

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)  
2ND CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2210

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

and

Brown of the Senate

2ND 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, 753, as last amended by Section 2, Chapter 10, O.S.L. 1993, 756.1 and 761.1 (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; modifying certain powers of the Attorney General and district attorney relating to consumer protection; modifying certain actions for liability for certain civil penalties; stating legislative findings and declarations concerning telemarketing; defining terms; specifying certain exemptions from the term "commercial telephone seller" or "seller"; requiring registration of commercial telephone sellers; providing procedures related thereto; placing certain requirements on registrants and applicants for registration; requiring the providing of certain information; specifying certain nonapplicability to certain transactions; requiring certain disclosure; specifying certain unlawful acts; providing exceptions; stating that unlawful acts pursuant to this act may be in addition to other unlawful acts; providing that violations are violations of the Oklahoma Consumer Protection Act; 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; modifying registration requirements of professional fund raisers; authorizing the Attorney General to enter into certain reciprocal agreements; providing for certain prosecution and procedures related

thereto; providing for codification; 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~~;~~;
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;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" means 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<sup>†</sup><sub>1</sub>
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale<sup>†</sup><sub>1</sub>
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction<sup>†</sup><sub>1</sub>
- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time<sup>†</sup><sub>1</sub>
- 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<sup>†</sup><sub>1</sub>
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item<sup>†</sup><sub>1</sub> 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 15 O.S. 1991, Section 756.1, is amended to read as follows:

Section 756.1 A. The Attorney General or a district attorney may bring an action:

1. To obtain a declaratory judgment that an act or practice violates the Consumer Protection Act;

2. To enjoin, or to obtain a restraining order against a person who has violated, is violating, or is likely to violate the Consumer Protection Act;

3. To recover actual damages and, in the case of unconscionable conduct, penalties as provided by this act, on behalf of an aggrieved consumer, in an individual action only, for violation of the Consumer Protection Act; or

4. To recover reasonable expenses and investigation fees.

B. In lieu of instigating or continuing an action or proceeding, the Attorney General or a district attorney may accept a consent judgment with respect to any act or practice declared to

be a violation of the Consumer Protection Act. Such a consent judgment shall provide for the discontinuance by the person entering the same of any act or practice declared to be a violation of the Consumer Protection Act, and it may include a stipulation for the payment by such person of reasonable expenses and investigation fees incurred by the Attorney General or a district attorney. The consent judgment also may include a stipulation for restitution to be made by such person to consumers of money, property or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

C. In any action brought by the Attorney General or a district attorney, the court may:

1. Make such orders or judgments as may be necessary to prevent the use or employment by a person of any practice declared to be a violation of the Consumer Protection Act;

2. Make such orders or judgments as may be necessary to compensate any person for damages sustained;

3. Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

4. Appoint a master or receiver or order sequestration of assets ~~whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this subsection to~~ prevent the use or enjoyment of proceeds derived through illegal

means and assess the expenses of a master or receiver against the defendant;

5. Revoke any license or certificate authorizing that person to engage in business in this state;

6. Enjoin any person from engaging in business in this state; or

7. Grant other appropriate relief.

D. When an action is filed under the Consumer Protection Act by a district attorney or the Attorney General, no action seeking an injunction or declaratory judgment shall be filed in any other county or district in this state based upon the same transaction or occurrence, series of transactions or occurrences, or allegations which form the basis of the first action filed.

SECTION 4. AMENDATORY 15 O.S. 1991, Section 761.1, is amended to read as follows:

Section 761.1 A. The commission of any act or practice declared to be a violation of the Consumer Protection Act shall render the violator liable to the aggrieved consumer for the payment of actual damages sustained by the customer and costs of litigation including reasonable attorney's fees, and the aggrieved consumer shall have a private right of action for damages, including but not limited to, costs and attorney's fees. In any private action for damages for a violation of the Consumer Protection Act the court shall, subsequent to adjudication on the merits and upon motion of the prevailing party, determine whether a claim or defense asserted in the action by a nonprevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs, including attorney's fees, incurred with respect to such claim or defense.

B. The commission of any act or practice declared to be a violation of the Consumer Protection Act, if such act or practice

is also found to be unconscionable, shall render the violator liable to the aggrieved customer for the payment of a civil penalty, recoverable in an individual action only, in a sum set by the court of not more than Two Thousand Dollars (\$2,000.00) for each violation. In determining whether an act or practice is unconscionable the following circumstances shall be taken into consideration by the court: (1) whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers; (3) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that there was no reasonable probability of payment of the obligation in full by the consumer; (4) whether the violator knew or had reason to know that the transaction he or she induced the consumer to enter into was excessively one-sided in favor of the violator.

