

ENGROSSED HOUSE  
BILL NO. 2839

By: Seikel of the House

and

Stipe of the Senate

( contracts - amending 15 O.S., Sections 753, 775A.3 and  
775A.4 - telemarketing - Consumer Protection Act -  
effective date )

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

SECTION 1. AMENDATORY 15 O.S. 1991, Section 753, as last amended by Section 3, Chapter 8, O.S.L. 1996 (15 O.S. Supp. 1997, 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 the person's business, the person:

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 the person 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, 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;

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

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

21. Violates any provision of Section ~~4~~ 169.1 of ~~this act~~ Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act; or

22. Violates any provision involving telemarketing pursuant to Sections 775A.1 through 775A.4 of Title 15 of the Oklahoma Statutes.

SECTION 2. AMENDATORY Section 7, Chapter 235, O.S.L. 1994, as amended by Section 12, Chapter 382, O.S.L. 1994 (15 O.S. Supp. 1997, Section 775A.3), is amended to read as follows:

Section 775A.3 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. No commercial telephone seller shall conduct business in this state without having filed with the Oklahoma Office of the Attorney General a surety bond with a surety authorized to do business in this state, in the penal sum of not less than Fifty Thousand Dollars (\$50,000.00), to compensate consumers who may be defrauded by the actions of the commercial telephone seller.

Individual employees of the commercial telephone seller are not required to file such bond.

C. 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. All monies collected under this subsection shall be placed to the credit of the Attorney General's Revolving Fund created in Section 20 of Title 74 of the Oklahoma Statutes.

~~C.~~ D. 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.~~ E. 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.~~ F. 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 3. AMENDATORY Section 8, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1997, Section 775A.4), is amended to read as follows:

Section 775A.4 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 or filed the required surety bond with the Attorney General, as required by Section 7 775A.3 of this ~~act~~ title;

2. Fails to provide the purchaser a written contract to be executed prior to the sale becoming final or 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. Directly accesses any purchaser's or potential purchaser's bank, savings, trust, stock, or bond account as a method of collecting payment for goods or services; or

9. 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~~ 775A.1 through ~~7~~ 775A.4 of this ~~act~~ title are violations of the Oklahoma Consumer Protection Act.

SECTION 4. This act shall become effective November 1, 1998.

Passed the House of Representatives the 2nd day of March, 1998.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1998.

President of the Senate