

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 2ND CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1147

6 By: Braddock of the House

7 and

8 Morgan of the Senate

9 2ND CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to consumer protection; amending 15
11 O.S. 1991, Sections 758 and 762, which relate to the
12 Oklahoma Consumer Protection Act; authorizing
13 issuance of certain process; authorizing oaths and
14 sworn statements; authorizing service and execution
15 of search warrants; authorizing Attorney General to
16 investigate and prosecute certain violations;
17 amending Section 6, Chapter 235, O.S.L. 1994, Section
18 7, Chapter 235, O.S.L. 1994, as amended by Section
19 12, Chapter 382, O.S.L. 1994 and Section 8, Chapter
20 235, O.S.L. 1994, as amended by Section 1 of Enrolled
21 House Bill No. 1715 of the 1st Session of the 47th
22 Oklahoma Legislature (15 O.S. Supp. 1998, Sections
23 775A.2 and 775A.3), which relate to commercial
24 telephone solicitation; modifying definitions;
25 modifying certain exclusions; providing for lapse of
26 registrations by commercial telephone sellers;
27 authorizing fee for reapplication; modifying
28 references; requiring filing of bond; prescribing
29 amount of bond; requiring approval; prescribing
30 requirements for sureties; providing for use of bond;
31 amending 18 O.S. 1991, Section 552.7, as last amended
32 by Section 4, Chapter 334, O.S.L. 1997 (18 O.S. Supp.
1998, Section 552.7), which relates to the Oklahoma
Solicitation of Charitable Contributions Act;
prohibiting certain persons from engaging in
fundraising activities for certain charitable
organizations; 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 758, is
amended to read as follows:

Section 758. To accomplish the objectives and to carry out the
duties prescribed by the Oklahoma Consumer Protection Act, the
Attorney General or district attorney, in addition to other powers

1 conferred on them by the Oklahoma Consumer Protection Act, or the
2 laws of this state, may issue subpoenas or other process to any
3 person and conduct hearings in aid of any investigation or inquiry,
4 administer oaths and take sworn statements under penalty of perjury,
5 serve and execute in any county, search warrants, provided that none
6 of the powers conferred by the Oklahoma Consumer Protection Act
7 shall be used for the purpose of compelling any natural person to
8 furnish testimony or evidence which might tend to incriminate him or
9 subject him to a penalty or forfeiture; and provided further that
10 information obtained pursuant to the powers conferred by the
11 Oklahoma Consumer Protection Act shall not be made public or
12 disclosed by the Attorney General, district attorney or their
13 employees.

14 SECTION 2. AMENDATORY 15 O.S. 1991, Section 762, is
15 amended to read as follows:

16 Section 762. A. In addition to all other powers and duties as
17 set forth in this act, the Attorney General may do any or all of the
18 following and upon request receive the assistance of any department,
19 division or branch of state government:

20 1. Coordinate consumer protection activities within state
21 government and maintain a liaison with federal and local governments
22 concerning the interests of consumers and businessmen;

23 2. Study the operation of any existing or proposed law
24 affecting the consumer interest and make recommendations to the
25 Governor and Legislature;

26 3. Conduct studies, investigations and research in matters
27 affecting consumer interest;

28 4. Submit an annual report of activities to the legislative and
29 executive branches of state government; and

30 5. Do those things necessary to implement the purpose of this
31 act.

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1 B. The Attorney General shall have the powers of a district
2 attorney to investigate and prosecute suspected violations of
3 consumer laws.

4 SECTION 3. AMENDATORY Section 6, Chapter 235, O.S.L.
5 1994 (15 O.S. Supp. 1998, Section 775A.2), is amended to read as
6 follows:

7 Section 775A.2 As used in this act, unless the context
8 otherwise requires:

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

15 a. a person offering or selling a security as defined in
16 Section 2 of Title 71 of the Oklahoma Statutes if:

17 (1) the security is either registered ~~with the~~
18 ~~Oklahoma Securities Commission under Sections~~ as
19 required by Section 301 through 307 of Title 71
20 of the Oklahoma Statutes, or exempt from
21 registration under Section 401 of Title 71 of the
22 Oklahoma Statutes and general or public
23 solicitation is not prohibited or the security is
24 a federal covered security for which a notice
25 filing has been made under Section 305.2 of Title
26 71 of the Oklahoma Statutes, and