C. Any person who is found to be in violation of the Oklahoma Consumer Protection Act in a civil action or who willfully violates the terms of any injunction or court order issued pursuant to the Consumer Protection Act shall forfeit and pay a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the name of the state, or a district attorney may petition for recovery of civil penalties.

D. In administering and pursuing actions under this act, the Attorney General and a district attorney are authorized to sue for and collect reasonable expenses, attorney's fees, and investigation fees as determined by the court. Civil penalties or

Req. No. L9808Page 9

contempt penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties and activities under the Consumer Protection Act.

E. In addition to other penalties imposed by the Oklahoma Consumer Protection Act, any person convicted in a criminal proceeding of violating the Oklahoma Consumer Protection Act shall be guilty of a misdemeanor for the first offense and upon conviction thereof shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment. If the value of the money, property or valuable thing referred to in this section is Five Hundred Dollars (\$500.00) or more or if the conviction is for a second or subsequent violation of the provisions of the Oklahoma Consumer Protection Act, any person convicted pursuant to this subsection shall be deemed guilty of a felony and shall be subject to imprisonment in the State Penitentiary, for not more than ten (10) years, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775A.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby finds, determines and declares that the use of telephones for commercial solicitation is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the Legislature finds that the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers and, particularly, elderly, homebound and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775A.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in this act, unless the context otherwise requires:

1. "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include the following:

- a. a person offering or selling a security as defined in Section 2 of Title 71 of the Oklahoma Statutes if:
  - (1) the security is either registered with the Oklahoma Securities Commission under Sections 301 through 307 of Title 71 of the Oklahoma Statutes, or exempt from registration under Section 401 of Title 71 of the Oklahoma Statutes, and
  - (2) the person is registered by the securities commission as a broker-dealer as defined in Section 2 of Title 71 of the Oklahoma Statutes, an agent as defined in Section 2 of Title 71 of the Oklahoma Statutes, or an investment adviser representative as defined in Section 2 of Title 71 of the Oklahoma Statutes, unless expressly excluded from such definitions, or such person is exempted from registration under Section 201 of Title 71 of the Oklahoma Statutes,
- b. a person soliciting the sale of any book, record, audio tape, compact disc or video if the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days or if the person solicits such sale on behalf of a membership club

- operating in conformity with 16 Code of Federal Regulations 425,
- c. a person making telephone calls to a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions or votes, or a person soliciting solely for a political or religious cause or purpose,
  - d. a paid solicitor or charitable organization which is required to and which has complied with the notice and reporting requirements of Section 552.3 of Title 18 of the Oklahoma Statutes or a person who is excluded from such notice and reporting requirements by Section 552.4 of Title 18 of the Oklahoma Statutes,
  - e. a supervised financial organization, as defined in Section 1-301 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,
  - f. a supervised lender, as defined in subsection (2) of Section 3-501 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,
  - g. a person or an affiliate of a person who is regulated by the Insurance Commission pursuant to Title 36 of the Oklahoma Statutes,
  - h. a person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had

- a previous face-to-face meeting in the course of such person's business,
- i. any governmental entity or employee thereof, acting in the employee's official capacity,
  - j. a person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser,
  - k. a person or an affiliate of a person whose business is regulated by the Oklahoma Real Estate Commission,
  - l. a person whose conduct is within the exclusive jurisdiction of the federal Commodity Futures Trading Commission as granted under the federal "Commodity Exchange Act", as amended,
  - m. a seller of food for immediate consumption when the sale to one purchaser does not exceed Three Hundred Dollars (\$300.00),
  - n. a person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days after receipt of the returned merchandise,
  - o. an issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) (2) of that section,
  - p. a person who has been operating for at least three (3) years a retail business establishment in Oklahoma under the same name as that used in connection with the solicitation of sales by

telephone if, on a continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location,

- q. a person who has conducted business for at least three (3) years under the same name and in the same state and offers potential purchasers satisfaction guaranteed by the sending of the product or providing the service and the purchaser has an unqualified right to review and return or cancel for at least thirty (30) days,
- r. any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) or more of its services are performed on behalf of sellers exempt from this section. This exemption shall not apply to that portion of a telephone marketing service company's services performed on behalf of nonexempt sellers,
- s. a person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling,
- t. a person or an affiliate of a person whose business is regulated by the Corporation Commission, or
- u. a person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues;

2. "Commercial telephone solicitation" means:

