

LEGISLATIVE BILL 305

Approved by the Governor April 12, 1993

Introduced by McKenzie, 34; Bohlke, 33; Day, 19

AN ACT relating to telecommunications; to amend sections 86-901 to 86-906, 86-1002, 86-1005, 87-302, 87-303.08, and 87-303.11, Revised Statutes Supplement, 1992; to state and restate intent; to provide, change, and eliminate definitions; to regulate activities involving automatic dialing-announcing devices and facsimile and similar machines; to provide for fees; to provide penalties; to provide powers and duties for the Public Service Commission; to eliminate provisions relating to such devices and machines; to name the Telecommunications Relay System Act; to rename a fund; to provide for the transfer of funds; to change provisions relating to a surcharge; to require certain reports regarding 911 service; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections, and also sections 87-307 to 87-312, Revised Statutes Supplement, 1992.

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

Section 1. For purposes of sections 1 to 22 of this act, the definitions found in sections 2 to 7 of this act shall be used.

Sec. 2. Automatic dialing-announcing device shall mean a device which selects and dials telephone numbers and automatically plays a recorded message.

Sec. 3. Commission shall mean the Public Service Commission.

Sec. 4. Emergency purposes shall mean any situation affecting the health and safety of a consumer.

Sec. 5. Established business relationship shall mean a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party.

Sec. 6. Telephone solicitation shall mean a telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which call or message is transmitted to any person. The term shall not include a call or message (1) made to any person with the person's prior express invitation or permission, (2) made to any person with whom the caller has an established business relationship, (3) made by

a tax-exempt nonprofit organization, (4) not made for commercial purposes, (5) made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or (6) placed by a live operator and a prerecorded message is not utilized.

Sec. 7. Unsolicited advertisement shall mean any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

Sec. 8. A person shall not initiate a telephone solicitation, other than a call made for emergency purposes, using an automatic dialing-announcing device to: (1) An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency; (2) the telephone line of any guest room or patient room of a hospital, health care facility, nursing home, or similar facility; (3) any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person called is charged for the call; or (4) a residential or business telephone line unless the telephone solicitation is otherwise permitted by sections 1 to 22 of this act.

Sec. 9. A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

Sec. 10. A person shall not use an automatic dialing-announcing device in such a way that two or more telephone lines of a business with a multiline telephone system are engaged simultaneously.

Sec. 11. All telephone solicitation messages delivered by an automatic dialing-announcing device shall:

(1) At the beginning of the message, state clearly the identity of the person making the call; and

(2) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of such person.

Sec. 12. (1) A person shall not make a telephone solicitation using an automatic dialing-announcing device to a residential telephone line (a) before 8 a.m. or after 9 p.m. at the location of the person called and (b) unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.

(2) The procedures instituted pursuant to subdivision (1)(b) of this section shall meet the following minimum standards:

(a) A written policy, available upon demand, for maintaining a do-not-call list must be established;

(b) Personnel engaged in any aspect of telephone solicitation must be informed of the existence of and trained in the use of the do-not-call list;

(c) If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation is made, the person on whose behalf the solicitation is made shall be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation is made or an affiliated entity;

(d) A person making a telephone solicitation shall provide the person called with the identity of the person making the call and a telephone number, other than that of the device which placed the call, or address at which the person may be contacted;

(e) In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised; and

(f) A person making telephone solicitations shall maintain a do-not-call list for the purpose of any future telephone solicitations.

Sec. 13. An automatic dialing-announcing device delivering a recorded message to a person shall release the telephone line of the person called within five seconds of the time notification is transmitted to the device that the person called has hung up, or as soon thereafter as the serving telephone company's central office equipment permits, to allow the telephone line of the person called to be used to make or receive other calls.

Sec. 14. (1) A person shall not connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line unless the person has a current permit from the commission for the device. An applicant for a permit shall make a written application to the commission. The application shall be in a form prescribed by the commission and shall require information about the type of device proposed for connection and operation, the time of day telephone solicitations will be made using the device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, or such alternative or additional information as the commission may require. The applicant shall remit a fee of five hundred dollars for each device with the application.

