

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1197

BY: VAUGHN (Ray)

AS INTRODUCED

AN ACT RELATING TO CONTRACTS; AMENDING 15 O.S. 1981, SECTIONS 752, AS AMENDED BY SECTION 1, CHAPTER 103, O.S.L. 1983 AND 753, AS LAST AMENDED BY SECTION 2, CHAPTER 353, O.S.L. 1989 (15 O.S. SUPP. 1990, SECTIONS 752 AND 753), WHICH RELATE TO THE OKLAHOMA CONSUMER PROTECTION ACT; ADDING DEFINITIONS; PROVIDING FOR VIOLATIONS OF THIS ACT TO BE UNLAWFUL UNDER THE OKLAHOMA CONSUMER PROTECTION ACT; REQUIRING TELEPHONE SOLICITORS TO PROVIDE CERTAIN INFORMATION TO A TELEPHONE SUBSCRIBER; PROVIDING PROCEDURES FOR USE OF CERTAIN AUTOMATIC DIAL ANNOUNCING DEVICES; AUTHORIZING DISCONNECTION OR REFUSAL TO CONNECT FOR CERTAIN ACTIONS; MAKING CERTAIN CONTRACTS VOIDABLE; EXCLUDING CERTAIN RELAYING SERVICES FROM THIS ACT; AMENDING SECTION 5, CHAPTER 161, O.S.L. 1988 (15 O.S. SUPP. 1990, SECTION 765.3), WHICH RELATES TO THE HOME REPAIR FRAUD ACT; ADDING OFFENSES; PROVIDING FOR CODIFICATION; 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. 1981, Section 752, as amended by Section 1, Chapter 103, O.S.L. 1983 (15 O.S. Supp. 1990, 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. "Consumer telephone call" means a call made by a telephone solicitor for the purpose of:

- a. soliciting a sale of any merchandise to the person called,
- b. soliciting an extension of credit for merchandise to the person called, or
- c. obtaining information that will or may be used for the direct solicitation of a sale of merchandise to the person called or an extension of credit for such purposes.

11. "Unsolicited consumer telephone call" means a consumer telephone call except a telephone call made:

- a. in response to an express request of the person called,
- b. primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call,

- c. to any person with whom the telephone solicitor has had a prior business relationship or has an existing business relationship,
- d. by a newspaper publisher or his agent or employee in connection with his business,
- e. a telephone call placed by or on behalf of any political, charitable, civic, fraternal or labor, public opinion polling, or radio or television broadcast rating organization, or
- f. without the intent to complete a sales presentation and during which a sales presentation is not completed, but rather the sales presentation is completed at a later face-to-face meeting between the solicitor and the prospective customer.

12. "Telephone solicitor" means any person, firm, organization, partnership, association, or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dial announcing devices.

13. "Automatic dial announcing device" means automatic equipment used for telephone solicitation or collection that:

- a. is capable of storing telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called, and
- b. is capable, alone or in conjunction with other equipment, to convey a prerecorded or synthesized voice message to the number called.

14. "Subscriber" means a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person.

SECTION 2. AMENDATORY 15 O.S. 1981, Section 753, as last amended by Section 2, Chapter 353, O.S.L. 1989 (15 O.S. Supp. 1990, Section 753), 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; ~~or~~

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

18. Violates any provision of Sections 3 or 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 755.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Any telephone solicitor who makes an unsolicited consumer telephone call shall:

1. Identify himself and the business on whose behalf he is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

2. Briefly describe the nature of the call; and

3. If at any time during the conversation, the called party states that he is not interested in listening to the presentation of the calling party, the caller shall immediately discontinue the sales solicitation.

B. A telephone solicitor shall not make any unsolicited consumer telephone calls before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday or before 1:30 p.m. or after 9:00 p.m. on Sunday.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 755.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

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. 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.

C. 1. A person may not use an automatic dial announcing device unless:

- a. the message conveyed by the device, or a message delivered by a person, states the nature of the call and the legal name and address of the person, company and organization for which the message is being made;
- b. the device disconnects from the called person's line not later than sixty (60) seconds after the called person hangs up; and
- c. for calls terminating in this state, the device is not used to make a call:
 - (1) before 1:30 p.m. or after 9 p.m. on a Sunday, or before 9 a.m. or after 9 p.m. on a weekday or a Saturday, when the device is used for solicitation, or
 - (2) at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, U.S.C., Section 801 et seq., when the device is used for collection purposes.

2. 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. A telephone company in this state may 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.

E. The telephone company shall disconnect service to the person on a determination by a court that the person is violating Section 3 of this act, and may reconnect service to the person only on a determination by the court that the person will comply with this section.

F. The telephone company shall give notice to the person using the device of its intent to disconnect service not later 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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 755.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

A contract or agreement to purchase any consumer goods or services pursuant to an unsolicited telephone call made by a telephone solicitor in violation of the Oklahoma Consumer Protection Act shall be voidable at the option of the subscriber.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 755.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall prohibit a telephone company from providing a service that is utilized for relaying messages for

private purposes, including but not limited to voice messaging services or message delivery services.

SECTION 7. AMENDATORY Section 5, Chapter 161, O.S.L. 1988 (15 O.S. Supp. 1990, Section 765.3), is amended to read as follows:

Section 765.3 A person commits the offense of home repair fraud if the person knowingly or with reason to know:

1. enters into a consumer transaction for home repair and knowingly or with reason to know:
 - a. misrepresents a material fact relating to the terms of the consumer transaction or the preexisting or existing condition of any portion of the property involved, or creates or confirms an impression of the consumer which is false and which the violator does not believe to be true, or promises performance which the violator does not intend to perform or knows will not be performed; or
 - b. uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such consumer to enter into any consumer transaction; or
 - c. requires payment for the home repair at a price which unreasonably exceeds the value of the services and materials needed for the home repair;
2. damages the property of a person with the intent to enter into a consumer transaction for home repair; ~~or~~
3. misrepresents himself or another to be an employee or agent of any unit of the federal, state, county, or municipal government, or an employee or agent of any public utility, with the intent to cause a person to enter into, with himself or another, any consumer transaction for home repair;
4. fails to complete the home repair without justifiable cause;

5. fails to obtain any license required by state law for the home repair service being offered or performed; or

6. represents, knowingly or with reason to know, affiliation with a legally nonexistent business entity.

SECTION 8. This act shall become effective July 1, 1991.

SECTION 9. 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.

43-1-5019

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