

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 HOUSE BILL NO. 1269

6 By: Ostrander of the House

7 and

8 Rabon of the Senate

9  
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to telephone solicitation; amending  
12 21 O.S. 1991, Section 1861, as amended by Section  
13 424, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998,  
14 Section 1861), which relates to telephone  
15 solicitation; requiring telephone number and street  
16 address of organization or business represented be  
17 provided by commercial telephone sellers engaged in  
18 telephone solicitation upon request of the person  
19 being called; requiring the disclosure of certain net  
20 receipts under certain circumstances; eliminating  
21 certain fee requirement; modifying certain penalty;  
22 amending Section 6, Chapter 235, O.S.L. 1994 (15 O.S.  
23 Supp. 1998, Section 775A.2), which relates to  
24 commercial telephone sellers; modifying definition;  
25 providing an effective date; and declaring an  
26 emergency.

27 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA;

28 SECTION 1. AMENDATORY 21 O.S. 1991, Section 1861, as  
29 amended by Section 424, Chapter 133, O.S.L. 1997 (21 O.S. Supp.  
30 1998, Section 1861), is amended to read as follows:

31 Section 1861. A. The name ~~and~~, organizational or business  
32 affiliation of every ~~person~~ commercial telephone seller as defined  
33 by Section 775A.2 of Title 15 of the Oklahoma Statutes who by  
34 telephone engages in the solicitation or sale of any item, tangible  
35 or intangible, shall, by such ~~person~~ seller, be given to the person  
36 answering such telephone call. Such information shall be given  
37 immediately and prior to any solicitation or sales presentation.

1 ~~The telephone number of the person placing the call must be given~~  
2 ~~upon request of the party being called.~~ Upon request of the party  
3 being called, the seller shall also provide the telephone number and  
4 complete street address of the organization or business they  
5 represent. The person in whose name the telephone is registered is  
6 responsible for his agents and employees conforming with the  
7 provisions of this section. This section does not apply to calls  
8 between persons known to each other and to religious groups, or  
9 nonprofit organizations within their own membership, and political  
10 activities.

11 B. No person may solicit contributions by telephone for a  
12 charitable nonprofit organization unless that organization has  
13 complied with the provisions of the Oklahoma Solicitation of  
14 Charitable Contributions Act, Sections 552.1 et seq. of Title 18 of  
15 the Oklahoma Statutes. ~~Such person may charge a reasonable fee for~~  
16 ~~his services, which shall not exceed ten percent (10%) of the net~~  
17 ~~receipts of the solicitation; provided, however, that in the event~~  
18 ~~the fee charged is based upon a predetermined flat fee, then this~~  
19 ~~provision shall not apply. Provided, further, that all sums shall~~  
20 ~~be paid directly to the nonprofit organization.~~ Upon request of the  
21 person being called, any person soliciting for a charitable  
22 nonprofit organization shall state what percentage of the net  
23 receipts of the solicitation the person or the organization or  
24 business that is engaging in the solicitation or sale will receive  
25 and what percentage of the net receipts the organization for which  
26 the solicitation is being conducted will receive.

27 C. Violation of this section by a person, business or  
28 organization shall constitute a misdemeanor punishable by a fine of  
29 not more than Ten Thousand Dollars (\$10,000.00). ~~A third and~~  
30 ~~subsequent conviction under this section shall constitute a felony.~~  
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1 SECTION 2. AMENDATORY Section 6, Chapter 235, O.S.L.  
2 1994 (15 O.S. Supp. 1998, Section 775A.2), is amended to read as  
3 follows:

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

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

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

14 (1) the security is either registered with the  
15 Oklahoma Securities Commission under Sections 301  
16 through 307 of Title 71 of the Oklahoma Statutes,  
17 or exempt from registration under Section 401 of  
18 Title 71 of the Oklahoma Statutes, and