(2) Upon receiving an application for a permit, the commission may grant, grant as modified, or deny the application. The

commission may modify or deny the permit 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 the requirements in the past, (b) the connection or operation of the device will 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.

(3) If a permit is granted, the 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.

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

Sec. 15. A person shall not connect or operate an automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially which means in any manner other than a random manner. A detectable, predictable pattern which can be used to accurately project the device's number dialing shall satisfy a finding that sequential number dialing is taking place in violation of this section.

Sec. 16. The commission shall adopt and promulgate rules and regulations to carry out sections 1 to 22 of this act. The rules and regulations shall include limitations on the length of calls and messages and the days of the week, holidays, and time of day when calls can be made.

Sec. 17. The commission may conduct investigations and shall enforce sections 1 to 22 of this act. Upon written complaint and supporting affidavit that an applicable law, rule, or regulation has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against the party named in the complaint. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered. In addition to any criminal or other penalties, failure to comply with an applicable law, rule, or regulation shall constitute grounds for revocation or suspension of a permit.

Sec. 18. The commission, its agents or employees, or any peace officer of this state at the direction of the commission may, at any place in the state, seize without a warrant any automatic dialing-announcing device the operation of which does not conform in all respects to requirements imposed by subdivisions (1) and (2) of section 8 of this act or any rules or regulations. The seized device shall constitute contraband. The commission may, upon satisfactory proof, direct return

of a seized device when the evidence establishes the owner did not willfully or intentionally fail to comply with the applicable law, rules, or regulations. The commission may, upon finding that the owner of a seized device has willfully or intentionally failed to comply with the applicable law, rules, or regulations, confiscate the device. Any device so confiscated may be destroyed. Destruction of a device shall not occur before all statutory appeal periods available to the owner have been exhausted. The seizure and destruction of an automatic dialing-announcing device shall not relieve any person from a fine, imprisonment, or other penalty for violation of the applicable law, rules, or regulations. The commission, its agents and employees, or any peace officer of this state shall not be liable for negligence for the seizure, confiscation, or destruction of any contraband pursuant to this section.

Sec. 19. Any decision of the commission made pursuant to sections 1 to 22 of this act or the rules and regulations may be appealed in the manner provided in section 75-137.

Sec. 20. It is the intent of the Legislature that sections 1 to 22 of this act apply to automatic dialing-announcing devices connected or operated on any telephone line both prior and subsequent to August 24, 1979. Each person who obtained a permit or registration prior to the operative date of this act and who was operating the device in compliance with the requirements of the law in effect at the time may continue to connect or operate the device until December 31, 1993, and shall cease to connect or operate the device after such date unless a permit or registration is obtained pursuant to sections 1 to 22 of this act.

Sec. 21. Any person using an automatic dialing-announcing device other than for telephone solicitations shall register the device with the commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the script to be used.

Sec. 22. The commission may administratively fine any person who violates sections 1 to 22 of this act or the rules and regulations adopted and promulgated thereunder in an amount not to exceed one thousand dollars per violation after notice and hearing. In addition to any other penalties available at law, any person who violates such sections shall be guilty of a Class II misdemeanor.

Sec. 23. Sections 23 to 29 of this act shall be known and may be cited as the Telecommunications Relay System Act.

Sec. 24. That section 86-901, Revised Statutes Supplement, 1992, be amended to read as follows:

86-901. The purpose of sections 86-901 to 86-906 the Telecommunications Relay System Act is to provide a statewide dual party telecommunications relay system for hearing-impaired or speech-impaired persons in Nebraska to enable such persons to communicate fully with others using conventional telephone systems which enables them to communicate twenty-four hours per day, seven days per week, with other persons who use conventional telephone systems.

