court, after a hearing, that a provision
10 of such acts or sections has been violated, the court may issue an
11 injunction or other proper process to restrain the telecommunications
12 company and its directors, officers, employees, or agents or the agency
13 or political subdivision of the state from continuing such violation and
14 may order additional relief. Any party to the case shall have the right
15 to appeal the decision of the district court to the Court of Appeals
16 under the rules provided by law for appeals in civil cases.

17 Sec. 3. Section 86-236, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 86-236 Sections 86-236 to 86-257 and section 10 of this act shall be
20 known and may be cited as the Automatic Dialing-Announcing Devices Act.

21 Sec. 4. Section 86-250, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 86-250 (1) A person shall not connect or operate an automatic
24 dialing-announcing device for the purpose of making telephone
25 solicitations on any telephone line unless the person has a current
26 permit from the Public Service Commission ~~commission~~ for the device. An
27 applicant for a permit shall make a written application to the
28 commission. The application shall be in a form prescribed by the
29 commission and shall require information about the type of device
30 proposed for connection and operation, the time of day telephone
31 solicitations will be made using the device, the anticipated number of

1 calls proposed to be placed during the specified calling period, the
2 average length of a completed call, or such alternative or additional
3 information as the commission may require. If the applicant is an
4 individual, the application shall include the applicant's social security
5 number. The applicant shall remit a fee of five hundred dollars for each
6 device with the application.

7 (2) Upon receiving an application for a permit, the commission may
8 grant, grant as modified, or deny the application. The commission may
9 modify or deny the permit if the commission determines that (a) the
10 applicant is unwilling or unable to meet the requirements placed on such
11 operations by law, rule, or regulation or has failed to comply with the
12 requirements in the past, (b) the connection or operation of the device
13 will result in a significant decline in the quality of service or access
14 to service for other telephone users, (c) the applicant's equipment is
15 unable to meet the requirements of law, rule, or regulation, or (d) the
16 application does not contain adequate information.

17 (3) If a permit is granted, the permit shall remain in force for two
18 years from the date of issuance, and each application for the renewal of
19 a permit shall be treated as a new application.

20 (4) After receiving a permit but prior to connecting or operating an
21 automatic dialing-announcing device on any telephone line, the
22 permitholder shall notify the telephone company of the telephone line on
23 which the device is proposed to be connected or operated. The telephone
24 line shall be considered a business telephone line. The telephone company
25 shall release to the commission the identity of any person connecting or
26 operating an automatic dialing-announcing device when requested to do so
27 by the commission pursuant to an investigation.

28 (5) A person contracting with a third party to connect or operate an
29 automatic dialing-announcing device for the purpose of making telephone
30 solicitations on any telephone line shall be jointly and severally liable
31 with the third party for connecting and operating the automatic dialing-

1 announcing device in violation of the Automatic Dialing-Announcing
2 Devices Act or the rules and regulations adopted and promulgated under
3 the act.

4 (6) A person contracting with a third party to connect or operate an
5 automatic dialing-announcing device for the purpose of making telephone
6 solicitations shall file with the commission the message to be used to
7 comply with the requirements of section 86-247. Such person shall file
8 any subsequent change to the message with the commission within five days
9 after the change.

10 Sec. 5. Section 86-252, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 86-252 (1) The Public Service Commission ~~commission~~ shall adopt and
13 promulgate rules and regulations necessary to carry out those provisions
14 of the Automatic Dialing-Announcing Devices Act governing (a) persons
15 required to have a permit under section 86-250 for using an automatic
16 dialing-announcing device for purposes of making a telephone solicitation
17 and (b) persons required to register under subsection (1) of section
18 86-256. The rules and regulations shall include limitations on the length
19 of calls and messages and the days of the week, holidays, and time of day
20 when calls can be made.

21 (2) The Nebraska Accountability and Disclosure Commission shall
22 adopt and promulgate rules and regulations necessary to carry out those
23 provisions of the Automatic Dialing-Announcing Devices Act governing
24 persons required to register under section 10 of this act for using an
25 automatic dialing-announcing device for purposes of supporting or
26 opposing a political candidate or ballot issue.

27 Sec. 6. Section 86-253, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 86-253 The Public Service Commission and Nebraska Accountability and
30 Disclosure Commission shall have separate jurisdiction to ~~commission may~~
31 conduct investigations and shall enforce their respective duties under

1 the Automatic Dialing-Announcing Devices Act. Upon written complaint and
2 supporting affidavit that an applicable law, rule, or regulation has been
3 or is being violated, the applicable commission may enter a cease and
4 desist order on an ex parte basis against the party named in the
5 complaint. The order shall have duration of no more than twenty days, and
6 a hearing upon the complaint shall be held no later than twenty days
7 after the order is entered. In addition to any criminal or other
8 penalties, failure to comply with an applicable law, rule, or regulation
9 shall constitute grounds for revocation or suspension of a permit or
10 registration.

