

SENATE BILL No. 426

By Committee on Corrections and Juvenile Justice

2-9

Proposed Amendments to SB 426 - Finney
House Committee on Corrections and Juvenile Justice
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Office of Revisor of Statutes
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1 AN ACT concerning violation of a consumer protection order; relating to
2 door-to-door sales; criminal liability; forfeiture; amending K.S.A. 2015
3 Supp. 60-4104 and repealing the existing section.
4

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

6 New Section 1. (a) Violation of a consumer protection order is
7 engaging in a door-to-door sale while prohibited from door-to-door sales.

8 (b) Violation of a consumer protection order is a severity level 9,
9 person felony.

10 (c) As used in this section:

11 (1) "Door-to-door sale" has the meaning provided by K.S.A. 50-640,
12 and amendments thereto.

13 (2) "Engaging in" means participating, directly or indirectly, in the
14 prohibited conduct or causing, directing, employing, enabling or assisting
15 others to participate in such conduct.

16 (3) "Prohibited from door-to-door sales" means subject to any
17 temporary or permanent order or judgment of a court entered under
18 authority of the Kansas consumer protection act, K.S.A. 50-623 et seq.,
19 and amendments thereto, or any act that is part of or supplemental to the
20 consumer protection act, and that restrains, enjoins or otherwise prohibits
21 the person from engaging in door-to-door sales in this state or any portion
22 thereof. For purposes of this section, an order or judgment restrains,
23 enjoins or otherwise prohibits the person from engaging in door-to-door
24 sales in this state or any portion thereof if such order or judgment:

25 (A) Expressly prohibits the person from engaging in door-to-door
26 sales;

27 (B) prohibits conduct that includes, but is not limited to, engaging in
28 door-to-door sales, such as prohibiting the person from engaging in
29 consumer transactions as defined by K.S.A. 50-624, and amendments
30 thereto; or

31 (C) prohibits engaging in only a particular type of door-to-door sale,
32 such as the door-to-door sale of roofing-related services within the
33 meaning of K.S.A. 2015 Supp. 50-6,122, and amendments thereto, or
34 prohibits engaging in door-to-door sales only in a particular place. In such
35 case, criminal liability under this section shall arise only if the person
36 engaged in the particular type of door-to-door sale that is restrained,

1 enjoined or otherwise prohibited or engaged in a door-to-door sale in the
2 particular place where such sale is restrained, enjoined or otherwise
3 prohibited.
4 (d) A person shall be subject to criminal liability under this section
5 only if the state proves beyond a reasonable doubt that such person had
6 actual or constructive notice of the temporary or permanent order or
7 judgment described in subsection (b)(3).
8 (1) A person has actual notice of the existence of a temporary or
9 permanent order or judgment if:
10 (A) Such order or judgment was actually served on such person in
11 any manner authorized by the code of civil procedure or the Kansas
12 consumer protection act, other than K.S.A. 60-307, and amendments of
13 thereof, at any time prior to the violation of this section, regardless of
14 when such order or judgment was issued; or
15 (B) such person otherwise had actual knowledge of such order or
16 judgment.
17 (2) A person has constructive notice of the existence of a temporary
18 or permanent order or judgment if, on or after July 1, 2016:
19 (A) The petition or subpoena that resulted in issuance of such order
20 or judgment was actually served on such person in any manner authorized
21 by the code of civil procedure or the Kansas consumer protection act, other
22 than K.S.A. 60-307, and amendments thereto;
23 (B) the petition or subpoena contained, or was accompanied by,
24 notice that failure to answer the petition or comply with the subpoena
25 could result in such person being prohibited from door-to-door sales
26 should a judgment be issued, and that a violation of the judgment could
27 constitute an additional crime;
28 (C) actual service of such order or judgment on such person was
29 attempted, but was refused or left unclaimed; and
30 (D) such order or judgment is posted conspicuously on an official and
31 publicly available website of the office of the attorney general, whether or
32 not such order or judgment was actually served on such person.
33 Compliance with this paragraph shall create a rebuttable presumption that
34 such person had knowledge of the existence of such order or judgment, but
35 such presumption may be rebutted by showing, through a preponderance
36 of evidence, that such person neither knew nor should have known of the
37 existence of such order or judgment.
38 (e) The criminal liability imposed by this section shall not relieve any
39 person of civil liability for violating a consumer protection order, and any
40 criminal penalties authorized by law may be imposed in addition to any
41 civil sanctions or liability authorized by law.
42 (f) The attorney general, or county attorney or district attorney, or
43 both, may institute criminal action to prosecute this offense.

1 (g) This section shall be part of and supplemental to the Kansas
2 criminal code.

3 (h) If any provision or provisions of this section or the application
4 thereof to any person or circumstance is held invalid, the invalidity shall
5 not affect other provisions or applications of this section which can be
6 given effect without the invalid provision or provisions or application, and
7 to this end the provisions of this section are severable.

8 New Sec. 2. The attorney general may post conspicuously on an
9 official and publicly available website of the office of the attorney general
10 any judgment or order that restrains, enjoins or otherwise prohibits a
11 person from engaging in door-to-door sales, as defined in section 1(c), and
12 amendments thereto.

