

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2760

By: Newport

AS INTRODUCED

An Act relating to telemarketing; amending 15 O.S. 2001, Section 755.1, which relates to automatic dialing announce devices; changing time restriction for certain telephone calls; creating Telemarketer Restriction Act; providing short title; defining terms; requiring the Attorney General to establish directory of consumers who do not wish to receive unsolicited telemarketing calls; permitting, pursuant to the Central Purchasing Act, contracting with a vendor to establish and maintain the registry; requiring notice of establishment of the directory and means for consumers to be included or removed; requiring quarterly updates; authorizing adoption and promulgation of rules; 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 codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 15 O.S. 2001, Section 755.1, is amended to read as follows:

Section 755.1 A. The connection of an automatic dial announcing device to a telephone line is subject to the provisions of the Oklahoma Consumer Protection Act.

B. No person shall operate an automatic dial announcing device except in accordance with the provisions of the Oklahoma Consumer Protection Act. The use of such device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dial announcing devices, is subject to the provisions of the Oklahoma Consumer Protection Act.

C. A person shall not use an automatic dial announcing device except as provided by this section. An automatic dial announcing device shall be used only when:

1. The device disconnects from the called person's line not later than twenty (20) seconds after the called person hangs up; and

2. For calls terminating in this state, the device is not used to make a call:

a. before 9 a.m. or after ~~9~~ 5 p.m., or

b. at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, 15 U.S.C., Section 1692(c), when the device is used for collection purposes; and

3. One of the following occur:

a. the calls are made or messages given solely in response to calls initiated by the person to whom the automatic calls or recorded messages are directed or who has made a written request to be called,

b. the calls made concern goods or services that have been previously ordered or purchased,

c. the calls are made by creditors or their assignees, or

d. the calls are initiated by a live operator who gives the caller the option to disconnect prior to the playing of a prerecorded or synthesized voice message.

D. An automatic dial announcing device shall not be used for random number dialing or to dial numbers determined by successively increasing or decreasing integers.

E. A telephone company in this state may, but shall not be required to disconnect or refuse to connect service to a person using or intending to use an automatic dial announcing device if the telephone company determines that the device is not capable of disconnecting from a called party's line as required by this section or that the device would cause or is causing network harm.

F. The telephone company shall give notice to the person using the device of its intent to disconnect service not less than three (3) days prior to the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given the day before the date of disconnection.

G. The telephone company shall disconnect service to the person on a determination by a court or the Oklahoma Corporation Commission that the person is violating the provisions of this section, and may reconnect service to the person only on a determination by the court or the Oklahoma Corporation Commission that the person will comply with this section. Any notice of such an order shall be served on a telephone company in the same manner as is required for service of process, unless the company is already a party to the proceeding in which the order is created.

SECTION 2. 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 3. 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 the relationship between a specific telemarketer and a consumer who has, within the preceding twelve (12) months, purchased goods or services from the telemarketer or where a contact has been initiated by the consumer;

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 4. 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 do not desire 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 5. 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 6. 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 7. 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 quarterly 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 8. 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 9. This act shall become effective July 1, 2002.

SECTION 10. 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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