

LEGISLATIVE BILL 257

Approved by the Governor April 20, 1979

Introduced by Wesely, 26

AN ACT relating to telephones; to prohibit installation of certain equipment without a permit; to provide procedures; to provide a penalty; to amend sections 87-302 and 87-303.08, Reissue Revised Statutes of Nebraska, 1943; 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 business, vocation, or occupation, he:

(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 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; or

(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 an automatic dialing-announcing device without first obtaining a permit issued pursuant to sections 3 to 6 of this act.

(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. As used in this act, unless the context otherwise requires, automatic dialing-announcing device shall mean a device which selects and dials telephone numbers and without obtaining permission of the recipient plays a recorded advertising message.

Sec. 3. No person shall connect any automatic dialing-announcing device to any telephone line without first obtaining a 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, 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. Upon receiving such an application for service, the Public Service Commission may deny the application or modify the application and grant the application as so modified.

Sec. 4. Prior to issuing a permit pursuant to section 3 of this act, 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 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. Failure to comply with the provisions of such an agreement shall, after ten days' notice and a hearing, be grounds for revocation or suspension of a permit.

Sec. 5. The Public Service Commission shall adopt and promulgate all rules and regulations necessary to carry out the provisions of this act. Such rules and regulations shall include, but not be limited to, limitations on the length of messages and the time of day when calls can be made.

Sec. 6. It is the intent of the Legislature that this act shall apply to any automatic dialing-announcing devices connected to any telephone line both prior and subsequent to the effective date of this act.

Sec. 7. That section 87-303.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-303.08. Any person who violates any of the provisions of section 87-302 or 87-303.01, or sections 3 to 6 of this act shall be guilty of a Class III misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.

Sec. 8. That original sections 87-302 and 87-303.08, Reissue Revised Statutes of Nebraska, 1943, are repealed.