

ENGROSSED HOUSE
BILL NO. 2450

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and

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AN ACT RELATING TO CONTRACTS; AMENDING 15 O.S. 1991,
SECTIONS 752, 753 (SECTION 2, CHAPTER 312, O.S.L.
1991) AND 755.1, WHICH RELATE TO THE OKLAHOMA
CONSUMER PROTECTION ACT; MODIFYING DEFINITIONS;
MODIFYING USE OF AUTOMATIC DIAL ANNOUNCING DEVICES;
PROVIDING AUTHORIZED USES; ADDING TO LIST OF
CERTAIN VIOLATIONS; AMENDING 21 O.S. 1991, SECTION
1847a, WHICH RELATES TO TELEPHONES AND AUTOMATIC
SYSTEMS; MODIFYING USAGE OF SYSTEMS; PROVIDING
AUTHORIZED USES; PROHIBITING USE OF TELEPHONE FOR
CERTAIN PURPOSES; ADDING DEFINITION; PROVIDING AN
EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 1991, Section 752, is
amended to read as follows:

Section 752. As used in the Oklahoma Consumer Protection Act:

1. "Person" means a natural person, corporation, trust,
partnership, incorporated or unincorporated association, or any
other legal entity.

2. "Consumer transaction" means the advertising, offering for
sale, sale, or distribution of any services or any property,
tangible or intangible, real, personal, or mixed, or any other

article, commodity, or thing of value wherever located, for purposes that are personal, household, or business oriented.

3. "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever located.

4. "Examination" when used in reference to documentary material includes the inspection, study, or copying of any such material, and the taking of testimony under oath, or acknowledgment in respect to any such documentary material or copy thereof.

5. "Merchandise" includes any object, ware, good, commodity, intangible, real estate, or service.

6. "Closing out sale" means any offer to sell, or actual sale, to the public of goods, wares, or merchandise on the implied or direct representation that the sale is in anticipation of the termination of a business at its present location, or that the sale is being held other than in the ordinary course of business. It also shall mean but shall not be limited to any sale held or advertised as a "closing out sale", "going out of business sale", "discontinuance of business sale", "quitting business sale", "sell out", "liquidation", "loss of lease sale", "must vacate sale", "forced out of business sale", "fire sale", "smoke and water damage sale", "adjustment sale", "creditor's sale", "bankrupt sale", "insolvent sale", "mortgage sale", or other like or similar title.

7. "Advertisement" means any advertisement or announcement published in the news media including but not limited to the radio, television, newspapers, handbills, and mailers.

8. "License" means the written authorization issued by the court clerk of the district court in any county in this state to any person to conduct a closing out sale.

9. "Clerk" means the court clerk of the district court of any county of this state in which a person applying for a license intends to conduct a closing out sale.

10. "Automatic dial announcing device" means automatic equipment that:

- a. stores telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called, ~~and~~
- b. conveys a prerecorded or synthesized voice message to the number called ~~without the use of a live operator,~~
and
- c. is used for the purpose of offering any goods or services for sale or conveying information regarding any goods or services.

SECTION 2. AMENDATORY 15 O.S. 1991, Section 753 (Section 2, Chapter 312, O.S.L. 1991), is amended to read as follows:

Section 753. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act when, in the course of his business, he:

1. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular make or brand, when it is of another;
2. Makes a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;
3. Makes a false or misleading representation, knowingly or with reason to know, as to affiliation, connection, association with, or certification by another;
4. Makes a false or misleading representation or designation, knowingly or with reason to know, of the geographic origin of the subject of a consumer transaction;

5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;

6. Represents, knowingly or with reason to know, that the subject of a consumer transaction is original or new if he knows that it is reconditioned, reclaimed, used, or secondhand;

7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;

8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;

10. Advertises under the guise of obtaining sales personnel when in fact the purpose is to sell the subject of a consumer transaction to the sales personnel applicants;

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a consumer transaction or the reason for, existence of, or amounts of price reduction;

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

- a. refusal to show the subject of a consumer transaction advertised;
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale;

- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction;
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time;
- e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement;
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item; or
- g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in this act;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act;

17. Violates any provision of the Home Repair Fraud Act; or

18. Violates any provision of Section ~~3~~ 755.1 of this ~~act~~ title or Section 1847a of Title 21 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 15 O.S. 1991, Section 755.1, is amended to read as follows:

Section 755.1 A. The connection of an automatic dial announcing device to a telephone line is subject to the provisions of the Oklahoma Consumer Protection Act.

B. No person shall operate an automatic dial announcing device except in accordance with the provisions of the Oklahoma Consumer Protection Act ~~and this act~~. The use of such device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dial announcing devices, is subject to the provisions of the Oklahoma Consumer Protection Act ~~and this act~~.

