

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 950

By: Leftwich and Williams of
the Senate

and

Paulk of the House

COMMITTEE SUBSTITUTE

An Act relating to telemarketing; creating Telemarketer Restriction Act; providing short title; defining terms; requiring the Attorney General to establish registry of consumers who do not wish to receive unsolicited telemarketing calls; providing for contracting with a vendor to establish and maintain the registry; requiring notice of establishment of the registry; providing a means for consumers to be included or removed; requiring quarterly updates; authorizing the Attorney General to adopt and promulgate rules; prohibiting telemarketing calls to registered consumers after certain time period; making telemarketing calls to registered consumers an unlawful telemarketing practice and a violation of the Oklahoma Consumer Protection Act; permitting administrative fines under certain circumstances; creating the Telemarketer Revolving Fund; providing for budgeting and expenditures from the fund; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Telemarketer Restriction Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Telemarketer Restriction Act:

1. "Commercial purposes" means the sale or offer for sale of goods or services. "Commercial purposes" does not mean solicitation of funds or other support for a charitable or religious activity; political candidate, cause, or organization; or any activity of a not-for-profit entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code;

2. "Consumer" means any natural person who is a resident of this state;

3. "Established business relationship" means a prior relationship formed within the preceding twenty-four (24) months or an existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party;

4. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries, or other business entity;

5. "Telemarketer" means any person who, for commercial purposes, initiates a telemarketing sales call to a consumer located in this state or any person who directly controls or supervises the conduct of a telemarketer; and

6. "Telemarketing" means any plan, program, or campaign which is conducted for commercial purposes, by use of one or more telephones and which involves a telephone call initiated by a telemarketer to a consumer located within this state at the time of the call; "telemarketing" may include use of random dialing or other devices for such purposes and use of recorded or simulated voices. "Telemarketing" does not include a telephone call which is made for

the sole purpose of arranging a subsequent face-to-face meeting between a salesperson and the consumer.

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

Not later than January 1, 2003, the Attorney General shall establish, and thereafter maintain, a statewide registry which shall contain a list of consumers who desire not to receive unsolicited telemarketing sales calls. The Attorney General may, pursuant to the Oklahoma Central Purchasing Act, contract with a private vendor to establish and maintain the registry.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Attorney General shall publicize notice to consumers of the establishment of the no-telemarketing-sales-call registry and may provide, upon request, explanatory information concerning the provisions of the Telemarketer Restriction Act. Any consumer who desires to be included in the listing shall notify the Attorney General by calling a toll-free number provided by the Attorney General, or in any other manner, and at such times, as the Attorney General may prescribe, which may include notification via the Internet. The name and number, or numbers, of a consumer listed in the registry shall be removed upon written request by the consumer. The Attorney General shall update the registry not less than quarterly and shall make the registry available to telemarketers by such means and for such fees as are determined by the Attorney General pursuant to the Administrative Procedures Act.

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

The Attorney General is authorized to adopt and promulgate rules for the implementation, administration, and enforcement of the Telemarketer Restriction Act.

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

A. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any consumer more than thirty (30) days after the consumer's name and telephone number or numbers first appear on the registry made available by the Attorney General pursuant to the Telemarketer Restriction Act.

B. Willful violation of subsection A of this section shall be an unlawful telemarketing practice and a violation of the Oklahoma Consumer Protection Act; provided, a call to a consumer with whom the caller has an established business relationship shall not be a violation of the Telemarketer Restriction Act.

C. In lieu of bringing an action under the Oklahoma Consumer Protection Act, the Attorney General may, in cases where the telemarketer is able to demonstrate that the violation occurred notwithstanding policies of the telemarketer that were an integral part of the training of the individual or individuals responsible for the violation, assess an administrative fine. The Attorney General shall, pursuant to the Administrative Procedures Act, adopt and promulgate rules establishing a schedule of increasing fines to be assessed pursuant to this subsection for multiple and repeated violations.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.7 of Title 15, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Telemarketer Revolving Fund". The fund shall be a continuing fund,

not subject to fiscal year limitations, and shall consist of all monies received pursuant to the provisions of the Telemarketer Restriction Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purpose of implementing, administering, or enforcing the provisions of the Telemarketer Restriction Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 8. This act shall become effective July 1, 2002.

SECTION 9. 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.

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