11 Sec. 7. Section 86-254, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 86-254 The Public Service Commission ~~commission~~, its agents or
14 employees, or any peace officer of this state at the direction of the
15 commission may, at any place in the state, seize without a warrant any
16 automatic dialing-announcing device the operation of which does not
17 conform in all respects to requirements imposed by subdivisions (1) and
18 (2) of section 86-244 or any rules or regulations. The seized device
19 shall constitute contraband. The commission may, upon satisfactory proof,
20 direct return of a seized device when the evidence establishes the owner
21 did not willfully or intentionally fail to comply with the applicable
22 law, rules, or regulations. The commission may, upon finding that the
23 owner of a seized device has willfully or intentionally failed to comply
24 with the applicable law, rules, or regulations, confiscate the device.
25 Any device so confiscated may be destroyed. Destruction of a device shall
26 not occur before all statutory appeal periods available to the owner have
27 been exhausted. The seizure and destruction of an automatic dialing-
28 announcing device shall not relieve any person from a fine, imprisonment,
29 or other penalty for violation of the applicable law, rules, or
30 regulations. The commission, its agents and employees, or any peace
31 officer of this state shall not be liable for negligence for the seizure,

1 confiscation, or destruction of any contraband pursuant to this section.

2 Sec. 8. Section 86-255, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 86-255 Any decision of the Public Service Commission or the Nebraska
5 Accountability and Disclosure Commission ~~commission~~ made pursuant to the
6 Automatic Dialing-Announcing Devices Act or the rules and regulations may
7 be appealed. The appeal shall be in accordance with the Administrative
8 Procedure Act ~~section 75-136~~.

9 Sec. 9. Section 86-256, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 86-256 (1) Except as provided in section 10 of this act:

12 (a) Any person using an automatic dialing-announcing device other
13 than for telephone solicitations shall register the device with the
14 Public Service Commission ~~commission~~ pursuant to the application process,
15 without a fee, and shall include with the application a detailed
16 explanation of the use planned and the message to be used; and -

17 (b) ~~(2)~~ All telephone messages transmitted by an automatic dialing-
18 announcing device other than telephone solicitations shall:

19 (i) ~~(a)~~ At the beginning of the message, state clearly the identity
20 of the person on whose behalf the message is being transmitted;

21 (ii) ~~(b)~~ During or after the message, state clearly the telephone
22 number, other than that of the device which made the call, or address of
23 the person operating the device; and

24 (iii) ~~(c)~~ Transmit messages only between the hours of 8 a.m. and 9
25 p.m. at the location of the person receiving the message.

26 (2) ~~(3)~~ This section does not apply to (a) a message from any
27 elementary, secondary, or postsecondary educational institution to any of
28 its students, parents, or employees, (b) a message to a person with whom
29 the person placing the call or the person on whose behalf the message is
30 being transmitted has an established business or personal relationship,
31 (c) a message from an employer advising any of its employees of work

1 schedules, or (d) a message from a political subdivision as defined in
2 section 13-903.

3 (3) Except as provided in section 10 of this act, a ~~(4)~~ A person
4 contracting with a third party to connect or operate an automatic
5 dialing-announcing device for other than telephone solicitations shall
6 (a) be jointly and severally liable with the third party for connecting
7 and operating the automatic dialing-announcing device in violation of the
8 Automatic Dialing-Announcing Devices Act or the rules and regulations
9 adopted and promulgated under the act and (b) -

10 ~~(5) A person contracting with a third party to connect or operate an~~
11 ~~automatic dialing-announcing device for other than telephone~~
12 ~~solicitations shall file with the commission the message to be used~~
13 ~~within twenty-four hours after the message is transmitted.~~

14 Sec. 10. (1) Any person using an automatic dialing-announcing
15 device for the purpose of supporting or opposing a political candidate or
16 ballot issue shall register the device with the Nebraska Accountability
17 and Disclosure Commission pursuant to the application process prescribed
18 by rules and regulations adopted and promulgated by the commission,
19 without a fee, and shall include with the application a detailed
20 explanation of the use planned and the message to be used.

21 (2) All telephone messages transmitted by an automatic dialing-
22 announcing device other than telephone solicitations shall:

23 (a) At the beginning of the message, state clearly the identity of
24 the person on whose behalf the message is being transmitted;

25 (b) During or after the message, state clearly the telephone number,
26 other than that of the device which made the call, or address of the
27 person operating the device; and

28 (c) Transmit messages only between the hours of 8 a.m. and 9 p.m. at
29 the location of the person receiving the message.

30 (3) A person contracting with a third party to connect or operate an
31 automatic dialing-announcing device for the purpose of supporting or

1 opposing a political candidate or ballot issue shall (a) be jointly and
2 severally liable with the third party for connecting and operating the
3 automatic dialing-announcing device in violation of the Automatic
4 Dialing-Announcing Devices Act or the rules and regulations adopted and
5 promulgated under the act and (b) file with the commission the message to
6 be used within twenty-four hours after the message is transmitted.

7 Sec. 11. Section 86-257, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 86-257 The Public Service Commission and the Nebraska Accountability
10 and Disclosure Commission ~~commission~~ may administratively fine, pursuant
11 to the rules of procedure adopted and promulgated pursuant to their
12 authority under the Automatic Dialing-Announcing Devices Act, section
13 ~~75-156~~ any person who violates the Automatic Dialing-Announcing Devices
14 Act or the rules and regulations adopted and promulgated under the act.

15 Sec. 12. Original sections 75-132.01, 86-236, 86-250, 86-252,
16 86-253, 86-254, 86-255, 86-256, and 86-257, Reissue Revised Statutes of
17 Nebraska, and section 49-14,123, Revised Statutes Cumulative Supplement,
18 2016, are repealed.

19 Sec. 13. The following section is outright repealed: Section
20 86-239, Reissue Revised Statutes of Nebraska.