C. ~~1. Unless a live operator is used to speak to the person called, a~~ A person may shall not use an automatic dial announcing device ~~unless the following conditions are met: except as provided by this section. An automatic dial announcing device shall be used only when:~~

1. The calls are made or messages given solely in response to calls initiated by the person to whom the automatic calls or recorded messages are directed or who has made a written request to be called;

2. The calls made concern goods or services that have been previously ordered or purchased;

3. The calls are made by creditors or their assignees;

~~a. if the message is commercial in nature, the message conveyed by the device or a message delivered by a person states the company's or organization's name and address by which the call is being made~~ 4. The calls are initiated by a live operator who gives the caller the option to disconnect prior to the playing of a prerecorded or synthesized voice message;

~~b. the~~ 5. The device disconnects from the called person's line not later than twenty (20) seconds after the called person hangs up; and

~~e. for~~ 6. For calls terminating in this state, the device is not used to make a call:

~~(1)~~ a. before 9 a.m. or after 9 p.m. on a weekday or weekend when the device is used ~~for solicitation,~~ or

~~(2)~~ b. at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, ~~U.S.C., Section 801 et seq.~~ 15 U.S.C., Section 1692(c), when the device is used for collection purposes.

~~2.~~ D. An automatic dial announcing device shall not be used for random number dialing or to dial numbers determined by successively increasing or decreasing integers.

~~3. This subsection does not apply to the use of an automatic dial announcing device to call a person who has given to the person making the call express consent to be called by an automatic dial announcing device.~~

~~D.~~ E. A telephone company in this state may, but shall not be required to disconnect or refuse to connect service to a person using or intending to use an automatic dial announcing device if the telephone company determines that the device is not capable of disconnecting from a called party's line as required by this section or that the device would cause or is causing network harm.

F. The telephone company shall give notice to the person using the device of its intent to disconnect service not less than three (3) days prior to the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given the day before the date of disconnection.

~~E.~~ G. The telephone company shall disconnect service to the person on a determination by a court or the Oklahoma Corporation Commission that the person is violating the provisions of this section, and may reconnect service to the person only on a

determination by the court or the Oklahoma Corporation Commission that the person will comply with this section. Any notice of such an order shall be served on a telephone company in the same manner as is required for service of process, unless the company is already a party to the proceeding in which the order is created.

~~F. The telephone company shall give notice to the person using the device of its intent to disconnect service not less than three (3) days prior to the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given the day before the date of disconnection.~~

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1847a, is amended to read as follows:

Section 1847a. A. ~~No~~ Except as provided by this subsection, no person shall use ~~a telephone~~ or knowingly allow ~~a telephone to be used for the purpose of offering any goods or services for sale or conveying information regarding any goods or services if such use involves an automated system for the selection or dialing of telephone numbers and the playing of a recorded message without the use of a live operator when a connection is completed to a number called~~ the use of an automatic dial announcing device.

~~B. This section shall not prohibit the use of an automated telephone system with recorded messages if:~~

~~1. The~~ An automatic dial announcing device shall be used only when:

1. The calls are made or messages given solely in response to calls initiated by the person to whom the automatic calls or recorded messages are directed or who has made a written request to be called;

2. The calls made concern goods or services that have been previously ordered or purchased; ~~or~~

3. The calls are made by creditors or their assignees;

4. The calls are initiated by a live operator who gives the caller the option to disconnect prior to the playing of a prerecorded or synthesized voice message;

5. The device disconnects from the called person's line not later than twenty (20) seconds after the called person hangs up; and

6. For calls terminating in this state, the device is not used to make a call:

- a. before 9 a.m. or after 9 p.m. on a weekday or weekend when the device is used, or
- b. at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, 15 U.S.C., Section 1692(c), when the device is used for collection purposes.

~~C.~~ B. A person who violates any provision of this section is guilty of a misdemeanor.

C. The Attorney General may seek injunctive relief to enforce this section pursuant to the Oklahoma Consumer Protection Act.

D. In the event that a civil action is filed pursuant to this subsection, the prevailing party shall be entitled to a reasonable attorney's fee.

~~D.~~ E. A contract or agreement to purchase any goods or services for sale executed in violation of the provisions of this section shall be voidable at the option of the person who has subscribed to telephone services from a telephone company.

F. No person shall use a telephone or knowingly allow a telephone to be used for the purpose of offering or conveying information regarding any candidate who has filed for a local or statewide office if such use involves an automated system for the selection or dialing of telephone numbers and the playing of a recorded message when a connection is completed to a number called.

G. For purposes of this section, "automatic dial announcing device" means automatic equipment that:

1. Stores telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called;

2. Conveys a prerecorded or synthesized voice message to the number called; and

3. Is used for the purpose of offering any goods or services for sale or conveying information regarding any goods or services.

SECTION 5. This act shall become effective July 1, 1992.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of February, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate