

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2210

By: Bastin, Boyd (Laura) and
Tyler of the House

and

Brown of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Office of the Attorney General; amending 15 O.S. 1991, Sections 752, as amended by Section 1, Chapter 317, O.S.L. 1992 and 753, as last amended by Section 2, Chapter 10, O.S.L. 1993 (15 O.S. Supp. 1993, Sections 752 and 753), which relate to the Oklahoma Consumer Protection Act; adding certain definitions; adding certain acts to those which are prohibited; amending 18 O.S. 1991, Sections 552.3, 552.5, 552.6, 552.7, 552.8, 552.9, 552.13 and 552.14, which relate to the Oklahoma Solicitation of Charitable Contributions Act; transferring powers, duties, responsibilities and fees charged for certain purposes under act from Oklahoma Tax Commission to the Office of the Attorney General; requiring the Office of the Attorney General to provide certain forms; providing that certain report be filed in the Office of the Attorney General; requiring such reports to be open for inspection by the Office of the Attorney General; requiring certain registration with the Office of the Attorney General; requiring certain bonds to run to the Attorney General's Office; requiring certain contracts and agreements to be filed with the Office of the Attorney General, and providing rights and procedures related thereto; authorizing the Attorney General to enter into certain reciprocal agreements; providing for certain prosecution and procedures related thereto; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 1991, Section 752, as amended by Section 1, Chapter 317, O.S.L. 1992 (15 O.S. Supp. 1993, 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-i

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-i

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-i

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-i

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

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-i

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

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;i

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;i

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,
- b. conveys a prerecorded or synthesized voice message to the number called, and
- c. is used for the purpose of offering any goods or services for sale or conveying information regarding such goods or services;i

11. "Deceptive trade practice" means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral; and

12. "Unfair trade practice" is any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

SECTION 2. AMENDATORY 15 O.S. 1991, Section 753, as last amended by Section 2, Chapter 10, O.S.L. 1993 (15 O.S. Supp. 1993, 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, Section 751 et seq. of this title, 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~~†~~L
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale~~†~~L
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction~~†~~L
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time~~†~~L
- 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~~†~~L
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item~~†~~L 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, Section 751 et seq. of this title;

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, Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

17. Violates any provision of the Home Repair Fraud Act, Section 765.1 et seq. of this title;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma Statutes; ~~or~~

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes; or

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 552.3, is amended to read as follows:

Section 552.3 No charitable organization, except those specifically exempt under Section 552.4 of this title, shall solicit or accept contributions from any person in this state by any means whatsoever until such charitable organization shall have registered with the ~~Oklahoma Tax Commission~~ Office of the Attorney General and filed information, as required by this act, on forms approved by that office. At the time of such registration, each charitable organization shall pay a fee of Fifteen Dollars (\$15.00). Such registration shall be valid for a period of one (1) year, and shall be subject to annual renewal. This registration shall not be deemed to constitute endorsement by the state or by the ~~Oklahoma Tax Commission~~ Attorney General of the charitable organizations so registered, and that office shall immediately revoke the registration of any person who directly or indirectly misrepresents the effect of registration hereunder to any donor or prospective donor. The information so filed shall be available to the general public as a matter of public record. The forms containing such information shall be sworn to and shall include the following:

1. The name under which the charitable organization intends to solicit or accept contributions, and the identity of the charitable organization by or for whom the solicitation is to be conducted;

2. The address of the charitable organization and the names and addresses of officers, directors, trustees and executive personnel;

3. The purposes for which the contributions solicited or accepted are to be used; provided, however, no contribution or any portion thereof shall enure to the private benefit of any voluntary solicitor;

4. A copy of Internal Revenue Form 990 as filed by the charitable organization for the most recent tax year;

5. The person who will have custody of the contributions;

6. The persons responsible for the distribution of funds collected;

7. The period of time during which such solicitation is to be conducted;

8. A description of the method or methods of solicitation in such detail as may from time to time be determined by the ~~Oklahoma Tax Commission~~ Attorney General;

9. Whether such solicitation is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both;

10. If in whole or in part by paid solicitors, the name and address of each professional fund raiser supplying such solicitors, the basis of payment and the nature of the arrangement, including a copy of the contract or other agreement between the charitable organization and the professional fund raiser, the specific amount or percentage of compensation, or property of any kind or value to be paid or paid to the professional fund raiser, the percentage value of such compensation as compared (a) to the total contributions received and (b) to the net amount of the total contributions received; and

11. Such additional information as may be deemed necessary and appropriate by the ~~Oklahoma Tax Commission~~ Attorney General in the public interest or for the specific protection of contributors.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 552.5, is amended to read as follows:

Section 552.5 A. On or before March 31 of each year every charitable organization subject to the provisions of this act which has received contributions during the previous calendar year shall file the following information in the manner hereinbefore

provided and on forms to be provided by the ~~Oklahoma Tax Commission~~ Office of the Attorney General:

1. The gross amount of the contributions pledged or collected;
2. The amount thereof given or to be given to the charitable purpose represented;
3. The aggregate amount paid and to be paid for the expenses of such solicitation; and
4. The aggregate amount paid to and to be paid to professional fund raisers and solicitors.

B. A charitable organization which maintains its books on other than a calendar year basis may upon application to the ~~Oklahoma Tax Commission~~ Attorney General be permitted to file its report within ninety (90) days after the close of its fiscal year. In addition, that office may require that within ninety (90) days after the close of any special period of solicitation the charitable organization conducting such solicitation shall file a special report of the information specified in this section for such special period of solicitation. Such report when filed shall be a public record in the ~~Commission~~ Office of the Attorney General.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 552.6, is amended to read as follows:

Section 552.6 Every charitable organization shall keep a full and true record in such form as will enable such charitable organization to accurately provide the information required herein. All records required hereunder shall be open to inspection at all times by the ~~Oklahoma Tax Commission~~ Office of the Attorney General and its employees, and upon demand shall be presented to that office for inspection.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 552.7, is amended to read as follows:

Section 552.7 No person shall act as a professional fund raiser for any charitable organization, including those organizations listed under Section 552.4 of this title, until he has first registered with the ~~Oklahoma Tax Commission~~ Attorney

General. Applications for such registrations shall be in writing, under oath, in the form prescribed by that office and shall be accompanied by an annual fee in the sum of Fifty Dollars (\$50.00). The applicant shall, at the time of making application, file with and have approved by the ~~Oklahoma Tax Commission~~ Attorney General a bond in which the applicant shall be the principal obligor, in the sum of Two Thousand Five Hundred Dollars (\$2,500.00), with one or more sureties whose liability in the aggregate as such sureties will at least equal the said sum. The said bond shall run to the ~~Oklahoma Tax Commission~~ Attorney General for the use of the state and to any person, including a charitable organization, who may have a cause of action against the obligor of said bond for any malfeasance or misfeasance of such obligor or any professional solicitor employed by him in the conduct of such solicitation. Registration when affected shall be for a period of one (1) year, expiring on the thirty-first day of March, and may be renewed upon the filing of the bond and fee prescribed herein for additional one-year periods.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.8, is amended to read as follows:

Section 552.8 All contracts or other agreements entered into by such professional fund raisers and charitable organizations shall be in writing and true and correct copies thereof shall be kept on file in the offices of the charitable organization and the professional fund raiser for a period of three (3) years from the date of solicitation of contributions provided for therein actually commences. Such contracts shall be available for inspection and examination by the ~~Oklahoma Tax Commission~~ Attorney General and other authorized agencies. At least one copy of every such contract or other agreement shall be on file at all times in that office and shall be available to the general public as a matter of public record. The ~~Oklahoma Tax Commission~~ Attorney General may require the use of standard contract forms and no contract shall be valid unless prior approval thereof is given by that office.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 552.9, is amended to read as follows:

Section 552.9 Every professional solicitor employed or retained by a professional fund raiser required to register shall, before accepting employment by such professional fund raiser, register with the ~~Oklahoma Tax Commission~~ Attorney General. Application for such registration shall be in writing, under oath, in the form prescribed by that office, and shall be accompanied by a fee in the sum of Ten Dollars (\$10.00). Such registration when affected shall be for a period of one (1) year, expiring on the thirty-first day of March, and may be renewed upon the payment of the fee prescribed herein for additional one-year periods.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 552.13, is amended to read as follows:

Section 552.13 The ~~Oklahoma Tax Commission~~ Attorney General may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the ~~Oklahoma Tax Commission~~ Attorney General. Pursuant to such agreements the ~~Oklahoma Tax Commission~~ Attorney General may accept information filed by a charitable organization with another state in lieu of the information required to be filed by a charitable organization in accordance with the provisions of Section 552.3 of this title, if such information is substantially similar to the information required to be filed under Section 552.3 of this title.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 552.14, is amended to read as follows:

Section 552.14 An action for violation of this act may be prosecuted by any district attorney of this state or by the Attorney General.

Whenever a district attorney or the Attorney General of this state shall have reason to believe that any person, charitable organization, professional fund raiser or professional solicitor is operating in violation of these provisions or there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or

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artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, in addition to any other action authorized by law, he shall institute in any district court of this state an injunctive action in the name and on behalf of the people of the state against such person or charitable organization and any other person who has participated or is about to participate in such solicitation or collection by employing such device, scheme, artifice, false representation or promise. Said action shall be for the purpose of enjoining such person or charitable organization or other participant from continuing such solicitation or collecting or engaging therein or doing any acts in furtherance thereof, or to cancel any registration statement previously filed with the ~~Oklahoma Tax Commission~~ Attorney General.

Any district attorney or the Attorney General shall exercise the authority granted in this section against any charitable organization which operates under the guise or pretense of being an organization exempted by the provisions of Section 552.4 of this title and is not in fact an organization entitled to such exemption.

SECTION 11. This act shall become effective September 1, 1994.

44-2-L9713 MCD