13 ~~Sec. 3. K.S.A. 2015 Supp. 60-4104 is hereby amended to read as~~
14 ~~follows: 60-4104. Conduct and offenses giving rise to forfeiture under this~~
15 ~~act, whether or not there is a prosecution or conviction related to the~~
16 ~~offense, are:~~

17 ~~(a) All offenses which statutorily and specifically authorize forfeiture;~~

18 ~~(b) violations involving controlled substances, as described in K.S.A.~~
19 ~~2015 Supp. 21-5701 through 21-5717, and amendments thereto;~~

20 ~~(c) theft, as defined in K.S.A. 2015 Supp. 21-5801, and amendments~~
21 ~~thereto;~~

22 ~~(d) criminal discharge of a firearm, as defined in subsections (a)(1)~~
23 ~~and (a)(2) of K.S.A. 2015 Supp. 21-6308(a)(1) and (a)(2), and~~
24 ~~amendments thereto;~~

25 ~~(e) gambling, as defined in K.S.A. 2015 Supp. 21-6404, and~~
26 ~~amendments thereto, and commercial gambling, as defined in subsection~~
27 ~~(a)(1) of K.S.A. 2015 Supp. 21-6406(a)(1), and amendments thereto;~~

28 ~~(f) counterfeiting, as defined in K.S.A. 2015 Supp. 21-5825, and~~
29 ~~amendments thereto;~~

30 ~~(g) unlawful possession or use of a scanning device or reencoder, as~~
31 ~~described in K.S.A. 2015 Supp. 21-6108, and amendments thereto;~~

32 ~~(h) medicaid fraud, as described in K.S.A. 2015 Supp. 21-5925~~
33 ~~through 21-5934, and amendments thereto;~~

34 ~~(i) an act or omission occurring outside this state, which would be a~~
35 ~~violation in the place of occurrence and would be described in this section~~
36 ~~if the act occurred in this state, whether or not it is prosecuted in any state;~~

37 ~~(j) an act or omission committed in furtherance of any act or omission~~
38 ~~described in this section including any inchoate or preparatory offense,~~
39 ~~whether or not there is a prosecution or conviction related to the act or~~
40 ~~omission;~~

41 ~~(k) any solicitation or conspiracy to commit any act or omission~~
42 ~~described in this section, whether or not there is a prosecution or~~
43 ~~conviction related to the act or omission;~~

- 1 (l) terrorism, as defined in K.S.A. 2015 Supp. 21-5421, and
- 2 amendments thereto; illegal use of weapons of mass destruction, as
- 3 defined in K.S.A. 2015 Supp. 21-5422, and amendments thereto, and
- 4 furtherance of terrorism or illegal use of weapons of mass destruction, as
- 5 described in K.S.A. 2015 Supp. 21-5423, and amendments thereto;
- 6 (m) unlawful conduct of dog fighting and unlawful possession of dog
- 7 fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A.
- 8 2015 Supp. 21-6414(a) and (b), and amendments thereto;
- 9 (n) unlawful conduct of cockfighting and unlawful possession of
- 10 cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A.
- 11 2015 Supp. 21-6417(a) and (b), and amendments thereto;
- 12 (o) selling sexual relations, as defined in K.S.A. 2015 Supp. 21-6419,
- 13 and amendments thereto; promoting the sale of sexual relations, as defined
- 14 in K.S.A. 2015 Supp. 21-6420, and amendments thereto, and buying
- 15 sexual relations, as defined in K.S.A. 2015 Supp. 21-6421, and
- 16 amendments thereto;
- 17 (p) human trafficking and aggravated human trafficking, as defined in
- 18 K.S.A. 2015 Supp. 21-5426, and amendments thereto;
- 19 (q) violations of the banking code, as described in K.S.A. 9-2012, and
- 20 amendments thereto;
- 21 (r) mistreatment of a dependent adult, as defined in K.S.A. 2015
- 22 Supp. 21-5417, and amendments thereto;
- 23 (s) giving a worthless check, as defined in K.S.A. 2015 Supp. 21-
- 24 5821, and amendments thereto;
- 25 (t) forgery, as defined in K.S.A. 2015 Supp. 21-5823, and
- 26 amendments thereto;
- 27 (u) making false information, as defined in K.S.A. 2015 Supp. 21-
- 28 5824, and amendments thereto;
- 29 (v) criminal use of a financial card, as defined in K.S.A. 2015 Supp.
- 30 21-5828, and amendments thereto;
- 31 (w) unlawful acts concerning computers, as described in K.S.A. 2015
- 32 Supp. 21-5839, and amendments thereto;
- 33 (x) identity theft and identity fraud, as defined in subsections (a) and
- 34 (b) of K.S.A. 2015 Supp. 21-6107(a) and (b), and amendments thereto;
- 35 (y) electronic solicitation, as defined in K.S.A. 2015 Supp. 21-5509,
- 36 and amendments thereto;
- 37 (z) felony violations of fleeing or attempting to elude a police officer,
- 38 as described in K.S.A. 8-1568, and amendments thereto;
- 39 (aa) commercial sexual exploitation of a child, as defined in K.S.A.
- 40 2015 Supp. 21-6422, and amendments thereto;
- 41 (bb) violations of the Kansas racketeer-influenced and corrupt
- 42 organization act, as described in K.S.A. 2015 Supp. 21-6329, and
- 43 amendments thereto;

1 ~~(cc) indecent solicitation of a child and aggravated indecent~~
2 ~~solicitation of a child, as defined in K.S.A. 2015 Supp. 21-5508, and~~
3 ~~amendments thereto; and~~
4 ~~(dd) sexual exploitation of a child, as defined in K.S.A. 2015 Supp.~~
5 ~~21-5510, and amendments thereto; and~~
6 ~~(ee) violation of a consumer protection order as defined in section 1,~~
7 ~~and amendments thereto.~~
8 Sec. 4. K.S.A. 2015 Supp. 60-4104 is hereby repealed.
9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.