Sec. 25. That section 86-902, Revised Statutes Supplement, 1992, be amended to read as follows:

~~86-902. For purposes of sections 86-901 to 86-906 the~~
Telecommunications Relay System Act:

(1) Commission shall mean the Public Service Commission;
(2) ~~Dual party relay system shall mean a service that permits full and simultaneous communication between hearing-impaired or speech-impaired persons using specialized telecommunications equipment and others using conventional telephone equipment;~~

(3) Fund shall mean the Nebraska Telephone Telecommunications Relay System Fund; ~~and~~

(3) (4) Specialized telecommunications equipment shall mean any telecommunications device ~~which enables~~ enabling hearing-impaired or speech-impaired persons to communicate using conventional telephone systems. Specialized telecommunications equipment shall include, but not be limited to, telecommunications devices for the deaf, signaling devices, and electronic artificial larynx devices; ~~and~~

(4) Telecommunications relay system shall mean a service permitting full and simultaneous communication between hearing-impaired or speech-impaired persons using specialized telecommunications equipment and other persons using conventional telephone equipment.

Sec. 26. That section 86-903, Revised Statutes Supplement, 1992, be amended to read as follows:

~~86-903. There is hereby created the Nebraska Telephone Telecommunications Relay System Fund. The fund shall be used to provide a statewide dual party telecommunications relay system.~~

Any money in the Nebraska Telephone Relay System Fund on the operative date of this act shall be transferred to the Nebraska Telecommunications Relay System Fund on such date.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 27. That section 86-904, Revised Statutes Supplement, 1992, be amended to read as follows:

~~86-904. (1)(a) Each Beginning January 1, 1991, each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed ten twenty cents per month on each telephone access line in Nebraska, including cellular telephone service. The surcharge shall only be collected on the first one hundred telephone access lines per customer subscriber. The telephone companies shall add the surcharge to each customer's subscriber's local telephone bill.~~

(b) The telephone companies shall not be liable for any surcharge not paid by a customer subscriber and shall not be obligated to take legal action to collect the surcharge.

(2) ~~Before September 1, 1990, and before September 1, October 1 of each year, thereafter,~~ the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the

~~purpose specified in section 86-901.~~ Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide ~~dual-party~~ telecommunications relay system for the following year plus a reasonable reserve. The surcharge ~~shall be effective on January 1, 1991, and any changes in the rate shall become effective on January 1 following the change.~~

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) The proceeds from the surcharge shall be remitted to the commission monthly no later than thirty days after the end of the month in which they were collected together with forms ~~to be~~ provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any telephone company collecting the surcharge ~~under this section~~ pursuant to the act.

Sec. 28. That section 86-905, Revised Statutes Supplement, 1992, be amended to read as follows:

~~86-905.~~ The commission shall establish standards, procedures, and training specifications for the ~~dual-party telecommunications~~ relay system and shall supervise ~~the its~~ operation, ~~of the system.~~ The system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, and shall provide at least the following services to all hearing-impaired or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment: (1) Statewide in-state calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (2) out-of-state calls with charges billed to the person making the call; and (3) emergency calls. Any person using the system shall not be charged for access to the system other than charges billed for in-state and out-of-state long-distance service. The commission shall adopt and promulgate rules and regulations necessary for implementation of ~~sections 86-901 to 86-906~~ the Telecommunications Relay System Act. The commission may enter into contracts with other agencies or private organizations to operate the ~~statewide dual-party telecommunications~~ relay system.

Sec. 29. That section 86-906, Revised Statutes Supplement, 1992, be amended to read as follows:

~~86-906.~~ The commission shall administer ~~sections 86-901 to 86-906~~ the Telecommunications Relay System Act with the advice of a special committee appointed by the Commission for the Hearing Impaired. The special committee shall consist of seven members as follows: Two members shall be hearing-impaired persons, one of whom is deaf; one member shall be a speech-impaired person; one member shall represent the Public Service Commission; one member shall represent the telephone industry; one member shall represent the Commission for the Hearing Impaired; and one member shall represent

the public.

