

ENGROSSED SENATE
BILL NO. 342

BY: HENDRICK of the SENATE

and

VAUGHN (Ray) of the HOUSE

[CRIMES AND PUNISHMENTS - CREATING CONSUMER
TELEMARKETING PROTECTION ACT OF 1990 -]

EFFECTIVE DATE]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Consumer Telemarketing Protection Act of 1990".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "ADAD equipment" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers

and disseminating recorded messages to the numbers so selected or dialed;

2. "Commission" means the Corporation Commission; and

3. "Telephone access line" means any seven-digit telephone number for each call to which a fee is charged.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to use, to employ or direct another person to use, or to contract for the use of ADAD equipment for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:

1. Consent is not received prior to the initiation of the calls as specified in subsection B of this section;

2. Such use is other than between the hours of eight o'clock a.m. and nine o'clock p.m.;

3. The ADAD equipment will operate unattended, or is not so designed and equipped with an automatic clock and calendar device that it will not operate unattended, even in the event of power failures;

4. Such use involves either the random or sequential dialing of telephone numbers; and

5. The telephone number required to be stated in paragraph 7 of this subsection is not, during normal business hours, promptly and personally answered by someone who:

a. is an agent of the person or organization in whose behalf the automatic calls are made, and

b. is willing and able to provide information concerning the automatic calls;

6. The automatic dialing and recorded message player does not automatically and immediately terminate its connection with any telephone call within ten (10) seconds after the person called:

- a. fails to give consent for the playing of a recorded message, or
- b. replaces the receiver on his telephone;

7. The recorded message fails to state clearly the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the call and at the conclusion of the call; or

8. Such use involves calls to:

- a. telephone numbers which, at the request of the customer, have been omitted from the telephone directory published by the telephone company or cooperative serving the customer, or
- b. hospitals, nursing homes, fire protection agencies or law enforcement agencies.

B. 1. A person may give consent to a call made with ADAD equipment when a live operator introduces the call and states an intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD equipment.

2. Any person wishing to receive telephone calls through the use of ADAD equipment shall give his written consent to the person using, employing, directing another person to use, or contracting for the use of such ADAD equipment.

3. Any form used for such written consent by any person using, employing, directing another person to use, or contracting for the use of such ADAD equipment shall clearly and conspicuously state its purpose and effect, and clearly and conspicuously give notice of how such consent may be withdrawn.

4. A record of such written consent shall be maintained by the person to whom consent is given, and shall be made available to the Corporation Commission or its authorized representative, without further action, during normal business hours and following reasonable notice.

5. Such consent shall, unless withdrawn, be valid for a period of two (2) years from the date on which it is executed; and such record of written consent shall be maintained by the person to whom consent is given for at least the same period of time.

6. Any consent to receive telephone calls through the use of ADAD equipment shall be void and withdrawn on the fifteenth day following the receipt of a letter withdrawing such consent.

7. It is unlawful for any person to whom written consent is given to fail to maintain the record of such written consent for the time required by this subsection, or to prevent or hinder the Commission or its authorized representative from inspecting any such record of written consent.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Prior to the utilization of ADAD equipment to call telephone numbers located in this state, any company or individual utilizing this equipment shall register the following with the Corporation Commission to receive a permit as provided in this section:

1. Name, address and telephone number of the company or individual utilizing the equipment;

2. Name and address of a designated agent for service of process located in this state for the ADAD operator;

3. A surety bond executed by the ADAD operator from a surety company authorized to do business in this state for the sum of Ten Thousand Dollars (\$10,000.00) to be maintained continuously in full force and effect. The Commission may waive the bond requirement for

any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution or by other means as the Commission by rule may prescribe.

B. The Commission shall promulgate rules to govern the issuance, revocation or suspension of permits for ADAD operators utilizing equipment to call telephone numbers located in this state.

C. Failure to obtain a permit from the Commission prior to utilization of ADAD equipment to call numbers located in this state, and failure to abide by Commission rules governing ADAD operations is a violation of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to connect any ADAD equipment to any telephone line in this state for the purpose of making telephone calls to persons in this state through the use of ADAD equipment unless a permit has been issued for such ADAD equipment by the Corporation Commission.

B. Any person desiring to use ADAD equipment in this state shall make application for a permit to the Commission on forms prescribed by the Commission, and shall pay a fee as prescribed by the Commission for such permit. Permits shall be renewed biennially as prescribed by the Commission and upon payment of a renewal fee. The fees charged shall cover the administrative cost for the issuance of such permits.

C. Permits shall be subject to suspension or revocation by the Commission for any violation of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

It is unlawful for any person making use of a telephone access line to use, to employ or direct another person to use, or to contract for the use of ADAD equipment or the United States mail for the purpose of soliciting any person to call such telephone access line.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.7 of Title 21, unless there is created a duplication in numbering, reads as follows:

No telephone company or cooperative shall provide access to a telephone access line to any person who solicits calls to such number through the use of ADAD equipment or through the use of the United States mail. A telephone company or cooperative shall, upon the order of the Corporation Commission, withdraw access to a telephone access line from any person if calls to such number are solicited by ADAD equipment or through the use of the United States mail.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.8 of Title 21, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall prohibit the use of ADAD equipment to make calls with recorded messages when such calls:

1. Are made in response to calls initiated by the person to whom the automatic call or recorded message is directed;

2. Concern goods or services that have been previously ordered or purchased; or

3. Relate to collection of lawful debts.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.9 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who violates any provision of this act, upon conviction, shall be guilty of a misdemeanor and shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) or

imprisoned in the county jail for not more than one (1) year, or by both such fine and imprisonment.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.10 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The district attorney of the county in which or from which automated calls in violation of this act are made may seek injunctive relief to enforce this act and recover such statutory damages and attorney's fees as are set out in Section 11 of this act.

B. Any individual or group of individuals receiving such automated calls may also seek injunctive relief to enforce this act on behalf of others similarly situated.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864.11 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. If an individual or corporation is found to be in violation of this act in a civil action, a court shall assess a civil penalty against the offending party in the amount of One Thousand Dollars (\$1,000.00) for each call made in violation of this act.

B. Any civil penalty collected pursuant to this section shall be paid into the General Revenue Fund of the state. The prevailing party in the cause shall be entitled to necessary expenses and reasonable attorney's fees.

SECTION 12. This act shall become effective September 1, 1991.

Passed the Senate the 27th day of February, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker

of the House of
Representatives