

Auto Dialer Statutes

86-236 Act, how cited.

Sections 86-236 to 86-257 shall be known and may be cited as the Automatic Dialing-Announcing Devices Act.

Source Laws 2002, LB 1105, § 98.

86-237 Definitions, where found.

For purposes of the Automatic Dialing-Announcing Devices Act, the definitions found in sections 86-238 to 86-243 apply.

Source Laws 1993, LB 305, § 1; R.S.1943, (1999), § 86-1201; Laws 2002, LB 1105, § 99.

86-238 Automatic dialing-announcing device, defined.

Automatic dialing-announcing device means a device which selects and dials telephone numbers and automatically plays a recorded message.

Source Laws 1993, LB 305, § 2; R.S.1943, (1999), § 86-1202; Laws 2002, LB 1105, § 100.

86-239 Commission, defined.

Commission means the Public Service Commission.

Source Laws 1993, LB 305, § 3; R.S.1943, (1999), § 86-1203; Laws 2002, LB 1105, § 101.

86-240 Emergency purposes, defined.

Emergency purposes means any situation affecting the health and safety of a consumer.

Source Laws 1993, LB 305, § 4; R.S.1943, (1999), § 86-1204; Laws 2002, LB 1105, § 102.

86-241 Established business relationship, defined.

Established business relationship means 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.

Source Laws 1993, LB 305, § 5; R.S.1943, (1999), § 86-1205; Laws 2002, LB 1105, § 103.

86-242 Telephone solicitation, defined.

(1) Telephone solicitation means 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.

(2) Telephone solicitation does not include a call or message (a) made to any person with the person's prior express invitation or permission, (b) made to any person with whom the caller has an established business relationship, (c) made by a tax-exempt nonprofit organization, (d) not made for commercial purposes, (e) made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or (f) placed by a live operator and a prerecorded message is not utilized.

Source Laws 1993, LB 305, § 6; R.S.1943, (1999), § 86-1206; Laws 2002, LB 1105, § 104; Laws 2008, LB720, § 2.January 1, 2009

86-243 Unsolicited advertisement, defined.

Unsolicited advertisement means 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.

Source Laws 1993, LB 305, § 7; R.S.1943, (1999), § 86-1207; Laws 2002, LB 1105, § 105.

86-244 Telephone solicitations; restrictions.

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 the Automatic Dialing-Announcing Devices Act.

Source Laws 1993, LB 305, § 8; R.S.1943, (1999), § 86-1208; Laws 2002, LB 1105, § 106.

86-245 Unsolicited advertisement to telephone facsimile machine; prohibited.

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

Source Laws 1993, LB 305, § 9; R.S.1943, (1999), § 86-1209; Laws 2002, LB 1105, § 107.

86-246 Automatic dialing-announcing device; certain use prohibited.

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.

Source Laws 1993, LB 305, § 10; R.S.1943, (1999), § 86-1210; Laws 2002, LB 1105, § 108.

86-247 Telephone solicitation message; requirements.

All telephone solicitation messages transmitted 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.

Source Laws 1993, LB 305, § 11; R.S.1943, (1999), § 86-1211; Laws 2002, LB 1105, § 109; Laws 2008, LB720, § 3. January 1, 2009

86-248 Telephone solicitation to residential line; limitations.

(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.

Source Laws 1993, LB 305, § 12; R.S.1943, (1999), § 86-1212; Laws 2002, LB 1105, § 110.

86-249 Automatic dialing-announcing device; release of telephone line; requirements.

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.

Source Laws 1993, LB 305, § 13; R.S.1943, (1999), § 86-1213; Laws 2002, LB 1105, § 111.

86-250 Permit required; procedure; liability; filing required.

(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. If the applicant is an individual, the application shall include the applicant's social security number. 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 permit holder 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.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(6) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations shall file with the commission the message to be used to comply with the requirements of section 86-247. Such person shall file any subsequent change to the message with the commission within five days after the change.

Source Laws 1993, LB 305, § 14; Laws 1997, LB 752, § 231; R.S.1943, (1999), § 86-1214; Laws 2002, LB 1105, § 112; Laws 2008, LB720, § 4. January 1, 2009

86-251 Sequential dialing prohibited.

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.

Source Laws 1993, LB 305, § 15; R.S.1943, (1999), § 86-1215; Laws 2002, LB 1105, § 113.

86-252 Commission; adopt rules and regulations.

The commission shall adopt and promulgate rules and regulations necessary to carry out the Automatic Dialing-Announcing Devices 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.

Source Laws 1993, LB 305, § 16; R.S.1943, (1999), § 86-1216; Laws 2002, LB 1105, § 114.

86-253 Commission; enforcement.

The commission may conduct investigations and shall enforce the Automatic Dialing-Announcing Devices 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.

Source Laws 1993, LB 305, § 17; R.S.1943, (1999), § 86-1217; Laws 2002, LB 1105, § 115.

86-254 Seizure of automatic dialing-announcing devices; when; destruction; liability.

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 86-244 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.

Source Laws 1993, LB 305, § 18; R.S.1943, (1999), § 86-1218; Laws 2002, LB 1105, § 116.

86-255 Commission decision; appeal.

Any decision of the commission made pursuant to the Automatic Dialing-Announcing Devices Act or the rules and regulations may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source Laws 1993, LB 305, § 19; Laws 2000, LB 1285, § 20; R.S.Supp.,2000, § 86-1219; Laws 2002, LB 1105, § 117.

Cross Reference

Administrative Procedure Act, see section 84-920.

86-256 Automatic dialing-announcing device; registration required; when; message requirements; liability; filing required.

(1) 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 message to be used.

(2) All telephone messages transmitted by an automatic dialing-announcing device other than telephone solicitations shall:

(a) At the beginning of the message, state clearly the identity of the person on whose behalf the message is being transmitted;

(b) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of the person operating the device; and

(c) Transmit messages only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the message.

(3) This section does not apply to (a) a message from any elementary, secondary, or postsecondary educational institution to any of its students, parents, or employees, (b) a message to a person with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship, (c) a message from an employer advising any of its employees of work schedules, or (d) a message from a political subdivision as defined in section 13-903.

(4) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall file with the commission the message to be used within twenty-four hours after the message is transmitted.

Source Laws 1993, LB 305, § 21; R.S.1943, (1999), § 86-1221; Laws 2002, LB 1105, § 118; Laws 2008, LB720, § 5. January 1, 2009

86-257 Violations; administrative fine.

The commission may administratively fine pursuant to section 75-156 any person who violates the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

Source Laws 1993, LB 305, § 22; Laws 2000, LB 1285, § 21; R.S.Supp.,2000, § 86-1222; Laws 2002, LB 1105, § 119.