

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1318

By: Bastin

AS INTRODUCED

An Act relating to telemarketing; amending Section 7, Chapter 235, O.S.L. 1994, as amended by Section 12, Chapter 382, O.S.L. 1994 and Section 8, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1996, Sections 775A.3 and 775A.4), which relate to commercial telephone solicitation; changing entity with regulatory authority over commercial telephone solicitation; changing revolving fund in which certain fees are deposited; stating change in authority; providing for validity of registrations made prior to certain date; 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 Section 7, Chapter 235, O.S.L. 1994, as amended by Section 12, Chapter 382, O.S.L. 1994 (15 O.S. Supp. 1996, 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~~ Office of the Secretary of State 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~~ Office of the Secretary of State. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the ~~Attorney General~~ Office of the Secretary of the State, 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~~ Revolving Fund for the Office of the Secretary of State created in Section 276.1 of Title 62 of the Oklahoma Statutes.

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~~ Office of the Secretary of State.

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~~ Office of the Secretary of State 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~~ Office of the Secretary of State.

SECTION 2. AMENDATORY Section 8, Chapter 235, O.S.L. 1994 (15 O.S. Supp. 1996, 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 with the ~~Attorney General~~ Office of the Secretary of State, as required by Section ~~7~~ 775A.3 of this ~~act~~ title;

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 this section or Sections 5 775A.1 through 7 775A.3 of this ~~act~~ title are violations of the Oklahoma Consumer Protection Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775A.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

On and after July 1, 1997, the Office of the Secretary of State shall assume the duties, powers and responsibilities of the regulation of commercial telephone solicitation as set forth in Sections 775A.1 through 775A.4 of Title 15 of the Oklahoma Statutes. All valid registrations of a commercial telephone seller on file as of July 1, 1997, shall continue to be valid until the expiration date of the registration.

SECTION 4. This act shall become effective July 1, 1997.

SECTION 5. 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.