- a. unsolicited telephone calls to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device, for the purpose of inducing the

person to purchase or invest in goods, services or property or offering an extension of credit,

b. any other communication by a commercial telephone seller in which:

(1) a gift, award, prize or contest is offered and a telephone call response from the intended purchaser is invited,

(2) a loan, credit card or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited, or

(3) a sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response, or

c. any other communication by a commercial telephone seller which includes representations about the price, quality or availability of goods, services or property and which invites a response by telephone, including pay-per-call service calls, or which is followed by a telephone call to the intended purchaser by a salesperson;

3. "Pay-per-call" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number;

4. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust or any other individual with similar supervisory functions with respect to any person;

5. "Purchaser" means a person who receives or responds to a commercial telephone solicitation;

6. "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made; and

7. "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property or an extension of credit by a commercial telephone seller and includes all communications which precede such payment of money.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775A.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. No commercial telephone seller shall conduct business in this state without having registered with the Attorney General at least ten (10) days prior to the conduct of such business.

Individual employees of the commercial telephone seller are not required to register. A commercial telephone seller conducts business in this state if the telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

B. A registration shall be effective for one (1) year after the date of filing with the Attorney General. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the Attorney General, but such filing fee shall not exceed Two Hundred Fifty Dollars (\$250.00) for an application for registration or One Hundred Dollars (\$100.00) for an application for renewal.

C. Whenever, prior to expiration of a commercial telephone seller's annual registration, there is a material change in the information required by subsection E of this section, the seller shall, within ten (10) days, file an addendum updating the information with the Attorney General.

D. Each application for registration shall be in writing and shall contain such information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as is required by law. The application shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the commercial telephone seller under penalty of perjury. The

declaration shall specify the date and location of signing. The information submitted pursuant to this section shall be available for public inspection.

E. Each application for registration or renewal pursuant to this section shall contain the following information:

1. The name or names of the commercial telephone seller, including all names under which the commercial telephone seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization;

2. The seller's business form and the date and place of organization;

3. The complete street addresses of all locations from which the commercial telephone seller is or will be conducting business, including a designation of the seller's principal business location;

4. A listing of all telephone numbers, including pay-per-call numbers, to be used by the commercial telephone seller;

5. The name, residential address, and position held by each principal of the commercial telephone seller and the names, residential addresses and positions of those persons who have management responsibilities in connection with the commercial telephone seller's business activities;

6. A description of the goods, services, property or extension of credit the commercial telephone seller is offering for sale and a copy of all sales scripts the commercial telephone seller requires salespersons to use when soliciting prospective purchasers, or, if no sales script is required to be used, a description of the sales presentation;

7. All rules, regulations, terms, restrictions and conditions to receiving any prize, bonus, award, gift or premium, if applicable, including a description of each prize, bonus, award, gift or premium, and the actual or approximate odds of a purchaser's receiving such prize, bonus, award, gift or premium;

8. A copy or representative sample of all written materials the seller sends to any purchaser; and

9. Such additional information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as may reasonably be required by the Attorney General.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775A.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

1. Conducts business as a commercial telephone seller without having registered with the Attorney General, as required by Section 7 of this act;

2. Fails to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services or property at any time before the expiration of three (3) business days after the purchaser's receipt of such goods, services or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked;

3. Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty (30) days after the commercial telephone seller receives notice of cancellation from the purchaser, except that:

- a. if the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty (30) days after the commercial telephone seller's receipt of the returned goods or property, and
- b. if the purchaser has received services during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the

commercial telephone seller is not required to  
refund payments to the purchaser;

4. Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph 2 of this subsection;

5. Misrepresents to any person that the person has won a contest, sweepstakes or drawing, or that the person will receive free goods, services or property;

6. Represents that the seller's goods, services or property are "free" if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services or property;

7. Makes any reference to the commercial telephone seller's compliance with this act to any purchaser without also disclosing that compliance with this act does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods or services; or

8. Engages in any deceptive trade practice defined in Section 752 of this title.

B. Paragraphs 2 and 4 of subsection A of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a cancellation of services by giving notice to the seller within seven (7) days after receipt by the consumer and the seller processes the refund or cancellation within thirty (30) days after receipt of the returned merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words "satisfaction guaranteed", "free inspection" or "no-risk guarantee" satisfy the disclosure requirements of this subsection.

C. The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

D. Any violations of Sections 5 through 7 of this act are violations of the Oklahoma Consumer Protection Act.

SECTION 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 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 17. This act shall become effective September 1, 1994.

44-2-L9808          MCD