19 (2) the person is registered by the securities  
20 commission as a broker-dealer as defined in  
21 Section 2 of Title 71 of the Oklahoma Statutes,  
22 an agent as defined in Section 2 of Title 71 of  
23 the Oklahoma Statutes, or an investment adviser  
24 representative as defined in Section 2 of Title  
25 71 of the Oklahoma Statutes, unless expressly  
26 excluded from such definitions, or such person is  
27 exempted from registration under Section 201 of  
28 Title 71 of the Oklahoma Statutes,

29 b. a person soliciting the sale of any book, record,  
30 audio tape, compact disc or video if the person allows  
31 the purchaser to review the merchandise without  
32 obligation for at least seven (7) days and provides a

1 full refund for the return of undamaged merchandise  
2 within thirty (30) days or if the person solicits such  
3 sale on behalf of a membership club operating in  
4 conformity with 16 Code of Federal Regulations 425,

5 c. a person making telephone calls to a residential  
6 customer for the sole purpose of polling or soliciting  
7 the expression of ideas, opinions or votes, or a  
8 person soliciting solely for a political or religious  
9 cause or purpose,

10 d. a paid solicitor or charitable organization which is  
11 required to and which has complied with the notice and  
12 reporting requirements of Section 552.3 of Title 18 of  
13 the Oklahoma Statutes or a person who is excluded from  
14 such notice and reporting requirements by Section  
15 552.4 of Title 18 of the Oklahoma Statutes,

16 e. a supervised financial organization, as defined in  
17 Section 1-301 of Title 14A of the Oklahoma Statutes,  
18 and its employees, when acting within the scope of  
19 their employment,

20 f. a supervised lender, as defined in subsection (2) of  
21 Section 3-501 of Title 14A of the Oklahoma Statutes,  
22 and its affiliates, subsidiaries, agents and  
23 employees, when acting within the scope of their  
24 employment,

25 g. a person or an affiliate of a person who is regulated  
26 by the Insurance Commission pursuant to Title 36 of  
27 the Oklahoma Statutes,

28 h. a person soliciting without the intent to complete and  
29 who does not in fact complete the sales transaction  
30 during the telephone solicitation or another telephone  
31 solicitation and who only completes the sales  
32 transaction at a later face-to-face meeting between

1 the solicitor and the prospective purchaser, excluding  
2 a face-to-face meeting, the sole purpose of which is  
3 to collect the payment or deliver any item purchased,  
4 or a person soliciting a purchaser with whom the  
5 person has had a previous face-to-face meeting in the  
6 course of such person's business,

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

9 j. a person soliciting telephone service, or licensed or  
10 franchised cable television service, which is billed  
11 and paid on a daily, weekly, or monthly basis and  
12 which can be canceled at any time without further  
13 obligation to the purchaser,

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

16 l. a person whose conduct is within the exclusive  
17 jurisdiction of the federal Commodity Futures Trading  
18 Commission as granted under the federal "Commodity  
19 Exchange Act", as amended,

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

23 n. a person who initially contacts the purchaser with a  
24 retail sales catalog requesting a telephone call  
25 response, when the person allows the purchaser to  
26 review the merchandise without obligation for at least  
27 seven (7) days and provides a full refund for the  
28 return of undamaged merchandise within thirty (30)  
29 days after receipt of the returned merchandise,

30 o. an issuer or a subsidiary of an issuer that has a  
31 class of securities which is subject to Section 12 of  
32 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

1 u. a person soliciting the sale of any newspaper,  
2 magazine, or other periodical of general circulation  
3 if such sales constitute a majority of such person's  
4 business and business revenues;

5 2. "Commercial telephone solicitation" means:

6 a. unsolicited telephone calls to a person initiated by a  
7 commercial telephone seller or salesperson, or an  
8 automated dialing machine with or without a recorded  
9 message device, for the purpose of inducing the person  
10 to purchase or invest in goods, services or property  
11 or offering an extension of credit,

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

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

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

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

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

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1 3. "Pay-per-call" means the use of a telephone number with a  
2 900 prefix or any other prefix under which liability for the service  
3 or product provided attaches to the telephone bill of the individual  
4 calling such number;

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

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

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

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

18 SECTION 3. This act shall become effective July 1, 1999.

19 SECTION 4. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

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