

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 426

As Recommended by Senate Committee on
Corrections and Juvenile Justice

Brief*

SB 426 would create the crime of violation of a consumer protection order, which would be defined as engaging in a door-to-door sale while prohibited from door-to-door sales. The bill would define “prohibited from door-to-door sales” to mean subject to a temporary or permanent order or judgment of a court entered under the Kansas Consumer Protection Act (KCPA) or any act part of or supplemental to the KCPA that restrains, enjoins, or otherwise prohibits the person from engaging in door-to-door sales in this state or any portion therein. The bill would specify an order or judgment restrains, enjoins, or otherwise prohibits the person from engaging in door-to-door sales if it:

- Expressly prohibits the person from engaging in door-to-door sales;
- Prohibits conduct that includes engaging in door-to-door sales, such as prohibiting the person from engaging in consumer transactions, as defined in the KCPA; or
- Prohibits engaging in only a particular type of door-to-door sales, such as the sale of roofing-related services, or only in only a particular place, in which case, criminal liability would arise only if the person engaged in the particular type of door-to-door sale that is restrained.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Violation of a consumer protection order would be a severity level 9, person felony. The person would be subject to criminal liability if the State proves beyond a reasonable doubt that such person had actual or constructive notice of the temporary or permanent order or judgment, as described in the definition of “prohibited from door-to-door sales.” The bill would outline circumstances wherein a person would have actual or constructive notice.

The bill provides criminal liability imposed under the terms of the bill would not relieve any person of civil liability for violating a consumer protection order. Any criminal penalties authorized by law could be imposed in addition to any civil sanctions or liability authorized by law. The bill would allow the Attorney General, a county or district attorney, or both to institute criminal action to prosecute this offense and would include a severability clause for the section creating this new crime.

Finally, the bill would allow the Attorney General’s Office to post conspicuously on its website any judgment or order that restrains, enjoins, or otherwise prohibits a person from engaging in door-to-door sales and would add violation of a consumer protection order to the list of crimes giving rising to civil forfeiture.

Background

The bill was introduced at the request of the Office of the Attorney General in the Senate Committee on Corrections and Juvenile Justice. At the Senate Committee hearing on the bill, the Attorney General and a representative of Kansas AARP appeared in support of the bill. There was no opponent or neutral testimony.

The fiscal note prepared by the Division of the Budget indicates passage could result in additional expenditures from new cases for the Office of the Attorney General, which would require investigation and prosecution; however, those costs

likely would be absorbed within existing resources. The bill also could result in additional revenues because the bill allows offenders to be liable for civil penalties for violations of the KCPA. The precise dollar amount of expenditures and revenues cannot be estimated.

The Kansas Association of Counties indicates passage could result in increased expenses for counties in investigating and prosecuting cases, however, the precise fiscal impact cannot be estimated.

The Kansas Sentencing Commission indicates the bill would have no immediate effect on prison admissions and bed space as most new offenders would receive probation. The bill may increase agency journal entry workload, however the specific number of entries cannot be determined.

Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.