Sec. 30. That section 86-1002, Revised Statutes Supplement, 1992, be amended to read as follows:

86-1002. For purposes of sections 86-1001 to 86-1009:

(1) Automatic location identification shall mean a feature by which the name and address associated with the calling party's telephone number is forwarded to the public safety answering point for display. Additional telephones with the same telephone number as the calling party's shall be identified with the address of the telephone number at the main location of the calling party. This feature shall be available only for E-911 service;

(2) Automatic number identification shall mean a feature by which the calling party's automatic number identification telephone number is forwarded to the E-911 control office and to the public safety answering point's display and transfer units. This feature shall be available only for E-911 service;

(3) E-911 service or enhanced-911 service shall mean a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features;

(4) Governing body shall mean the board of county commissioners or supervisors of a county, the city council of a city, the board of trustees of a village, or the board of directors of any rural or suburban fire protection district;

(5) Local exchange access line shall mean any telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911;

(6) 911 service shall mean a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such area;

(7) 911 service area shall mean (a) the portion of a governing body's jurisdiction in which 911 service is provided and (b) an area being provided 911 service by contract with a service supplier on or before January 1, 1990, notwithstanding the crossing of jurisdictional lines, until such time as the noncontracting governing body notifies the contracting governing body in writing of its intention to opt out of the 911 service area;

(8) Public safety agency shall mean an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services;

(9) Public safety answering point shall mean a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays

calls to the appropriate public safety agency;

(7) (10) Service supplier shall mean any person providing 911 service in this state;

(8) (11) Service surcharge shall mean a charge set by a governing body and assessed on each local exchange access line which physically terminates within the governing body's designated 911 service area; and

(9) (12) Service user shall mean any person who is provided local exchange access line service in this state.

Sec. 31. That section 86-1005, Revised Statutes Supplement, 1992, be amended to read as follows:

86-1005. (1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's books and records concerning the collection and remittance of a service surcharge.

(2) Each service supplier shall report to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the surcharge, (c) the location of the public safety answering point, (d) whether the governing body belongs to an interlocal agreement or other agreement with another governing body and, if so, the name of the other governing body, and (e) the amount of revenue collected by the surcharge.

The initial report shall be due April 30, 1994, for calendar year 1993 and subsequent reports shall be due no later than April 30 of each year. The report period shall be the preceding calendar year.

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations to carry out subsections (2) and (3) of this section.

Sec. 32. That section 87-302, Revised Statutes Supplement, 1992, 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; 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; †

~~(14) Connects or operates an automatic dialing announcing device for advertising purposes unless there is in force with respect to such device a current permit issued pursuant to sections 87-308 to 87-311; or~~

~~(15) Intentionally transmits an unsolicited electronic or telephonic transmission to a facsimile device for advertising purposes without the receiver's prior, express permission.~~

(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. 33. That section 87-303.08, Revised Statutes Supplement, 1992, be amended to read as follows:

87-303.08. Any person who violates the Uniform Deceptive Trade Practices Act ~~or sections 87-308 to 87-312~~ shall be guilty of a Class II misdemeanor except as otherwise provided in the act.

~~or such sections.~~

Sec. 34. That section 87-303.11, Revised Statutes Supplement, 1992, be amended to read as follows:

87-303.11. Any person who violates section 87-302, ~~except subdivision (a)(14) of such section,~~ or section 87-303.01 or who willfully violates the terms of an injunction or declaratory judgment of a district court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action. For purposes of this section, the district court which issues any injunction shall retain jurisdiction and the cause shall be continued while the Attorney General seeks the recovery of such civil penalties.

Sec. 35. This act shall become operative on October 1, 1993.

Sec. 36. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 37. That original sections 86-901 to 86-906, 86-1002, 86-1005, 87-302, 87-303.08, and 87-303.11, Revised Statutes Supplement, 1992, and also sections 87-307 to 87-312, Revised Statutes Supplement, 1992, are repealed.