

SENATE BILL No. 58

AN ACT relating to consumer protection; prohibiting certain acts; charitable organizations; penalties; amending K.S.A. 17-1764, 17-1773 and 50-636 and repealing the existing sections.

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

New Section 1. (a) No supplier shall obtain or submit for payment, other than for the continuation of existing and recurrent services, services provided by a public utility as defined in K.S.A. 66-104, and amendments thereto, services provided by a wireless carrier as defined in K.S.A. 12-5301, and amendments thereto, or the collection of a preexisting debt, a check, draft or other form of negotiable instrument or payment order drawn on a person's checking, savings, share or similar account without the consumer's express authorization. The supplier obtaining or submitting the check, draft or other form of negotiable instrument or payment order for payment shall have the burden of proving the express authorization by a preponderance of the evidence.

(b) As used in this section, "express authorization" means an express affirmative act by a consumer clearly agreeing to the payment by check, draft or other form of negotiable instrument or payment order drawn on a person's checking, savings, share or similar account.

(c) Nothing in this section shall prohibit a consumer from personally directing the consumer's financial institution to make payment from the consumer's checking, savings, share or similar account via electronic or telephonic means in accordance with procedures set by the consumer's financial institution, nor shall this section affect the right of a consumer to transfer funds from one account to another.

(d) Financial institutions may decline to pay any check, draft or other form of negotiable instrument or payment order submitted without proof of the consumer's express authorization.

(e) A violation of subsection (a) is an unconscionable act within the meaning of K.S.A. 50-627, and amendments thereto.

(f) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. K.S.A. 50-636 is hereby amended to read as follows: 50-636.

(a) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved consumer, or the state or a county as provided in subsection (c), for the payment of a civil penalty, recoverable in an individual action, including an action brought by the attorney general or county attorney or district attorney, in a sum set by the court of not more than ~~\$5,000~~ \$10,000 for each violation. An aggrieved consumer is not a required party in actions brought by the attorney general or a county or district attorney pursuant to this section.

(b) Any supplier who willfully violates the terms of any court order issued pursuant to this act shall forfeit and pay a civil penalty of not more than ~~\$10,000~~ \$20,000 per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an order shall retain jurisdiction, and in such cases, the attorney general, acting in the name of the state, or the appropriate county attorney or district attorney may petition for recovery of civil penalties.

(c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(d) Any act or practice declared to be a violation of this act not identified to be in connection with a specific identifiable consumer transaction but which is continuing in nature shall be deemed a separate violation each day such act or practice exists.

Sec. 3. K.S.A. 17-1773 is hereby amended to read as follows: 17-

1773. (a) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved contributor, or the state or a county as provided in subsection (c), for the payment of a civil penalty, in a sum set by the court of not more than ~~\$2,000~~ \$10,000 for each violation. An aggrieved contributor is not a required party in

actions brought by the attorney general or a county or district attorney pursuant to this act.

(b) Any person who willfully violates the terms of any injunction or court order issued pursuant to this act shall forfeit and pay a civil penalty of not more than ~~\$10,000~~ \$20,000 per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this act, the district court issuing an injunction shall retain jurisdiction, and in such cases, the attorney general, acting in the name of the state or the appropriate county attorney or district attorney may petition for recovery of civil penalties.

(c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Sec. 4. K.S.A. 17-1764 is hereby amended to read as follows: 17-1764. No person shall act as a professional fund raiser for a charitable organization or for any religious organization as described in subsection (k) of K.S.A. 17-1762 and amendments thereto before such person has registered with the secretary of state or after the expiration or cancellation of such registration or any renewal of such registration. Applications for registration and reregistration shall be in writing and under oath in the form prescribed by the secretary of state. ~~The applicant, at the time of making application, shall file with, and have approval of the secretary of state, a bond in the sum of \$5,000, in which the applicant shall be the principal obligor, with one or more corporate sureties licensed to do business in this state whose liability in the aggregate will at least equal such sum. The bond shall run to the state for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation. The aggregate limit of liability of the surety to the state and to all such persons, in no event, shall exceed the sum of such bond.~~ Registration or reregistration shall be in effect for a period of one year, or a part thereof, expiring on June 30, and may be renewed upon written application, under oath, in the form prescribed by the secretary of state ~~and the filing of the bond~~ for additional one year periods. Every professional fund raiser required to register pursuant to this act shall file an annual written report with the secretary of state containing such information as the secretary may require by rule and regulation pursuant to K.S.A. 17-1763 and amendments thereto.

New Sec. 5. (a) If any person is found to have violated any provision of the charitable organizations and solicitations act, and such violation is committed against elder or disabled persons, in addition to any civil penalty otherwise provided by law, the court may impose an additional civil penalty not to exceed \$10,000 for each such violation.

(b) In determining whether to impose a civil penalty as provided in this section and the amount of such civil penalty, the court shall consider the extent to which one or more of the following factors are present:

- (1) Whether the defendant's conduct was in disregard of the rights of the elder or disabled person;
- (2) whether the defendant knew or should have known that the defendant's conduct was directed to an elder or disabled person;
- (3) whether the elder or disabled person was more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility or disability than other persons and actually suffered substantial physical, emotional or economic damage resulting from the defendant's conduct;
- (4) whether the defendant's conduct caused an elder or disabled person to suffer any of the following:
 - (A) Mental or emotional anguish;
 - (B) loss of or encumbrance upon a primary residence of the elder or disabled person;
 - (C) loss of or encumbrance upon the elder or disabled person's principal employment or principal source of income;

(D) loss of funds received under a pension or retirement plan or a government benefits program;

(E) loss of property set aside for retirement or for personal or family care and maintenance;

(F) loss of assets essential to the health and welfare of the elder or disabled person; or

(G) any other factors the court deems appropriate.

(c) As used in this section elder person and disabled person shall mean the same as provided in K.S.A. 2000 Supp. 50-676, and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to the charitable organizations and solicitations act.

Sec. 6. K.S.A. 17-1764, 17-1773 and 50-636 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.