

CS for EHB 2837

1 THE STATE SENATE
2 Thursday, April 4, 2002

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 2837

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2837 - By: PERRY,
7 PETERS and LIOTTA of the House and CAMPBELL of the Senate.

8 [telecommunications - amending 15 O.S., Section 775A.4 -
9 unlawful telemarketing practices - effective date -
10 emergency]

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

12 SECTION 1. AMENDATORY 15 O.S. 2001, Section 775A.4, is
13 amended to read as follows:

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

17 1. Conducts business as a commercial telephone seller without
18 having registered with the Attorney General, as required by Section
19 775A.3 of this title;

20 2. Fails to allow the purchaser in any telephone sales
21 transaction to cancel any purchase or agreement to purchase goods,
22 services or property at any time before the expiration of three (3)
23 business days after the purchaser's receipt of such goods, services
24 or property by delivering or mailing to the commercial telephone
25 seller written notice of cancellation. Notice of cancellation, if

1 sent by mail, is deemed to be given as of the date the mailed notice
2 was postmarked;

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

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

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

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

1 5. Misrepresents to any person that the person has won a
2 contest, sweepstakes or drawing, or that the person will receive
3 free goods, services or property;

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

8 7. Makes any reference to the commercial telephone seller's
9 compliance with this act to any purchaser without also disclosing
10 that compliance with this act does not constitute approval by any
11 governmental agency of the seller's marketing, advertisements,
12 promotions, goods or services;

13 8. Uses equipment or techniques the purpose of which is to
14 intentionally block or avoid detection of the commercial telephone
15 seller's identity or telephone number by caller identification
16 devices; ~~or~~

17 9. Uses equipment, systems or procedures which automatically
18 dial and engage the telephone number of more than one person at a
19 time but allow only one line at a time to be connected to the
20 telemarketer thereby resulting in consumers receiving dead calls;
21 provided, however, this section does not apply to predictive dialer
22 equipment which is calibrated to connect to the telemarketer within
23 five (5) seconds; or

1 10. Engages in any deceptive trade practice defined in Section
2 752 of this title.

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

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

1 D. Any violations of this act are violations of the Oklahoma
2 Consumer Protection Act.

3 SECTION 2. This act shall become effective July 1, 2002.

4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 4-1-02 -
9 DO PASS, As Amended.