STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1271

By: Newport, Lindley, Cox and Hefner of the House

and

Leftwich of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to telemarketing; amending Sections 2, 4 and 6, Chapter 72, O.S.L. 2002 (15 O.S. Supp. 2002, Sections 775B.2, 775B.4 and 775B.6), which relate to the Telemarketer Restriction Act; modifying definitions; deleting requirement to include consumer names on registry; authorizing the Attorney General to forward consumer requests to the appropriate federal agency for inclusion on a nationwide registry; making the registry privileged and confidential in certain circumstances; making the registry exempt from the Oklahoma Open Records Act; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 72, O.S.L. 2002 (15 O.S. Supp. 2002, Section 775B.2), is amended to read as follows:

Section 775B.2 As used in the Telemarketer Restriction Act:

1. "Commercial purposes" means relating to 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 and shall not include any business association, partnership, firm, corporation, and its affiliates or subsidiaries, or other business entity;

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 2. AMENDATORY Section 4, Chapter 72, O.S.L. 2002 (15 O.S. Supp. 2002, Section 775B.4), is amended to read as follows:

Section 775B.4 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 from the registry either by the consumer calling a toll-free number provided by the Attorney General or upon written request by the consumer. The Attorney General shall implement a procedure to verify a consumer request to be added or removed from the registry. 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. The Attorney General is authorized to forward all consumer requests to be included in the registry to the Federal Trade Commission, Federal Communications Commission, or any other agency of the federal government charged with the establishment and maintenance of a nationwide registry of consumers who desire not to receive unsolicited telemarketing sales calls. Except as otherwise provided in the Telemarketer Restriction Act, the registry is privileged and confidential and not subject to the Oklahoma Open Records Act.

SECTION 3. AMENDATORY Section 6, Chapter 72, O.S.L. 2002 (15 O.S. Supp. 2002, Section 775B.6), is amended to read as follows:

Section 775B.6 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 or a call to a

consumer whose ~~name and~~ number ~~have~~ has been removed from the registry 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 4. 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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