

HOUSE BILL No. 2367

By Committee on Business, Commerce and Labor

2-7

AN ACT concerning the charitable organizations and solicitations act; relating to unlawful acts and practices; telephone solicitations; amending K.S.A. 17-1769 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 17-1769 is hereby amended to read as follows: 17-1769. The following acts and practices are hereby declared unlawful as applied to the planning, conduct or execution of any solicitation or charitable purpose:

(a) Operating in violation of, or failing to comply with, any of the requirements of this act;

(b) utilizing any deceptive acts or practices whether or not any person has in fact been misled. Deceptive acts or practices include, but are not limited to, the following:

(1) The intentional use in any solicitation of exaggeration, innuendo or ambiguity as to a material fact; ~~and~~

(2) the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact in any solicitation;

(3) *the failure to provide upon the request of any person the percentage of the cost of fund raising incurred or anticipated to be incurred as a percent of contributions received; and*

(4) *sending or delivering a solicitation which could reasonably be interpreted or construed as a bill, invoice or statement of account due, unless such solicitation contains the following notice, on its face, in clear, conspicuous and legible type in contrast by typography, layout or color with other printing on its face:*

“THIS IS A SOLICITATION FOR A CHARITABLE CONTRIBUTION AND NOT A BILL, INVOICE OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS”;

(c) utilizing any unconscionable acts or practices. An unconscionable act or practice violates this act whether it occurs before, during or after the solicitation.

(1) The unconscionability of an act or practice is a question for the court.

1 (2) In determining whether an act or practice is unconscionable, the
2 court shall consider circumstances which the charitable organization or
3 fund raiser knew or had reason to know including, but not limited to, the
4 following:

5 (A) Taking advantage of a person's inability to reasonably protect such
6 person's interests because of the person's physical infirmity, ignorance,
7 illiteracy, inability to understand the language of a solicitation or similar
8 factor; and

9 (B) using undue pressure in soliciting;

10 (d) utilizing any representation that implies the contribution is for or
11 on behalf of a charitable organization or utilizing any emblem, device or
12 printed matter belonging to or associated with a charitable organization,
13 without obtaining authorization in writing from the charitable
14 organization;

15 (e) utilizing a name, symbol or statement so closely related or similar
16 to that used by another charitable organization that the use thereof would
17 tend to confuse or mislead a solicited person, whether or not any person
18 has in fact been misled;

19 (f) misrepresenting or misleading any person in any manner to be-
20 lieve that the person on whose behalf a solicitation or charitable purpose
21 is being conducted is a charitable organization;

22 (g) using donations for purposes other than those stated in an organ-
23 ization's articles of incorporation or current registration statements filed
24 with the secretary of state;

25 (h) using donations for purposes other than those stated in
26 solicitations;

27 (i) using donations for other than charitable purposes;

28 (j) misrepresenting or misleading any person in any matter, to believe
29 that any other person or governmental unit sponsors, endorses or ap-
30 proves such solicitation or charitable purpose when such other person has
31 not given consent in writing to the use of such person's name for these
32 purposes; and

33 (k) utilizing or exploiting the fact of registrations so as to lead any
34 person to believe that such registration in any manner constitutes an en-
35 dorsement or approval by the state.

36 New Sec. 2. (a) As used in this section:

37 (1) "Automatic dialing-announcing device" means any user terminal
38 equipment which:

39 (A) When connected to a telephone line can dial, with or without
40 manual assistance, telephone numbers which have been stored or pro-
41 grammed in the device or are produced or selected by a random or se-
42 quential number generator; or

43 (B) when connected to a telephone line can disseminate a recorded

1 message to the telephone number called, either with or without manual
2 assistance;

3 (2) “negative response” means a statement from a person indicating
4 the person does not wish to listen to the solicitation or participate in the
5 solicitation presented in the unsolicited telephone call;

6 (3) “telephone solicitor” means any natural person, firm, organiza-
7 tion, partnership, association or corporation who makes or causes to be
8 made an unsolicited telephone call, including, but not limited to, calls
9 made by use of automatic dialing-announcing device;

10 (4) “unsolicited telephone call” means a call made by a telephone
11 solicitor to a residential telephone number for the purpose of soliciting a
12 charitable contribution from the person called, or for the purpose of ob-
13 taining information that will or may be used for the direct solicitation of
14 a charitable contribution from the person called, other than a call made
15 in response to an express request of the person called.

16 (b) Any telephone solicitor who makes an unsolicited telephone call
17 to a residential telephone number shall:

18 (1) State the identity of the professional solicitor and the professional
19 fund raiser;

20 (2) state the city and state from which the telephone solicitor is
21 calling;

22 (3) state the identity of the charitable organization on whose behalf
23 such person is soliciting;

24 (4) state the purpose of the call promptly upon making contact by
25 telephone with the person who is the object of the telephone solicitation;

26 (5) promptly discontinue the solicitation if the person being solicited
27 gives a negative response at any time during the unsolicited telephone
28 call;

29 (6) hang up the phone, or in the case of an automatic dialing-an-
30 nouncing device operator, disconnect the automatic dialing-announcing
31 device from the telephone line within 25 seconds of the termination of
32 the call by the person being called; and

33 (7) a live operator or an automated dialing-announcing device shall
34 answer the line within five seconds of the beginning of the call. If an-
35 swered by an automated dialing-announcing device, the message pro-
36 vided shall include only the information required in subsection (b)(1) and
37 (3), but shall not contain any solicitation.

38 (c) A telephone solicitor shall not withhold the display of the tele-
39 phone solicitor’s telephone number from a caller identification service
40 when that number is being used for telemarketing purposes and when
41 the telephone solicitor’s service or equipment is capable of allowing the
42 display of such number.

43 (d) A telephone solicitor shall not transmit any written information

1 by facsimile machine or computer to a person after the person requests
2 orally or in writing that such transmissions cease.

3 (e) A telephone solicitor shall not obtain by use of any professional
4 delivery, courier or other pickup service receipt or possession of a per-
5 son's payment.

6 (f) Local exchange carriers and telecommunications carriers shall not
7 be responsible for the enforcement of the provisions of this section.

8 (g) Any violation of this section is an unconscionable act or practice
9 under the Kansas charitable organizations and solicitations act.

10 (h) This section shall be part of and supplemental to the Kansas char-
11 itable organizations and solicitations act.

12 Sec. 3. K.S.A. 17-1769 is hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43