

LEGISLATIVE BILL 408

Approved by the Governor April 5, 1991

Introduced by Wesely, 26

AN ACT relating to deceptive trade practices; to amend sections 87-302 and 87-307, Revised Statutes Supplement, 1990; to define and redefine terms; to enumerate a deceptive trade practice; and to repeal the original sections.

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

Section 1. That section 87-302, Revised Statutes Supplement, 1990, 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) 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. 2. That section 87-307, Revised Statutes Supplement, 1990, be amended to read as follows:

87-307. As used in For purposes of sections 87-302, 87-303.08, and 87-307 to 87-312, 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 service or to solicit a contribution to any group, organization, or committee;

(2) Automatic dialing-announcing device shall mean a device which selects and dials telephone numbers and automatically plays a recorded ~~advertising~~ message for advertising purposes; and

(3) Facsimile device shall mean any machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines; and

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

Sec. 3. That original sections 87-302 and 87-307, Revised Statutes Supplement, 1990, are repealed.