

1 STATE OF OKLAHOMA

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

3 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 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.

32

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~~
19 Section 301 through 307 of Title 71 of the
20 Oklahoma Statutes, or ~~exempt from registration~~
21 ~~under Section 401~~ the security is a federal
22 covered security for which a notice filing has
23 been made under Section 305.2 of Title 71 of the
24 Oklahoma Statutes, and

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

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

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

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

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

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

29 f. a supervised lender, as defined in subsection (2) of
30 Section 3-501 of Title 14A of the Oklahoma Statutes,
31 and its agents and employees, when acting within the
32 scope of their employment,

- 1 g. a person or an affiliate of a person who is regulated
2 by the Insurance Commission pursuant to Title 36 of
3 the Oklahoma Statutes,
- 4 h. a person soliciting without the intent to complete and
5 who does not in fact complete the sales transaction
6 during the telephone solicitation or another telephone
7 solicitation and who only completes the sales
8 transaction at a later face-to-face meeting between
9 the solicitor and the prospective purchaser, excluding
10 a face-to-face meeting, the sole purpose of which is
11 to collect the payment or deliver any item purchased,
12 or a person soliciting a purchaser with whom the
13 person has had a previous face-to-face meeting in the
14 course of such person's business,
- 15 i. any governmental entity or employee thereof, acting in
16 the employee's official capacity,
- 17 j. a person soliciting telephone service, or licensed or
18 franchised cable television service, which is billed
19 and paid on a daily, weekly, or monthly basis and
20 which can be canceled at any time without further
21 obligation to the purchaser,
- 22 k. a person or an affiliate of a person whose business is
23 regulated by the Oklahoma Real Estate Commission,
- 24 l. a person whose conduct is within the exclusive
25 jurisdiction of the federal Commodity Futures Trading
26 Commission as granted under the federal "Commodity
27 Exchange Act", as amended,
- 28 m. a seller of food for immediate consumption when the
29 sale to one purchaser does not exceed Three Hundred
30 Dollars (\$300.00),
- 31 n. a person who initially contacts the purchaser with a
32 retail sales catalog requesting a telephone call

1 response, when the person allows the purchaser to
2 review the merchandise without obligation for at least
3 seven (7) days and provides a full refund for the
4 return of undamaged merchandise within thirty (30)
5 days after receipt of the returned merchandise,

6 o. an issuer or a subsidiary of an issuer that has a
7 class of securities which is subject to Section 12 of
8 the federal "Securities Exchange Act of 1934", 15
9 U.S.C. 781, and which is either registered or exempt
10 from registration under paragraph (A), (B), (C), (E),
11 (F), (G) or (H) of subsection (g) (2) of that section,

12 p. a person who has been operating for at least three (3)
13 years a retail business establishment in Oklahoma
14 under the same name as that used in connection with
15 the solicitation of sales by telephone if, on a
16 continuing basis, the majority of the seller's
17 business involves the purchaser receiving the seller's
18 goods and services at the seller's business location,

19 ~~q. a person who has conducted business for at least three~~
20 ~~(3) years under the same name and in the same state~~
21 ~~and offers potential purchasers satisfaction~~
22 ~~guaranteed by the sending of the product or providing~~
23 ~~the service and the purchaser has an unqualified right~~
24 ~~to review and return or cancel for at least thirty~~
25 ~~(30) days,~~

26 ~~r.~~ any telephone marketing service company which provides
27 telemarketing sales services under written contract to
28 sellers and has been operating continuously for at
29 least five (5) years under the same business name and
30 seventy-five percent (75%) or more of its services are
31 performed on behalf of sellers exempt from this
32 section. ~~This exemption shall not apply to that~~

~~portion of a telephone marketing service company's
services performed on behalf of nonexempt sellers~~
Nothing in this paragraph shall be construed to exempt
any commercial telephone seller that contracts with a
telephone marketing service company for telemarketing
sales service from the requirements set forth in
Section 775A.3 of this title,

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

~~u.~~ t. 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

1 communication, and a telephone call response from
2 the intended purchaser is invited, or

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

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

13 3. "Pay-per-call" means the use of a telephone number with a
14 900 prefix or any other prefix under which liability for the service
15 or product provided attaches to the telephone bill of the individual
16 calling such number;

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

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

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

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

30 SECTION 4. AMENDATORY Section 7, Chapter 235, O.S.L.
31 1994, as amended by Section 12, Chapter 382, O.S.L. 1994 (15 O.S.
32 Supp. 1998, Section 775A.3), is amended to read as follows:

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

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

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

29 D. Each application for registration shall be in writing and
30 shall contain such information regarding the conduct of the
31 commercial telephone seller's business and the personnel conducting
32 the business as is required by law. The application shall be

1 submitted on a form provided by the Attorney General and shall be
2 verified by a declaration signed by each principal of the commercial
3 telephone seller under penalty of perjury. The declaration shall
4 specify the date and location of signing. The information submitted
5 pursuant to this section shall be available for public inspection.

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

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

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

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

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

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

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

30 7. All rules, regulations, terms, restrictions and conditions
31 to receiving any prize, bonus, award, gift or premium, if
32 applicable, including a description of each prize, bonus, award,

1 gift or premium, and the actual or approximate odds of a purchaser's
2 receiving such prize, bonus, award, gift or premium;

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

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

8 SECTION 5. AMENDATORY Section 8, Chapter 235, O.S.L.
9 1994, as amended by Section 1 of Enrolled House Bill No. 1715 of the
10 1st Session of the 47th Oklahoma Legislature, is amended to read as
11 follows:

12 Section 775A.4 A. A commercial telephone seller engages in an
13 unlawful telemarketing practice when, in the course of any
14 commercial telephone solicitation, the seller:

15 1. Conducts business as a commercial telephone seller without
16 having registered with the Attorney General, as required by Section
17 ~~7~~ 775A.3 of this ~~act~~ title;

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

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

30 a. if the purchaser has received goods or property from
31 the commercial telephone seller, other than an item
32 represented as free, the commercial telephone seller

1 shall refund all payments made by the purchaser within
2 thirty (30) days after the commercial telephone
3 seller's receipt of the returned goods or property,
4 and

5 b. if the purchaser has received services during the
6 course of a pay-per-call service call, which services
7 cannot, by their nature, be returned, the commercial
8 telephone seller is not required to refund payments to
9 the purchaser;

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

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

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

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

25 8. Uses equipment or techniques the purpose of which is to
26 intentionally block or avoid detection of the commercial telephone
27 seller's identity or telephone number by caller identification
28 devices; or

29 9. Engages in any deceptive trade practice defined in Section
30 752 of this title.

31 B. Paragraphs 2 and 4 of subsection A of this section do not
32 apply to a transaction in which the consumer obtains a full refund

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

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

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

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

24 The applicant shall, at the time of making application, file
25 with and have approved by the Attorney General a bond in which the
26 applicant shall be the principal obligor, in the sum of Ten Thousand
27 Dollars (\$10,000.00) with one or more sureties whose liability is
28 the aggregate as such sureties shall at least equal the said sum.
29 The said bond shall run to the Attorney General for the use of the
30 state and to any person who may have a cause of action against the
31 obligor of said bond for any violation of the act.

32

1 SECTION 7. AMENDATORY 18 O.S. 1991, Section 552.7, as
2 last amended by Section 4, Chapter 334, O.S.L. 1997 (18 O.S. Supp.
3 1998, Section 552.7), is amended to read as follows:

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

25 B. No professional fundraiser or solicitor shall engage in
26 fundraising activities for a charitable organization which is not
27 registered with the Secretary of State unless the organization is
28 exempt from registration.

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