27 (2) the person is registered ~~by the securities~~
28 ~~commission~~ as required by Section 201 of Title 71
29 of the Oklahoma Statutes as a broker-dealer as
30 defined in Section 2 of Title 71 of the Oklahoma
31 Statutes, an agent as defined in Section 2 of
32 Title 71 of the Oklahoma Statutes, an investment

1 adviser as defined in Section 2 of Title 71 of
2 the Oklahoma Statutes, or an investment adviser
3 representative as defined in Section 2 of Title
4 71 of the Oklahoma Statutes, unless expressly
5 excluded from such definitions, or such person is
6 exempted from registration under Section 201 of
7 Title 71 of the Oklahoma Statutes,

8 b. a person soliciting the sale of any book, record,
9 audio tape, compact disc or video if the person allows
10 the purchaser to review the merchandise without
11 obligation for at least seven (7) days and provides a
12 full refund for the return of undamaged merchandise
13 within thirty (30) days or if the person solicits such
14 sale on behalf of a membership club operating in
15 conformity with 16 Code of Federal Regulations 425,

16 c. a person making telephone calls to a residential
17 customer for the sole purpose of polling or soliciting
18 the expression of ideas, opinions or votes, or a
19 person soliciting solely for a political or religious
20 cause or purpose,

21 d. a paid solicitor or charitable organization which is
22 required to and which has complied with the notice and
23 reporting requirements of Section 552.3 of Title 18 of
24 the Oklahoma Statutes or a person who is excluded from
25 such notice and reporting requirements by Section
26 552.4 of Title 18 of the Oklahoma Statutes,

27 e. a supervised financial organization, as defined in
28 Section 1-301 of Title 14A of the Oklahoma Statutes,
29 and its employees, when acting within the scope of
30 their employment,

31 f. a supervised lender, as defined in subsection (2) of
32 Section 3-501 of Title 14A of the Oklahoma Statutes,

1 and its agents and employees, when acting within the
2 scope of their employment,

3 g. a person or an affiliate of a person who is regulated
4 by the Insurance Commission pursuant to Title 36 of
5 the Oklahoma Statutes,

6 h. a person soliciting without the intent to complete and
7 who does not in fact complete the sales transaction
8 during the telephone solicitation or another telephone
9 solicitation and who only completes the sales
10 transaction at a later face-to-face meeting between
11 the solicitor and the prospective purchaser, excluding
12 a face-to-face meeting, the sole purpose of which is
13 to collect the payment or deliver any item purchased,
14 or a person soliciting a purchaser with whom the
15 person has had a previous face-to-face meeting in the
16 course of such person's business,

17 i. any governmental entity or employee thereof, acting in
18 the employee's official capacity,

19 j. a person soliciting telephone service, or licensed or
20 franchised cable television service, which is billed
21 and paid on a daily, weekly, or monthly basis and
22 which can be canceled at any time without further
23 obligation to the purchaser,

24 k. a person or an affiliate of a person whose business is
25 regulated by the Oklahoma Real Estate Commission,

26 l. a person whose conduct is within the exclusive
27 jurisdiction of the federal Commodity Futures Trading
28 Commission as granted under the federal "Commodity
29 Exchange Act", as amended,

30 m. a seller of food for immediate consumption when the
31 sale to one purchaser does not exceed Three Hundred
32 Dollars (\$300.00),

- 1 n. a person who initially contacts the purchaser with a
2 retail sales catalog requesting a telephone call
3 response, when the person allows the purchaser to
4 review the merchandise without obligation for at least
5 seven (7) days and provides a full refund for the
6 return of undamaged merchandise within thirty (30)
7 days after receipt of the returned merchandise,
- 8 o. an issuer or a subsidiary of an issuer that has a
9 class of securities which is subject to Section 12 of
10 the federal "Securities Exchange Act of 1934", 15
11 U.S.C. 781, and which is either registered or exempt
12 from registration under paragraph (A), (B), (C), (E),
13 (F), (G) or (H) of subsection (g) (2) of that section,
- 14 p. a person who has been operating for at least three (3)
15 years a retail business establishment in Oklahoma
16 under the same name as that used in connection with
17 the solicitation of sales by telephone if, on a
18 continuing basis, the majority of the seller's
19 business involves the purchaser receiving the seller's
20 goods and services at the seller's business location,
- 21 ~~q. a person who has conducted business for at least three~~
22 ~~(3) years under the same name and in the same state~~
23 ~~and offers potential purchasers satisfaction~~
24 ~~guaranteed by the sending of the product or providing~~
25 ~~the service and the purchaser has an unqualified right~~
26 ~~to review and return or cancel for at least thirty~~
27 ~~(30) days,~~
- 28 ~~r.~~ any telephone marketing service company which provides
29 telemarketing sales services under written contract to
30 sellers and has been operating continuously for at
31 least five (5) years under the same business name and
32 seventy-five percent (75%) or more of its services are

1 performed on behalf of sellers exempt from this
2 section. ~~This exemption shall not apply to that~~
3 ~~portion of a telephone marketing service company's~~
4 ~~services performed on behalf of nonexempt sellers~~
5 Nothing in this paragraph shall be construed to exempt
6 any commercial telephone seller that contracts with a
7 telephone marketing service company for telemarketing
8 sales service from the requirements set forth in
9 Section 775A.3 of this title,

10 ~~s.~~ r. a person soliciting business solely from business
11 purchasers who have previously purchased identical or
12 similar goods or services from the business enterprise
13 on whose behalf the person is calling,

14 ~~t.~~ s. a person or an affiliate of a person whose business is
15 regulated by the Corporation Commission, or

16 ~~u.~~ t. a person soliciting the sale of any newspaper,
17 magazine, or other periodical of general circulation
18 if such sales constitute a majority of such person's
19 business and business revenues;

20 2. "Commercial telephone solicitation" means:

21 a. unsolicited telephone calls to a person initiated by a
22 commercial telephone seller or salesperson, or an
23 automated dialing machine with or without a recorded
24 message device, for the purpose of inducing the person
25 to purchase or invest in goods, services or property
26 or offering an extension of credit,

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

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

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

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

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

16 3. "Pay-per-call" means the use of a telephone number with a
17 900 prefix or any other prefix under which liability for the service
18 or product provided attaches to the telephone bill of the individual
19 calling such number;

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

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

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

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

1 SECTION 4. AMENDATORY Section 7, Chapter 235, O.S.L.
2 1994, as amended by Section 12, Chapter 382, O.S.L. 1994 (15 O.S.
3 Supp. 1998, Section 775A.3), is amended to read as follows:

4 Section 775A.3 A. No commercial telephone seller shall conduct
5 business in this state without having registered with the Attorney
6 General at least ten (10) days prior to the conduct of such
7 business. Individual employees of the commercial telephone seller
8 are not required to register. A commercial telephone seller
9 conducts business in this state if the telephone solicitations of
10 prospective purchasers are made from locations in this state or
11 solicitation is made of prospective purchasers located in this
12 state.

13 B. A registration shall be effective for one (1) year after the
14 date of filing with the Attorney General. Each application for
15 registration or renewal thereof shall be accompanied by a filing
16 fee, determined and collected by the Attorney General, but such
17 filing fee shall not exceed Two Hundred Fifty Dollars (\$250.00) for
18 an application for registration or One Hundred Dollars (\$100.00) for
19 an application for renewal. Any registration not renewed by the
20 commercial telephone seller by the anniversary date of the
21 registration shall lapse. If the registration lapses, the
22 commercial telemarketer must file another application accompanied by
23 a fee of Two Hundred Fifty Dollars (\$250.00). All monies collected
24 under this subsection shall be placed to the credit of the Attorney
25 General's Revolving Fund created in Section 20 of Title 74 of the
26 Oklahoma Statutes.

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

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1 D. Each application for registration shall be in writing and
2 shall contain such information regarding the conduct of the
3 commercial telephone seller's business and the personnel conducting
4 the business as is required by law. The application shall be
5 submitted on a form provided by the Attorney General and shall be
6 verified by a declaration signed by each principal of the commercial
7 telephone seller under penalty of perjury. The declaration shall
8 specify the date and location of signing. The information submitted
9 pursuant to this section shall be available for public inspection.

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

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

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

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

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

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

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

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

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

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

13 SECTION 5. AMENDATORY Section 8, Chapter 235, O.S.L.
14 1994, as amended by Section 1 of Enrolled House Bill No. 1715 of the
15 1st Session of the 47th Oklahoma Legislature, is amended to read as
16 follows:

17 Section 775A.4 A. A commercial telephone seller engages in an
18 unlawful telemarketing practice when, in the course of any
19 commercial telephone solicitation, the seller:

20 1. Conducts business as a commercial telephone seller without
21 having registered with the Attorney General, as required by Section
22 7 775A.3 of this ~~act~~ title;

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

31 3. Fails to refund all payments made by any purchaser in any
32 telephone sales transaction within thirty (30) days after the

1 commercial telephone seller receives notice of cancellation from the
2 purchaser, except that:

3 a. if the purchaser has received goods or property from
4 the commercial telephone seller, other than an item
5 represented as free, the commercial telephone seller
6 shall refund all payments made by the purchaser within
7 thirty (30) days after the commercial telephone
8 seller's receipt of the returned goods or property,
9 and

10 b. if the purchaser has received services during the
11 course of a pay-per-call service call, which services
12 cannot, by their nature, be returned, the commercial
13 telephone seller is not required to refund payments to
14 the purchaser;

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

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

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

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

30 8. Uses equipment or techniques the purpose of which is to
31 intentionally block or avoid detection of the commercial telephone
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1 seller's identity or telephone number by caller identification
2 devices; or

3 9. Engages in any deceptive trade practice defined in Section
4 752 of this title.

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

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

25 D. Any violations of ~~Sections 775A.1 through 775A.3 of this~~
26 ~~title act~~ are violations of the Oklahoma Consumer Protection Act.

27 SECTION 6. NEW LAW A new section of law to be codified
28 in the Oklahoma Statutes as Section 775A.5 of Title 15, unless there
29 is created a duplication in numbering, reads as follows:

30 The applicant shall, at the time of making application, file
31 with and have approved by the Attorney General a bond in which the
32 applicant shall be the principal obligor, in the sum of Ten Thousand

1 Dollars (\$10,000.00) with one or more sureties whose liability is
2 the aggregate as such sureties shall at least equal the said sum.
3 The said bond shall run to the Attorney General for the use of the
4 state and to any person who may have a cause of action against the
5 obligor of said bond for any violation of the act.

6 SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.7, as
7 last amended by Section 4, Chapter 334, O.S.L. 1997 (18 O.S. Supp.
8 1998, Section 552.7), is amended to read as follows:

9 Section 552.7 A. No person shall act as a professional fund
10 raiser for any charitable organization, including those
11 organizations listed under Section 552.4 of this title, until the
12 person has first registered with the Office of the Secretary of
13 State. Applications for such registrations shall be in writing,
14 under oath, in the form prescribed by that office and shall be
15 accompanied by an annual fee in the sum of Fifty Dollars (\$50.00).
16 The applicant shall, at the time of making application, file with
17 and have approved by the Secretary of State a bond in which the
18 applicant shall be the principal obligor, in the sum of Two Thousand
19 Five Hundred Dollars (\$2,500.00), with one or more sureties whose
20 liability in the aggregate as such sureties shall at least equal the
21 said sum. The said bond shall run to the Secretary of State for the
22 use of the state and to any person, including a charitable
23 organization, who may have a cause of action against the obligor of
24 said bond for any malfeasance or misfeasance of such obligor or any
25 professional solicitor employed by him or her in the conduct of such
26 solicitation. Registration when affected shall be for a period of
27 one (1) year, expiring on the thirty-first day of March, and may be
28 renewed upon the filing of the bond and fee prescribed herein for
29 additional one-year periods.

30 B. No professional fundraiser or solicitor shall engage in
31 fundraising activities for a charitable organization which is not
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1 registered with the Secretary of State unless the organization is
2 exempt from registration.

3 SECTION 8. This act shall become effective November 1, 1999.

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